



TEACHER RETIREMENT SYSTEM OF TEXAS

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Board of Trustees

# Policy Committee

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*June 14, 2013*

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**TEACHER RETIREMENT SYSTEM OF TEXAS MEETING  
BOARD OF TRUSTEES  
AND  
POLICY COMMITTEE**

*(Mr. Colonna, Chairman; Mr. Barth; Ms. Clifton; Mr. Kelly; & Mr. McDonald, Committee Members)*

**AGENDA**

**June 14, 2013 – 11:00 a.m.  
TRS East Building, 5<sup>th</sup> Floor, Boardroom**

*A quorum of the Policy Committee (Committee) of the TRS Board of Trustees (Board) and the Board will be physically present for the Committee's June 14, 2013 meeting at the following location: 1000 Red River Street, Austin, Texas 78701 in the TRS East Building, 5th Floor, Boardroom. The Committee and Board intend to have a quorum of the Committee and Board physically present at that location. One or more members of the Committee or Board may participate remotely in the Committee meeting by telephone conference call under Texas Government Code Section 551.130.*

1. Consider the approval of the proposed minutes of the April 18, 2013 Policy Committee meeting – Presiding Officer.
2. Begin the comprehensive review of Chapter 53 of TRS' rules in Title 34, Part 3, of the Texas Administrative Code, and consider approving a related Rule Review Plan and authorizing for public comment publication in the *Texas Register* a related Notice of Intention to Review (Proposed Rule Review Notice) – Dan Junell.
3. Review, discuss, and consider recommending to the Board amendments to the Policy on Negotiated Rulemaking and Alternative Dispute Resolution – Tina Carnes.
4. Discuss or consider the following TRS rules in Title 34, Part 3 of the Texas Administrative Code:
  - A. Consider authorizing for public comment publication in the *Texas Register* proposed amendments to Rule § 47.17, relating to Qualified Domestic Relations Orders of Chapter 47, Qualified Domestic Relations Orders – Rebecca Smith.
  - B. Discuss publication of proposed amendments to Rule § 25.1, relating to Full-time Service, for public comment in the *Texas Register* under the Executive Director's authority in the Board's bylaws – Rebecca Smith.
5. Discuss and consider options for addressing TRS-ActiveCare funding matters, including consideration of a resolution that recommends to the Board amending on an emergency basis TRS-ActiveCare Rule 34 Tex. Admin. Code § 41.41, relating to premium payments and authorizes for public comment publication in the *Texas Register* proposed permanent amendments to Rule § 41.41 – Clarke Howard.

Tab 1

## Minutes of the Policy Committee April 18, 2013

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on April 18, 2013, in the boardroom on the Fifth Floor of the East Building of TRS offices located at 1000 Red River Street, Austin, Texas 78701. The following committee members were present:

Joe Colonna, Chair  
Todd Barth  
Charlotte Clifton  
David Kelly  
Eric McDonald

A quorum of the committee was present.

Others present:

Karen Charleston, TRS Trustee  
Chris Moss, TRS Trustee  
Anita Palmer, TRS Trustee  
Nanette Sissney, TRS Trustee  
Brian Guthrie, TRS  
Ken Welch, TRS  
Dennis Gold, TRS  
Amy Barrett, TRS  
Marianne Woods Wiley, TRS  
Dinah Arce, TRS  
Jase Auby, TRS  
Mary Chang, TRS  
Chris Cutler, TRS  
Janie Duarte, TRS  
Jan Engler, TRS  
Edward Esquivel, TRS  
Brian Gomolski, TRS

Tom Guerin, TRS  
Clarke Howard, TRS  
Bob Jordan, TRS  
Dan Junell, TRS  
Eric Lang, TRS  
Lynn Lau, TRS  
Rebecca Merrill, TRS  
Kirsten Morgan, TRS  
Hugh Ohn, TRS  
Mike Rehling, TRS  
Rebecca Smith, TRS  
David Veal, TRS  
Tim Wei, TRS  
Dr. Keith Brown  
Steven Huff, Reinhart Boerner Van Deuren, s.c.  
Brady O'Connell, Hewitt EnnisKnupp  
Tathata Lohachitkul, Albourne America

With a quorum of the committee present, Mr. Joe Colonna called the meeting to order at 1:25 p.m.

