

Chapter 841. Workforce Investment Act

The Texas Workforce Commission (Commission) proposes new Chapter 841 §§841.1, 841.2, 841.11-841.13, 841.31-841.49, 841.61-841.69, and 841.91-841.96, relating to the implementation of the Workforce Investment Act.

The purpose of Subchapter A is to address the goal of the program and the definitions of terms used in this chapter.

The purpose of Subchapter B is to establish the requirement for a one-stop delivery system, to identify the requirements of the one-stop delivery system, and to identify the limitations on delivery of services.

The purpose of Subchapter C is to address the certification of training providers.

Section 841.31 discusses the scope and coverage of this subchapter.

Section 841.32 addresses the training services.

Section 841.33 concerns the determination of occupations in demand.

Section 841.34 discusses the individual training accounts.

Section 841.35 addresses the training services which are not provided through individual training accounts.

Section 841.36 discusses the priority of access to services.

Section 841.37 addresses coordination of services.

Section 841.38 addresses the initial certification process.

Section 841.39 discusses the alternative application for initial eligibility determination.

Section 841.40 addresses the application submission.

Section 841.41 discusses the initial eligibility determination.

Section 841.42 identifies exception to provider certification requirements.

Section 841.43 discusses application for subsequent eligibility determination.

Section 841.44 addresses determination of subsequent eligibility.

Section 841.45 establishes the requirement that each local workforce development board (LWDB) adopt standards of performance.

Section 841.46 addresses verifiable program-specific performance information.

Section 841.47 discusses certified provider lists.

Section 841.48 addresses local appeals.

Section 841.49 discusses state level appeals.

The purpose of Subchapter D is to address local area grievance procedures.

Section 841.61 identifies the purpose and coverage of this subchapter.

Section 841.62 addresses the grievance filing procedures at the local level.

Section 841.63 identifies the time limitations at the local level.

Section 841.64 addresses the LWDB's responsibilities.

Section 841.65 discusses the local level informal conference procedure.

Section 841.66 addresses the local level hearing procedure.

Section 841.67 discusses the written decision.

Section 841.68 addresses the remedies available.

Section 841.69 identifies the appeal procedure.

Section 841.70 addresses the alternate resolution process.

The purpose of Subchapter E is to address state level hearing procedures.

Section 841.91 addresses the scope of this subchapter.

Section 841.92 discusses the review procedure for appeals made under §841.73.

Section 841.93 addresses the state level informal resolution and hearing process.

Section 841.94 discusses the appeal of denial of area certification.

Section 841.95 addresses the referral of local complaints.

Section 841.96 discusses the appeal to the Secretary of Labor.

The 74th Texas Legislature and the Governor enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995. This state law reformed both the welfare and workforce systems and made Texas the nation's leader among reform-minded states. House Bill 1863 provided local elected officials the opportunity to form local workforce development boards (LWDB) 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.

The federal Workforce Investment Act of 1998 (WIA) recognizes the strides made in the development of Texas' workforce investment system and specifically provides for the state to maintain many features of H.B. 1863.

Without these provisions, early implementation of WIA in Texas would be substantially more complicated. Key features of the system that Texas is preserving include the following.

The State Human Resource Investment Council, called the Texas Council on Workforce and Economic Competitiveness (TCWEC) constituted under prior consistent state law will function as the State Board.

The twenty-eight existing local workforce development areas (LWDAs), established under prior consistent state law, will function as the local workforce investment areas for purposes of WIA.

The State will continue to use the Allocation Rule established under prior consistent state law for the disbursement of WIA funds.

The State will continue to use the sanctions, established under prior consistent state law, for nonperformance by an LWDB.

LWDBs established in conformity with prior consistent state law will function as the local workforce investment boards, including those functions required of a Youth Council.

In lieu of designating or certifying one-stop partners and operators as described in WIA, Texas requires LWDBs to partner with those outlined under prior consistent state law and to competitively procure the Center Operator(s).

The LWDBs will also continue to make arrangements for financial services by selecting fiscal agents in accordance with the process established in prior consistent state law set out in the Texas Government Code.

Texas bases its strategies for implementing WIA requirements for the Texas workforce development system on four key principles determined by the Governor: (1) limited and efficient state government; (2) local control; (3) personal responsibility; and (4) support for strong families. The training provider certification system is guided by these four key principles which serve as a framework to guide the development of this system in order to allow maximum flexibility, emphasize customer choice, and demand strict accountability.

Within each LWDA, the LWDB and the Commission must find all providers of training services to be eligible and qualified to provide a training program before WIA funds may be used to pay for services provided by that training program. All providers must submit written applications in order for eligibility to be determined.

