

## **Chapter 841. Workforce Investment Act**

### Subchapter C. Training Provider Certification

#### **40 TAC §§841.43, 841.44, 841.46**

The Texas Workforce Commission (Commission) proposes new §§841.43, 841.44, and 841.46, relating to the implementation of the Workforce Investment Act.

The purpose of §841.43 is to address the Application for Subsequent Eligibility Determination. Section 841.44 concerns the Determination of Subsequent Eligibility. Section 841.46 addresses the Verifiable Program-Specific Performance Information.

These sections were originally published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3054). As the Commission has revised these sections, the Commission has re-proposed these sections for an additional 30-day comment period.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the sections 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 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 adverse impact on small businesses as a result of enforcing or administering these rules.

Jean Mitchell, Director of Workforce Development, has determined that the public benefit anticipated as a result of the sections as proposed will be to clarify the subsequent eligibility of training providers, and to clarify the verifiable program-specific performance information.

Mark Hughes, Director of Labor Market Information, has determined that 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](mailto:barbara.cigainero@twc.state.tx.us).

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

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.

#### §841.43. 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, 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 subject to the state's 30 day review period.

(b) 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.

(c) 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) current and projected 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 the establishment of skill requirements for the training program; and
- (7) the feedback of employers who employ recent individuals who have completed WIA-funded training to verify the training provided produced the expected skills.

(b) No later than July 1, 2000, each LWDB shall ensure that training providers, in developing programs of training services and establishing performance criteria for successful course completion, use in descending order:

- (1) skill standards recognized or conditionally recognized by the Texas Skill Standards Board when available; or
- (2) industry-defined or recognized skill standards; or
- (3) skill requirements determined by employers.

(c) LWDBs may require enhancements to programs or courses to meet local industry needs.

*§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) Participating training providers shall provide to the Commission the participant and employer information determined by the Commission to be necessary to utilize unemployment insurance wage records and employer-based, follow-up surveys to obtain performance information. The training providers shall submit the information in a form and format determined by the Commission.

(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 §841.46(b). Approval or use of an alternate procedure shall not release the training provider from the obligation to provide the information required by §841.46(b). Submission of supplemental performance data obtained through use of an alternate procedure must be in accordance with formats determined by the Commission.

(d) An independent audit of any alternate methodology used 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 data collection methodology every two years. A copy of the report shall be made available to the LWDB and to the Commission within 30 days of the completion of the report.

(e) Verifiable program performance information shall be submitted on a calendar quarterly basis in a format and on a schedule established by the Commission.

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

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 June 2, 1999.

TRD-9903261

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 18, 1999

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