**1. Consider the approval of the proposed minutes of the December 13, 2012 committee meeting.**

On a motion by Mr. Barth, seconded by Ms. Clifton, the committee approved the proposed minutes of the December 13, 2012 meeting as presented.

**2. Review, discuss, and consider recommending to the Board amendments to the Resolution Designating Persons Authorized to Approve and Sign Vouchers – Don Green.**

Mr. Green presented the proposed amended resolution designating persons authorized to sign TRS vouchers. He stated that the proposed amendment would add Janie Duarte as Assistant Manager of General Accounting and Budgeting as an authorized designee.

On a motion by Ms. Clifton, seconded by Mr. Barth, the committee unanimously voted to

recommend that the board adopt the proposed amendments to the resolution designating persons authorized to approve and sign vouchers as presented by staff.

**3. Discuss and consider recommending to the Board final adoption of proposed amendments to the following TRS rules in Title 34 of the Texas Administrative Code:**

**A. Chapter 23 (Administrative Procedures) – Tim Wei:**

- i. Rule § 23.7, relating to the Code of Ethics for Consultants; and**
- ii. Rule § 23.8, relating to the Expenditure Reporting by Consultants, Agents, Financial Advisors, Financial Services Providers, and Brokers.**

Mr. Wei stated that the proposed amendments to §§23.7 and 23.8 would update the rules to reflect the current code of ethics for contractors and the related memorandum. He said that the proposed amendments had been published in the *Texas Register* for at least 30 days, and TRS received no comments regarding them. Therefore, he said, staff recommended that the committee recommend to the board adoption of the proposed amendments.

**B. Chapter 25 (Membership Credit) – Rebecca Smith:**

- i. Rule § 25.1, relating to Full-time Service;**
- ii. Rule § 25.6, relating to Part-time or Temporary Employment;**
- iii. Rule § 25.21, relating to Compensation Subject to Deposit and Credit;**
- iv. Rule § 25.43, relating to Cost for Unreported Service or Compensation;**
- v. Rule § 25.47, relating to Deadline for Verification; and**
- vi. Rule § 25.81, relating to Out-of-State Service Eligible for Credit.**

**C. Chapter 31 (Employment After Retirement) – Rebecca Smith:**

- i. Rule § 31.14, relating to One-half Time Employment; and**
- ii. Rule § 31.41, relating to Return to Work Employer Pension Surcharge.**



- D. Rule § 41.4, relating to the Employer Health Benefit Surcharge of Subchapter A, Retiree Health Care Benefits (TRS-Care) of Chapter 41, Health Care and Insurance Programs – Rebecca Smith.**
- E. Rule § 47.10, relating to Determination of Whether an Order is a Qualified Domestic Relations Order of Chapter 47, Qualified Domestic Relations Orders – Rebecca Smith.**

Ms. Smith summarized the proposed amendments to §§25.1, 25.6, 25.21, 25.43, 25.47, and 25.81 relating to membership credit; §§31.14 and 31.41 relating to employment after retirement; §41.4 relating to the employer health benefit surcharge; and §47.10 relating to qualified domestic relations orders.

Ms. Smith said that staff recommended adding language to §31.14 to clarify that the rule would only apply to retirees who retired after January 1, 2011. She explained that the suggested change was based on certain oral comments made to staff by members of the public. She stated that the suggested change was shown in the copy of the revised resolution and rule text distributed to the committee during this presentation. She noted that the additional change was for clarification purposes and would not require the rule to be republished. She also noted the telephone inquiries staff received about §25.1 and the conversion ratio for employees of higher education institutions.

On a motion by Mr. Barth, seconded by Mr. McDonald, the committee unanimously voted to recommend to the board the adoption of the resolutions amending chapters 23, 25, 31, 41, and 47 of TRS rules as presented by staff, including the minor clarifying change to proposed rule §31.14 relating to one-half-time employment.

The meeting adjourned at 1:35 p.m.



Tab 2



**Legal Services**

## **Memorandum**

**DATE:** May 28, 2013

**TO:** Policy Committee of the TRS Board of Trustees

**FROM:** Rebecca Merrill, TRS Special Advisor to the Executive Director & Manager of Special Projects; Carolina de Onís, TRS General Counsel; and Dan Junell and Mary Chang, TRS Assistant General Counsels.