As described in §841.38, the LWDBs will develop an application to be used in two situations. The first situation is that of institutions which are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 and which provide a program that leads to an associate degree, baccalaureate degree, or certificate, when those institutions are seeking to be certified as an eligible provider for a program leading to an associate degree, baccalaureate degree, or certification. The second situation occurs when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider for a program under the National Apprenticeship Act.

A second application process, described in §841.39, is used in three situations. The first is when a postsecondary school is seeking certification as an eligible provider for a program which does not lead to an associate degree, baccalaureate degree, or certification. The second is when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider of a program is not regulated under the National Apprenticeship Act. The third is when any other public or private provider of training services, including community-based and faith-based organizations, seeks to be certified as an eligible provider of training services. The Commission solicited and received comments and input into the development of the provider certification procedures through meetings with representatives of community colleges, proprietary schools, literacy training providers, apprenticeship programs and LWDBs; the creation and maintenance of a website on the Internet; and a public hearing held on March 11, 1999.

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

there are no additional estimated cost 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 and administering the rule;

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 amendments; and

there are no anticipated costs to persons who are required to comply with the rule as proposed.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated or foreseeable adverse impact on small businesses as a result of enforcing or administering these rules.

Jean Mitchell, Director of Workforce Development, has determined that for the first five year period the rules are in effect, the public benefit anticipated as a result of the sections as proposed will be to ensure that essential rules are in place for early implementation of WIA.

Mark Hughes, Director of Labor Market Information, has determined that, while the proposed sections could affect private sector or public sector employment under certain circumstances, there is no significant negative impact upon employment conditions in this state as a result of these proposed sections.

Comments on the proposed sections may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas 78778; Fax Number 512-463-3424; or E-mail to barbara.cigainero@twc.state.tx.us.

The Commission has scheduled a public hearing on the proposed rules for 10:00 a.m. on May 13, 1999, in room 244 of the Texas Workforce Commission Building, at 101 East 15th Street in Austin, Texas.

Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

Subchapter A. General Provisions

40 TAC §841.1, §841.2

The new sections are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

§841.1.Goal.

These rules provide the implementation of the Workforce Investment Act (WIA) as it relates to the duties of the Commission and the Local Workforce Development Boards (LWDBs). This implementation accommodates prior consistent state laws as permitted by WIA. This integration of new federal law and prior existing state law will continue to promote and support Texas' ongoing workforce development reform efforts. WIA compliments Texas' reform efforts, which stress:

(1) limited and efficient state government;

(2) local control;

(3) personal responsibility; and

(4) support for strong families.

§841.2.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Administrative costs - The necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of employment and training services, as further defined by the federal regulations and subject to the cost limitations set forth in WIA §134(a)(3)(B) and the cost principles set forth in WIA §184(a)(2)(B).

(2) Commission - The Texas Workforce Commission as established in the Texas Labor Code, §301.001.

(3) Complainant - Any participant or other personally interested or personally affected party alleging a non-criminal violation of the requirements of WIA.

(4) Customized Training - As defined in WIA §101(8), training that is designed to meet the requirements of an employer, conducted with a commitment by the employer to employ an individual on successful completion of the training and for which the employer pays not less than 50 percent of the cost of the training.

(5) Hearing Officer - An impartial party who shall preside at a hearing on a grievance.

(6) ITAs - Individual Training Accounts.

(7) LWDA - Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.

(8) LWDB - Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261.

(9) On-the-Job Training - As defined in WIA §101(31), training by an employer that is provided to a paid participant while engaged in productive work in a job.

(10) One-Stop Partner - An entity which makes services available to participants through a one-stop delivery system under the terms of a memorandum of agreement with a LWDB.

(11) Participant - As defined in WIA §101(34), an individual who has been determined to be eligible to participate in, and who is receiving services under, a program authorized by WIA.

(12) Respondent - The person, organization or agency against which a complaint has been filed for the alleged violation of the requirements of WIA.

(13) WIA - Workforce Investment Act, P.L. 105-220, 29 U.S.C.A. §1601 et seq.

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 April 2, 1999.
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J. Randel Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: May 16, 1999
For further information, please call: (512) 463-8812

Subchapter B. One-Stop Delivery System

40 TAC §§841.11-841.13

The new sections are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

§841.11. Requirement to Maintain a One-Stop Delivery System.

Each LWDB shall maintain a one-stop delivery system, consistent with WIA and prior consistent state law.

§841.12. Requirements of One-Stop Delivery System.

(a) A one-stop delivery system shall include at least one career center which is accessible to employers, workers, and students and which offers core services. Core services as defined in WIA §134(c) and Government Code Chapter 2308 include:

(1) outreach;

(2) intake, which may include worker profiling, and orientation to the information and services available through the one-stop;

(3) determinations of whether the individuals are eligible to receive assistance and services through the one-stop delivery system;

(4) initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(5) job search and placement assistance and, where appropriate, career counseling;

(6) provision of performance information and program cost information on eligible providers of training services as described in Subchapter C of this chapter (relating to Training Provider Certification), provided by program, and eligible providers of youth activities described in WIA §123, providers of adult education described in title II of WIA, providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C.A. §2301 *et seq.*), and providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C.A. §720 *et seq.*);

(7) provision of information regarding how the local area is performing on the local performance measures and any additional performance information with respect to the one-stop delivery system in the local area;

(8) provision of information regarding filing claims for unemployment compensation;

(9) provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor markets areas, including job vacancy listings in such labor market areas, information on job skills necessary to obtain the jobs listed, and information related to local occupations in demand and the earnings and skill requirements for such occupations;

(10) provision of accurate information relating to the availability of supportive services, including child care and transportation, available in the LWDA, and referral to such services, as appropriate;

(11) assistance in establishing eligibility for Welfare to Work activities, Choices, Food Stamp Employment and Training, and programs of financial aid assistance for training and education that are available in the local area; and

(12) follow-up services including counseling regarding the workplace, for participants in workforce investment activities authorized under this chapter who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

(b) A one-stop delivery system shall provide access to services as described in the Texas Government Code Chapter 2308 and intensive services as described in the WIA §134(c), which may include the following:

(1) comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, such as diagnostic testing and use of other assessment tools, in-depth interviewing, and evaluation to identify employment barriers and employment goals;

(2) development of an individual employment plan and service strategy to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve employment goals and objectives;

- (3) group counseling;
- (4) individual counseling and career planning;
- (5) centralized and continuous case management; and
- (6) short-term prevocational services including learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for unsubsidized employment or training.
- (c) A one-stop delivery system shall provide access to training services as described in the WIA §134(c) and the Texas Government Code Chapter 2308. Training services may include the following:
 - (1) occupational skills training, including training for non-traditional employment;
 - (2) on-the-job training;
 - (3) programs that combine workplace training with related instruction;
 - (4) training programs operated by the private sector;
 - (5) skill upgrading and retraining;
 - (6) entrepreneurial training;
 - (7) job readiness training;
 - (8) adult education and literacy activities in combination with services with activities described in paragraphs (1)-(7) of this subsection; and
 - (9) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training.
- (d) A one-stop delivery system shall offer access to all other permissible local employment and training activities included in the local workforce development plan. Such activities may include discretionary one-stop activities, supportive services, and needs-related payments as outlined in WIA §134(e).
- (e) A one-stop delivery system shall offer access to all programs and activities carried out by the one-stop partners.
- (f) A one-stop delivery system shall offer access to the information described in §15 of the Wagner-Peyser Act and all job search, placement, recruitment and other labor exchange services authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.)

§841.13.Limitations on Delivery of Services.

Delivery of services under §841.12 of this title (relating to Requirements of a One-Stop Delivery System) are subject to state law requirements on local workforce board organization and service delivery structure as found in Government Code §2308 and Chapter 801 of this title (relating to Local Workforce Development Boards).

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.

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J. Randel Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812

Subchapter C. Training Provider Certification

40 TAC §§841.31-841.49

The new sections are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

§841.31.Scope and Coverage.

This subchapter establishes rules governing the state's training provider certification system as required by WIA §122 and is applicable to providers of training services for adults and dislocated workers.

§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.

(b) Training services shall be directly linked with employment opportunities on the list of occupations in demand for the LWDA of the participant's residence or another area to which the participant is willing to relocate. In addition, each LWDB shall develop a process for considering requests from participants for training in occupations not on the demand list if sufficient and verifiable documentation is provided.

(c) Training services shall be provided in such a manner as to maximize consumer choice in the selection of eligible providers.

(d) Training services shall be provided through the use of individual training accounts except for those situations described in §841.35 of this title (relating to Training Services Which are Not Provided Through Individual Training Accounts).

§841.33.Determining Occupations in Demand.

(a) Each LWDB shall annually establish a list of occupations in demand in the LWDA.

(b) In establishing the list of occupations in demand, the LWDB shall consider:

(1) labor market information provided by the Commission;

(2) information provided by businesses and business organizations in the LWDA; and

(3) information provided by workers and worker organizations in the LWDA.

§841.34.Individual Training Accounts.