**COPY:** Brian Guthrie, TRS Executive Director

**RE:** Four-year Rule Review of Chapter 53 (403(b) Rules)

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### **Background**

Every four years, TRS must review and consider for re adoption each of its rules, as provided by §2001.039 of the Texas Government Code. The rule review must assess whether the reasons for initially adopting the rule continue to exist. TRS must then readopt, readopt with amendments, or repeal a rule because of its review.

TRS must review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The adoption of an amendment to an existing rule does not satisfy rule review requirements, unless the amendment is adopted as a result of the rule review. The date on which TRS completed its last statutory review of a rule or set of rules is called the “Chapter Review Date” and is used to set the deadline for completion of the next four-year review cycle.

TRS completed its last statutory review of the rules for the 403(b) company certification and product registration program in Chapter 53 of TRS’ rules on March 4, 2010. Consequently, the next review of Chapter 53 must be completed by March 3, 2014. For that reason and pursuant to the Policy Review Schedule approved by the Policy Committee for fiscal year 2013, the next review of Chapter 53 begins at the June 2013 meeting.

The rule review process comprises three major stages:

- 1. Rule Review Plan:** The Rule Review Plan is a general, informational schedule of activities concerning the rule review that is filed with the *Texas Register*.
- 2. Notice of Intention to Review (Proposed Rule Review Notice):** The Notice of Intention to Review — also referred to as the Proposed Rule Review Notice — legally notifies the public of the commencement and scope of TRS's rule review and invites comments on the rules to be reviewed. The Proposed Rule Review Notice must be published in the *Texas Register* at least 30 days before TRS completes the rule review.
- 3. Notice of Readoption (Adopted Review):** The Notice of Readoption — also referred to as the Adopted Review — legally confirms and notifies the public that TRS has completed its rule review. Filing the Adopted Review with the Secretary of State then restarts the four-year period by the end of which the rules must be reviewed again.

Attached for your consideration are a proposed Rule Review Plan and Proposed Rule Review Notice:

- The **Rule Review Plan** sets out the schedule for the Chapter 53 rule review. The plan explains that the opportunity for public comment on the review is expected to end at the December 2013 meeting, when the committee and board will consider adopting the completed rule review, including readopting the 403(b) rules without changes or adopting any new, amended, or repealed rules as result of the review.
- The **Proposed Rule Review Notice** is the legal public notice that TRS is reviewing Chapter 53. The notice invites public comment on the rule chapter under review.

## **RECOMMENDATION**

With regard to Chapter 53 of TRS' rules, the staff recommends that the Policy Committee authorize the Executive Director or his designee to file (1) the Rule Review Plan with the *Texas Register* and (2) the Proposed Rule Review Notice for public comment publication in the *Texas Register*.

## **Teacher Retirement System of Texas Rule Review Plan**

### **Chapter 53 – 403(b) Program Rules**

In accordance with the Texas Government Code § 2001.039, regarding Agency Review of Existing Rules and requiring the Teacher Retirement System of Texas (TRS) and other governmental bodies to review their rules every four years, TRS submits the following Rule Review Plan.

The Policy Committee (committee) of the TRS Board of Trustees (board) has authorized for public comment this Rule Review Plan for the following board rules according to the general schedule set out below:

#### June 2013 - December 2013:

Title 34, Part 3, Texas Administrative Code:

Chapter 53, Certification by Companies Offering Qualified Investment Products

During the review of board rules relating to TRS' 403(b) company certification and product registration program (403(b) program), the committee and board will consider the readoption, amendment, or repeal of rules in Chapter 53. The committee has also authorized public comment publication of a Notice of Intention to Review (Proposed Rule Review Notice) for Chapter 53, which will appear in an upcoming issue of the *Texas Register*. In response to the Rule Review Plan and Proposed Rule Review Notice, the public will have opportunities to provide comments on the rules in Chapter 53 in writing and by addressing the committee or board at the September 2013 meeting. The Proposed Rule Review Notice to be published in the *Texas Register* will provide further details regarding public comment on the rules under review.

At the September 2013 meeting, the committee or the board or both will consider authorizing for public-comment publication any proposed changes to the 403(b) program rules resulting from the review of Chapter 53.

At the December 2013 meeting, the committee and the board will consider the proposed adoption of the completed rule review and any changes to Chapter 53 as a result of the rule review. The public will have an opportunity then to comment on the proposed completion of the Chapter 53 rule review and any changes to the rules resulting from the review.