(a) An ITA is an account established by a one-stop operator on behalf of an eligible adult or dislocated worker program participant and funded with WIA adult and dislocated worker funds. Participants may use ITAs for training services for skills in demand or allowed occupations as defined by the LWDB from training providers on the state-distributed list of approved eligible training providers.

(b) At its discretion, a LWDB is authorized to approve a request for training for occupations not on the occupations in demand list, if sufficient and verifiable documentation is provided.

§841.35.Training Services Which are Not Provided Through Individual Training Accounts.

Training services may be provided pursuant to a contract for services instead of an ITA as provided in WIA §134(d)(4)(G)(ii) in the following situations:

(1) the services are on-the-job training provided by an employer or are customized training, as defined in §841.2 of this title (relating to Definitions);

(2) the LWDB determines there are an insufficient number of eligible providers of training services in the LWDA to accomplish the purposes of a system of ITAs; or

(3) the LWDB determines that there is a training services program of demonstrated effectiveness offered in the LWDA by a community-based organization or another private organization which serves participant populations that face multiple barriers to employment, including one or more of the following categories:

(A) individuals with substantial language or cultural barriers;

(B) offenders;

(C) homeless individuals; or

(D) other such population defined by the LWDB.

§841.36.Priority of Access to Services.

(a) The LWDBs shall determine whether WIA funds allocated to the LWDA for adult employment and training activities are insufficient to meet the anticipated request for services. The LWDBs' local plans shall reflect this determination and the basis for the determination.

(b) If a determination is made that funds are insufficient, the LWDBs shall determine the priority of access to services for participants, in compliance with WIA requirements. Priority for intensive services and training services shall be given to recipients of public assistance and other low-income individuals in the LWDA. The LWDB shall develop instructions for one-stop operators in the LWDA regarding the provision of services related to such priorities.

(c) If a determination is made that WIA funds are sufficient, the LWDBs shall provide services to any eligible participant.

§841.37.Coordination of Services.

(a) Prior to enrolling a participant in an adult education or literacy activity provided in combination with other training services, the one-stop operator shall develop an individual employment plan with the participant. The plan shall identify the skill training for the occupation in demand that will be pursued and the required skill competency level associated with the additional training service.

(b) LWDBs shall collaborate with adult education and literacy providers as well as other providers, whenever possible, to develop coordinated training activities.

§841.38.Initial Certification Process.

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

(1) a postsecondary educational institution that:

(A) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(B) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or
(2) an entity that carries out programs under the Act of August 16, 1937, commonly known as the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.
§841.39. Alternative Application for Initial Eligibility Determination.

(a) The following entities shall be eligible to receive WIA funds if they complete the provider certification process and are determined eligible for participation by a LWDB in the LWDA in which the provider desires to provide training services and the Commission:

(1) public or private providers of a program of training services including faith-based providers which are not:
(A) postsecondary educational institutions that are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. §1070 et seq.), and provide programs that lead to an associate degree, baccalaureate degree or certificate; or

(B) entities that carry out programs under the Act of August 16, 1937, also known as the "National Apprenticeship Act," 50 Stat. 664, chapter 663, 29 U.S.C. 50 et seq.;

(2) postsecondary educational institutions which seek to receive WIA funding for a program that does not lead to an associate degree, baccalaureate degree or certificate; and

(3) providers that carry out programs under the Act commonly known as the National Apprenticeship Act that seek to receive WIA funding for a program not covered by the National Apprenticeship Act.

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

(1) the name, mailing address and physical address of the training facility;

(2) documentation of financial stability of the applicant, which may include audits or financial statements;

(3) the name of the program(s) of training services submitted for WIA funding;

(4) the total hours of instruction associated with each program of training services;

(5) the cost of each program of training services, including tuition, fees, books, and any required tools, uniforms, equipment, or supplies;

(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;

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

(9) a list of occupations (by Occupational Employment Statistics Code) in which these skill sets are of primary interest;

(10) if any of the occupations described 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;

(11) description of the class size, instructor/student ratio;

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

(13) an outline of the course or program curriculum;

(14) the qualifications of the training instructors;

(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);

(16) description of equipment utilized in the course and equipment/student ratio;

(17) description of employer support of program; and

(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) the program completion rates for all individuals participating in the applicable program;

(2) the percentage of all individuals participating in the applicable program who obtained unsubsidized employment;

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

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

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

(d) Training providers of programs of training services who wish to be identified on the state list but who are not seeking WIA certification shall submit the information outlined in subsection (c) of this section.

(e) Each LWDB shall annually establish minimum requirements for initial eligibility. Such requirements shall include consideration of the information required by §841.44(a) of this title (relating to Determination of Subsequent

Eligibility). The LWDB shall provide to each applicant the current levels of performance required by the Governor or levels of performance required by the LWDB if higher than those established by the Governor.

(f) A staff member or a representative of the LWDB shall make an on-site visit to the area of program instruction for all initial eligibility applications, unless the school has been previously certified eligible for a program of training services.

§841.40. Application Submission.

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.

§841.41. Initial Eligibility Determination.

(a) A LWDB shall provide a written notice of determination of acceptance or rejection of an initial application to an applying entity within 90 calendar days of the receipt of the completed initial eligibility determination application.

(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 six months after the date of the written notice of denial.

§841.42. Exceptions to Provider Certification Requirements.

(a) On-the-job or customized training providers are not subject to the training provider certification requirements. In order to be eligible to receive WIA funding, such training providers shall provide to one-stop operators the performance information described in §841.39(c) of this title (relating to Alternative Application for Initial Eligibility Determination). One-stop operators shall review the performance data and determine which training providers meet the performance criteria listed in §841.39(e) of this title. One-stop operators shall provide to the Commission and to participants information on each customized training or on-the-job trainer provider, including the performance information supplied by the provider as well as the one-stop operator's determination of whether the provider meets the performance criteria in §841.39(e) of this title.

(b) Providers of youth activities are not subject to the training provider certification system and are not eligible to provide training through the use of ITAs. Providers of youth activities are selected through a competitive procurement by LWDBs in consultation with providers of youth services and based on criteria contained in the state plan. Eligible providers of youth activities are subject to the Governor's standards for core indicators of performance established for youth programs in WIA.

§841.43. Application for Subsequent Eligibility Determination.

(a) All training services providers, including training providers who were required to qualify for initial eligibility as well as providers exempt from the initial eligibility process, shall annually, from date of certification, establish continuing eligibility to receive funds from WIA to provide training services. The LWDB may request that the state make a certification effective on or after a requested date.

(b) Each training services provider shall submit the following verifiable program-specific performance information:

(1) program completion rates for all individuals participating in each of the applicable programs;

(2) percentage of all individuals participating in each of the applicable programs who obtained unsubsidized employment;

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

(4) wages at placement in employment of all individuals participating in the applicable program;

(5) training services information for all participants who received assistance under WIA, including:

(A) Social Security Number of each participant and an indication of whether or not the participant completed the program;

(B) percentage of participants who have completed the applicable program and who are placed in unsubsidized employment;

(C) percentage of participants who have completed the applicable program and who are placed in unsubsidized employment in an occupation related to the program conducted;

(D) name, mailing address and phone number of the employers providing unsubsidized employment for participants;

(E) rates of degree or equivalent attainment, if appropriate, from institutions awarding academic degrees or equivalent; and

(6) program cost information, including tuition, books, fees and tools, for participants in the applicable programs.

(c) The required information shall be submitted by the providers to the LWDB on a calendar quarter basis on a schedule determined by the LWDB, but no later than 30 days after the end of the calendar quarter.

(d) The LWDB shall provide the required information to and in a format determined by the Commission within 30 days of receipt by the LWDB.

(e) An individual shall be considered to have completed a program if that individual is not enrolled in a program of training services for four consecutive months, or has completed the requirements of the program of training services.

(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) Each LWDB shall annually establish minimum requirements for subsequent eligibility. In determining subsequent eligibility, LWDBs shall consider the following:

(1) the specific economic, geographic, and demographic factors in the local areas in which providers seeking eligibility are located;

(2) the characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving such populations, where applicable;

(3) occupational demand within the local area;

(4) the performance of a provider of a program(s) of training services including the extent to which the annual standards of performance established by the LWDB have been achieved;

(5) the program cost of training services; and

(6) the involvement of employers in establishing the skill requirements for the training program.

(b) No later than July 1, 2000, each LWDB shall ensure that industry-defined and industry recognized skill standards, if recognized by the Texas Skill Standards Board as statewide Texas occupational skill standards, are used when making determinations of subsequent eligibility. As the Texas Skill Standards Board recognizes new standards not previously recognized, these standards shall be used by each LWDB when making subsequent eligibility determinations. In the event that there are skill standards which have been granted conditional recognition by the Texas Skill Standards Board but have not been recognized as statewide Texas skill standards, these conditionally recognized standards shall be used when making subsequent eligibility determinations. The standards recognized by the Texas Skill Standards Board are minimum standards and do not prevent LWDBs from enhancing standards to meet their employer-identified local skill needs.