Set out below is the detailed Rule Review Plan for Chapter 53, which is subject to change:

June 14, 2013: The TRS review of Chapter 53 begins. The committee considers filing the proposed Rule Review Plan with the Secretary of State and authorizing public-comment publication of the Proposed Rule Review Notice in the *Texas Register*. The public is given the opportunity to comment on the scope and schedule of the proposed rule review.

September 12-13, 2013: The committee considers authorizing public-comment publication of any rule changes needed in Chapter 53 as a result of the rule review. The public is given the opportunity to comment on the rule review and any proposed changes to rules in Chapter 53.

December 12-13, 2013: The committee and the board consider the adoption of the completed rule review of Chapter 53. In connection with completing the rule review, the committee and board consider adopting any changes to rules in Chapter 53 and readopting the remaining ones without changes. The public is given the opportunity to comment on the proposed completion of the rule review, the adoption of any rule changes, and the readoption of 403(b) rules without changes.

Comments regarding the contents of this Rule Review Plan may be submitted in writing to Brian K. Guthrie, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701.

The following chapter is available for review at  
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC):

Chapter 53. Certification by Companies Offering Qualified Investment Products.

## **Teacher Retirement System of Texas**

### **Title 34, Part 3**

#### **Proposed Rule Review**

The Teacher Retirement System of Texas (TRS) proposes to review Chapter 53 of TRS' rules, which is found in Title 34, Part 3 of the Texas Administrative Code. Chapter 53 concerns certification by companies who offer voluntary 403(b) investment options through salary reduction agreements between public school employees and their local employers.

TRS will review Chapter 53 in accordance with the requirements of section 2001.039 of the Texas Government Code, which concerns the review of existing rules. TRS asserts that the reasons for adopting Chapter 53 continue to exist. TRS will review the chapter to update and improve the rules as needed. TRS will also file a rule review plan for Chapter 53 with the *Texas Register*.

Written comments pertaining to this proposed rule review must be submitted to Brian Guthrie, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. The deadline for written comments is 30 days after publication of this proposed rule review notice in the *Texas Register*. In addition, the public will be given an opportunity to comment on the proposed rule review at a meeting of the TRS Board of Trustees (board) or the Policy Committee of the board or both.

Any changes to these rules proposed because of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment before final adoption or repeal by TRS in accordance with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

The following chapter is available for review at  
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC):

Chapter 53. Certification by Companies Offering Qualified Investment Products.

Brian Guthrie  
Executive Director  
Teacher Retirement System of Texas

Tab 3



Legal Services

## Memorandum

**DATE:** May 28, 2013

**TO:** Policy Committee of the Board of Trustees and Board of Trustees

**FROM:** Tina M. Carnes, Assistant General Counsel

**COPY:** Brian K. Guthrie, TRS Executive Director; Ken Welch, TRS Deputy Director; Janet Bray, Director of Human Resources; Carolina de Onis, TRS General Counsel

**RE:** Resolution for the Re-Adoption of the Alternative Dispute Resolution (ADR) and Negotiated Rulemaking Policy

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### Introduction

At the June 2013 meeting of the Policy Committee, the committee will consider recommending to the Board of Trustees (board) the re-adoption of a policy regarding negotiated rulemaking and alternative dispute resolution. The policy was adopted by the board in June of 2008 and the Policy Review Schedule requires the policy to be reviewed every five years.

### Background

Section 825.1025 of the Government Code requires the board to implement a policy regarding negotiated rulemaking and alternative dispute resolution. The policy under consideration satisfies this requirement.

- Section 825.1025 requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures for adoption of TRS rules and appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under TRS' jurisdiction.
- The statute also requires the board to designate a trained person to coordinate the implementation of the policy; serve as a resource for any training needed to implement the procedures for negotiated rulemaking and alternative dispute resolution; and collect data concerning the effectiveness of the procedures that are implemented.
- The law specifies that the implementation of procedures must be consistent with the board's fiduciary responsibilities.

## **Considerations for TRS**

A negotiated rulemaking and alternative dispute resolution policy provides TRS staff the authority and framework for resolving disputes in a collaborative manner. However, the law recognizes that TRS may have unique considerations regarding disputes because of its fiduciary responsibilities.

TRS actively uses methods consistent with alternative dispute resolution procedures to settle differences. For example, TRS routinely engages in mediation at the State Office of Administrative Hearings (SOAH) for appeals relating to pension benefits when the assigned TRS attorney, another party, or the assigned SOAH administrative law judge determine that mediation is a promising avenue for settling the appeal. Additionally, rules adopted by TRS regarding vendor disputes provide an interested party an opportunity to protest a solicitation or award of a contract without resorting to litigation. TRS has also developed a Grievance and Appeal Policy to resolve internal personnel conflicts. As for negotiated rulemaking, TRS has not encountered the need for such a formal process, but TRS regularly seeks to understand and address the concerns of its stakeholders as rulemaking issues arise.

Staff proposes minor changes to delete an obsolete citation and to improve the wording and format of the current policy.

## **Requested Action**

Staff requests that the Policy Committee recommend that the Board of Trustees adopt the attached amended policy. It supports the use of a collaborative agreement-seeking approach to resolving disputes as appropriate; recognizes that TRS already uses alternative dispute resolution processes in its operations; and designates the Executive Director or his designee to handle duties as necessary to implement the policy. Staff also proposes continuing the five-year review cycle of the policy.

Staff also requests the Board of Trustees adopt the attached policy.

**Board of Trustees**  
**Policy on Negotiated Rulemaking and Alternative Dispute Resolution**  
**June 13 - 14, 2013**

- I. In accordance with Tex. Gov't Code §825.1025, the Board of Trustees of the Teacher Retirement System of Texas (TRS) hereby establishes this policy regarding negotiated rulemaking and alternative dispute resolution.
- II. It is the policy of TRS to encourage the use of a collaborative agreement-seeking approach when appropriate to resolve disputes within the jurisdiction of TRS, including those involving rulemaking.
- III. It is the policy of TRS to consider the use of negotiated rulemaking as appropriate for rulemaking in connection with new programs administered by TRS or significant modifications to existing programs.
- IV. TRS currently uses several processes that include a collaborative element to resolve disputes, including mediation of appropriate administrative appeals referred to the State Office of Administrative Hearings (SOAH); TRS rule 34 Tex. Admin. Code §23.4, providing procedures for public participation in the adoption of TRS rules beyond those established for public comment on proposed rules under the Administrative Procedure Act (Chapter 2001, Tex. Gov't Code); TRS rule 34 Tex. Admin. Code §51.2, providing an internal process for vendor protests, including settlement through mutual agreement; and the Grievances and Appeals Policy administered for TRS employee concerns.
- V. The Executive Director is authorized to establish, revise, and administer appropriate processes supporting collaborative dispute resolution consistent with the fiduciary responsibilities of TRS, retirement plan qualification requirements, and statutory program responsibilities.
- VI. The Board of Trustees designates the Executive Director or his designee to fulfill the responsibilities described by §825.1025(c), Tex. Gov't Code. Under the Bylaws of the Board of Trustees, the Board delegates this authority to the staff through the Executive Director, and the Executive Director is authorized to assign duties to TRS personnel. Therefore, it is appropriate from time to time for the Executive Director to designate a TRS employee to carry out on his behalf the responsibilities described by §825.1025(c), Tex. Gov't Code, specifically, to coordinate the implementation of this policy; to serve as a resource for any training needed to implement the procedures for negotiated rulemaking and alternative dispute resolution; and to collect data regarding the effectiveness of the procedures that are implemented.

Tab 4 A



Legal Services

## Memorandum

**DATE:** May 28, 2013

**TO:** Policy Committee of the Board of Trustees

**FROM:** Rebecca M. Smith, Assistant General Counsel

**COPY:** Brian Guthrie, Executive Director  
Ken Welch, Deputy Director  
Carolina de Onís, General Counsel  
Rebecca Merrill, Special Advisor to the Executive Director and  
Manager of Special Projects

**RE:** Proposed Amendments to Chapter 47, relating to Qualified Domestic Relations Orders

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### **Requested Action**

Staff asks the Policy Committee to authorize publication of proposed amendments to one rule in Chapter 47 regarding qualified domestic relations orders. Specifically, staff proposes amendments to §47.17(y), relating to Calculation for Alternate Payee Benefits Before a Member's Benefit Begins. The proposed amendments will be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

### **Why the Action is Requested**

The need for the proposed rule change to §47.17(y) was identified in the course of establishing business rules for the TEAM project. The original rule was adopted with an error in its text resulting in a greatly reduced benefit to the alternate payee. The proposed amendment corrects the error so that an alternate payee who is authorized under a qualified domestic relations order (QDRO) to receive a stated monthly amount of the annuity payment made on behalf of the participant will receive the correct amount of annuity when requesting to receive a lifetime annuity under §804.005, Texas Government Code.