(1) For those occupations which appear on a LWDB's occupations in demand list and for which neither statewide Texas occupational skill standards nor conditional skill standards have been recognized by the Texas Skill Standards Board, each LWDB shall, within two years of funding training for that occupation, undertake and document a local skill needs analysis for those occupations. In the event that neither statewide Texas occupational skill standards nor conditionally recognized skill standards exists, then the local skill needs analysis shall be used when making determinations of subsequent eligibility.

(2) The local skill needs analysis referenced in paragraph (1) of this subsection will be undertaken locally in collaboration with other entities, including employers and workers, and may include other LWDBs.

(3) For purposes of collaboration and the efficient use of resources, each LWDB shall report annually to the Commission and the Texas Skill Standards Board those occupations in demand in their area for which skill standards have not yet been recognized.

(4) For purposes of collaboration and facilitation of statewide Texas skill standards development, each LWDB shall forward to the Texas Skill Standards Board the outcomes and work-related data of any local skill needs analysis for those occupations in demand in their area for which skill standards have not yet been recognized by the Texas Skill Standards Board. This information shall be forwarded within 90 days after completion of the skills needs analysis.

(c) Once every two years, each LWDB shall ensure that a representative group of appropriate local employers review the exit standards of certified training providers to verify that the training being provided produces the skills and work performance competencies as specified in the Texas Skill Standards Board recognized statewide Texas occupational skill standards, conditional skill standards, or the LWDB local skill needs analysis.

§841.45.Standards of Performance.

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

(b) Standards shall be developed in the following performance measures:

(1) training completion rate,

(2) entered employment rate,

(3) training relatedness employment rate,

(4) average earnings change in six months,

(5) six months employment retention rate, and

(6) educational or occupational skills credential rate.

(c) Performance standards for employment at six months, wages at six months, and rate of licensure, certification, degree completion and other skill attainment measures may be adjusted by the state for local conditions and should reflect continuous improvement within the local area.

§841.46. Verifiable Program-Specific Performance Information.

(a) Performance information submitted for a training services program as a part of the subsequent eligibility determination process shall be verifiable.

(b) Each training services provider shall develop a written methodology for the collection of required performance information.

(c) An independent audit of the methodology shall be conducted on an annual basis by a certified public accountant for programs of training services in which 100 or more WIA-supported students are served within a twelve-month period. Programs that serve less than 100 WIA-supported students in a twelve-month period shall provide for an independent audit of the performance information collection methodology every two years. A copy of the audit report shall be made available to the LWDB and to the Commission within 30 days of the completion of the report.

(d) Verifiable program performance information shall be submitted to the LWDB on a calendar quarter basis on a schedule established by the LWDB, but no later than 30 days after the end of a calendar quarter.

(e) The LWDB shall provide the required information to and in a format determined by the Commission within 30 days of receipt by the LWDB.

(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.

(g) A LWDB may use an alternate procedure for performance information verification if the LWDB obtains the written approval of the Commission before the use of the alternate methodology.

(h) 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. Certified Provider Lists.

(a) At least two times a year, 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 a list of providers who submitted applications. Each LWDB shall also develop a list of providers determined to be initially eligible and retain on that list providers determined to be subsequently eligible to continue to receive WIA funds to provide training services.

(c) Each LWDB shall provide the list to the Commission on a monthly basis. The submission shall be in a format prescribed by the Commission.

(d) On placing or retaining a provider on the list, the LWDB shall submit to the Commission the performance and cost information outlined in §841.43(b) of this title (relating to Application for Subsequent Eligibility Determination) supplied by the provider. The LWDB shall provide the information to the Commission no later than 30 calendar days from receipt of the information by the LWDB.

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

(f) 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 Governor, 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.

(g) 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.

(h) 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.

§841.48. Local Appeals.

(a) Each LWDB shall develop a written appeals process for appeals requested by providers found by the LWDB to be ineligible to receive WIA funding for training services.

(b) This procedure shall include an opportunity for a hearing.

(c) A final written decision on the appeal shall be provided within 60 days of the date of the LWDB's receipt of the request for appeal.

§841.49. State Level Appeals.

(a) A Commission determination that a provider is not eligible to receive WIA funding may be appealed. The written request for an appeal must be received by the Commission within 30 days of the date of the written notification to the provider of the determination of ineligibility. Either the LWDB in the area in which the training provider is located or the training provider may request an appeal.

(b) A hearing shall be conducted by a hearing officer employed by the Commission.

(c) A written decision shall be provided within 60 days of the date of receipt of the request for a hearing.

(d) The decision of the hearing officer shall be final.

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.

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Subchapter D. Local Area Grievance Procedure

40 TAC §§841.61-841.69

The new sections are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

§841.61. Purpose and Coverage.

(a) This subchapter establishes procedures for resolving allegations of violations of the requirements of WIA in the operation of local WIA programs and activities.

(b) These procedures cover complaints alleging a non-criminal violation of the requirements of WIA pursuant to WIA §181, and do not apply to complaints of discrimination. The Commission may waive specific provisions of this grievance procedure.

(c) All information and complaints involving allegations of fraud, abuse or other criminal activity shall be reported directly to the Texas Workforce Commission, Office of Investigations, 101 E. 15th Street, Austin, TX 78778-0001.

(d) All complaints of discrimination shall be handled in accordance with WIA §188.

§841.62. Grievance Filing Procedures at the Local Level.

(a) Any participant or other personally interested or personally affected party alleging a violation of the requirements of WIA at the local level may file a complaint by submitting a written grievance to the LWDB where the alleged action took place. The grievance must be signed and dated by the complainant and shall include the following information:

(1) the name, complete address, and telephone numbers for the person or organization filing the complaint;

(2) a detailed description of the action which is the subject of the complaint, including reference or description of the provision that was allegedly violated;

(3) a description of how they were personally affected; and

(4) the name and address of each party or parties believed to be responsible for the action which is the subject of the complaint. The complainant must explain how each party is responsible for the action which is the subject of the complaint.

(b) To facilitate the filing of a grievance or complaint, the complainant may request a WIA Grievance Information Form from the LWDB or send a written request to the Texas Workforce Commission, Equal Opportunity Officer, at 101 E. 15th Street, Austin, TX 78778-0001.

§841.63. Time Limitations at Local Level.

(a) All complaints of non-criminal violations of the requirements of WIA must be made within 180 days of the alleged action. The time limitations for complaint resolution shall begin to run upon the date of receipt by the LWDB of a properly completed written grievance.

(b) All of the complainant's outstanding and unresolved allegations against the respondent must be described and consolidated into a single complaint at the time of filing. Any allegation not consolidated into the filed complaint prior to the informal resolution shall be deemed waived.

§841.64. LWDB Responsibilities.

Each LWDB shall adopt a written grievance procedure and ensure that its WIA contractor and subrecipients post in a public location a notice that a copy of the grievance rules are available upon request. The LWDB shall also ensure that

(1) the Commission receives a photocopy of each complaint postmarked within three working days following the filing of such complaint;

(2) upon request, the complainant receives information regarding WIA grievance procedures;

(3) complete and accurate copies of all complaint correspondence and records of all complaint proceedings are maintained; and

(4) all LWDB contractors are fully complying with the terms of the WIA grievance procedures.

§841.65. Local Level Informal Conference Procedure.

(a) The LWDB shall ensure that there is an opportunity for an informal resolution.

(b) The LWDB shall appoint an impartial Hearing Officer to preside at the informal conference.

(c) The informal conference may be attended by the complainant, the respondent, and any other persons with information or knowledge relevant to the complaint considered necessary by the Hearing Officer for a fair determination of the issues. Only those issues presented at the informal conference may be addressed in subsequent hearings.

(d) The Hearing Officer shall notify all parties of the time, date, and location for the informal conference.

(e) The Hearing Officer shall provide each party with a written determination, including a statement of whether or not a resolution was reached, the details of any resolution and, if the complaint was unresolved, notice to the complainant of the opportunity for a local level hearing.

(f) The LWDB shall ensure that the informal conference, issuance of the written determination, and notice of the opportunity for a local level hearing, is completed within 20 days of the LWDB's receipt of a properly completed complaint form.

§841.66. Local Level Hearing Procedure.

(a) An LWDB shall provide a hearing at the request of either party who is dissatisfied with the results of the informal conference. The request for a hearing must be in writing and mailed within 14 days of the date the written determination was mailed.

(b) The LWDB shall select an impartial Hearing Officer who was not involved in the original decision.

(c) The LWDB shall ensure that the hearing, issuance of the written determination, and notice of the opportunity to appeal to the Texas Workforce Commission, are completed within 60 days of the LWDB's receipt of a properly completed complaint form.

(d) The LWDB shall ensure that the complainant is informed that he may withdraw the request for a hearing by submitting a written notice of withdrawal to the Hearing Officer at any time prior to the hearing date.

(e) The Hearing Officer shall conduct the hearing, which may be attended by the complainant, the respondent, and any other persons with information or knowledge relevant to the complaint and considered necessary by the hearing officer for a fair determination of the issues.

(f) The Hearing Officer shall fully consider evidence relevant to the complaint in order to reach a fair decision based on such evidence. At any time during testimony, the Hearing Officer may ask questions to elicit additional facts and to clarify the issues or statements of a party or witness. The Hearing Officer may interrupt testimony to discourage irrelevant lines of testimony or inquiry, to avoid cumulative evidence, and to maintain or restore efficient order to the proceeding.

(g) The Hearing Officer shall make an audible, understandable electronic recording of the hearing.

(h) The Hearing Officer shall inform all parties that, for each issue considered, the complainant is responsible for proving that the actions complained of involved a violation of WIA, WIA regulations and rules, a contract or other agreement under WIA, or were committed in connection with the operation of a WIA program, and caused specific harm or injury either to the complainant or to the WIA program.

§841.67. Written Decision.

The Hearing Officer shall provide a written decision to all parties to the complaint and to the Commission. Such written decision shall contain at minimum the following information:

(1) the time, date, and location of the hearing;

(2) the names of all persons present at the hearing and the capacities in which they appeared;

(3) a synopsis of the issues and the facts found to exist by the Hearing Officer;

(4) a statement of the decision and the basis for such decision; and

(5) a statement of any remedies to be imposed.

§841.68. Remedies.

The remedies that may be imposed are enumerated at WIA §181(c)(3).

§841.69.Appeal.

(a) If no decision is mailed within 60 days or if either party is dissatisfied with the local hearing decision, the parties may appeal to the Texas Workforce Commission by sending a written notice of appeal to the Equal Opportunity Officer, 101 E. 15th Street, Austin, TX 78778-0001.

(b) The following time limitations apply to appeals to the Commission:

(1) if no decision is mailed within 60 days of the date of receipt of the complaint, the appeal must be filed with the Commission no later than 90 days after the original complaint had been filed; and

(2) if either party is dissatisfied with the local level hearing decision, the appeal must be filed no later than 14 calendar days after the decision has been mailed.

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.

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Subchapter E. State Level Hearing

40 TAC §§841.91-841.96

The new sections are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

§841.91.Scope.

This subchapter applies to the following:

(1) appeals made under §841.69 of this title (relating to Appeal);

(2) alleged violations of the requirements of WIA by the State;

(3) complaints from individuals affected by the statewide program;

(4) denials of area certification;

(5) referral to local level grievance process; and

(6) appeal to the Secretary of Labor.

§841.92.Review Procedure for Appeals Made Under §841.69.

(a) The state shall select an impartial Hearing Officer.

(b) The Hearing Officer shall review the record to determine if the party was afforded a process that was held in compliance with WIA and the local grievance procedure.

(c) Within 60 days of receipt of the request for review, the Hearing Officer shall render a written Decision either affirming the local level decision or remanding.

(d) If the Hearing Officer remands the complaint to the local area grievance process, the LWDB shall hold a hearing on the complaint within 10 days of receipt of the Hearing Officer's decision and render a decision within 10 days of the hearing.

§841.93.State Level Informal Resolution and Hearing for Alleged Violations of the Requirements of WIA by the State or for Complaints by Individuals Affected by the Statewide Program.

(a) All complaints of non-criminal violations of the requirements of WIA must be made within 30 days of the alleged action. The time limitations for complaint resolution shall begin to run upon the date of receipt by the Commission of a properly completed written grievance.

(b) All of the complainant's outstanding and unresolved allegations against the respondent must be described and consolidated into a single complaint at the time of filing. Any allegation not consolidated into the filed complaint prior to the informal resolution shall be deemed waived.

(c) The state shall select an impartial Hearing Officer.

(d) The Hearing Officer shall provide an opportunity for an informal resolution and for a formal hearing to be held, and decision to be rendered, within 60 days of receipt of the complaint.

(e) The complainant and respondent may be represented at the hearing by an attorney or other representative, and shall have the right to call witnesses and introduce documentary evidence at the hearing, as deemed necessary by the Hearing Officer. The individual parties shall bear the cost of such representation.

(f) The complainant shall bear the burden of proof by a preponderance of the evidence.

(g) The Hearing Officer shall ensure that an audible, understandable electronic recording is made of the hearing.

(h) Within 60 days of receipt of a complaint, the Hearing Officer shall mail a written Decision.

§841.94. Appeal of Denial of LWDA Certification.

All appeals of denial of LWDA certification shall be referred to the Texas Council on Workforce and Economic Competitiveness.

§841.95. Referral of Local Complaints.

Complaints arising under Subchapter D of this Title (relating to Local Area Grievance Procedure) and made directly to the Commission shall be referred to the appropriate LWDA for resolution in accordance with Subchapter D.

§841.96. Appeal to Secretary of Labor.

An appeal may be made to the Secretary of Labor pursuant to 20 CFR §§667.610, 667.640, 667.645, and 667.650.

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.

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J. Randel Hill

General Counsel

Texas Workforce Commission

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