### **BACKGROUND OF THE REQUESTED ACTION**

Section 47.17(y). In 1993, the Legislature provided a mechanism for an alternate payee to begin receiving payment of the award given under the terms of a QDRO when the member is at least 62 years old and eligible for normal age retirement but not yet retired. Upon the alternate payee's request, TRS is directed to pay the alternate payee the alternate payee's portion of the actuarial equivalent of the member's accrued benefit at the time of the request, determined as if

the member retired on the date of the alternate payee's election. Section 47.17 establishes the method of calculating the alternate payee's benefit under §804.005 as well as the method of calculating the benefit payable on behalf of the member at the time a distribution becomes payable.

Because of the many types of awards made to alternate payees in QDROs over the years, it became necessary to provide instructions in the rule for how to calculate the alternate payee's portion under each type of award. Subsection (y) addresses how to calculate the alternate payee's portion when the QDRO directs TRS to pay a stated monthly amount, e.g. \$500 per month. The subsection currently directs staff to simply divide the stated monthly amount by the member's life annuity factor which results in a few dollars per month to the alternate payee. The subsection should direct staff to multiply the stated monthly amount by the member's life annuity factor in order to arrive at the amount of money TRS would have expected to pay to the alternate payee over the member's lifetime and then to divide the lump sum amount by the alternate payee's life annuity factor effectively annuitizing the lump sum over the alternate payee's lifetime. The proposed amendment corrects this error.

## **RULE §47.17 Calculation for Alternate Payee Benefits Before a Member's Benefit Begins**

(a) A "qualified domestic relations order" (QDRO) means a domestic relations order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree under a public retirement system, which directs the public retirement system to disburse benefits to an alternate payee, and which meets the requirements of Government Code, §804.003 and Internal Revenue Code §414(p)(1)(A)(i) and §414(p)(1)(B).

(b) The retirement system shall pay any eligible alternate payee who has a QDRO approved by the retirement system and who elects such payments, an amount that is the alternate payee's portion of the actuarial equivalent of the accrued benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election. The amount will become payable, upon receipt of a written request and a certified copy of a domestic relations order determined to be qualified, in accordance with the order, and in the form of an annuity payable in equal monthly installments for the life of the alternate payee.

(c) This method of distribution may be elected only when there is a member whose benefits are subject to partial payment under the law, who has not retired; who has attained the greater of either the age of 62 and is eligible to retire without reduction for early age retirement, or normal retirement age and service requirements for service retirement; and who retains credit and contributions in the retirement system attributable to that service.

(d) If an alternate payee elects to be paid under this section, the retirement system shall reduce the benefit payable by the system to the member or the member's beneficiary by the alternate payee's portion of the actuarial equivalent determined under this section.

(e) In figuring these benefits for the alternate payee and the adjusted standard annuity of the member's benefit as set forth in this section, the system shall consider the member's benefit as a normal age standard service retirement annuity, without regard to any optional annuity chosen or beneficiary designated by the member.

(f) The beginning of monthly payments under this section terminates any interest that the alternate payee who receives the payment might otherwise have in benefits that accrue to the account of the member after the date the initial payment to the alternate payee is made.

(g) An alternate payee who elects this method of payment has only a right to receive an annuity for life as calculated in this section and does not have the right to pass on any portion of his/her benefit upon his/her death. There is no reversion of the alternate payee's benefit to the member upon the alternate payee's death, irrespective of whether the death occurs before or after the member's benefit commencement.

(h) TRS will use Tables for Life Annuity Factors, Interest Annuity Factors, and Interest Accumulation Factors furnished by the TRS actuary of record.

[Attached Graphic](#)

[Attached Graphic](#)

[Attached Graphic](#)

(i) To calculate the alternate payee's actuarial equivalent benefit, the following procedure will be followed:

(1) Determine the member's accrued monthly benefit as of the alternate payee's benefit commencement date.

(2) Determine the member's age and the alternate payee's age as of the alternate payee's benefit commencement date.

- (3) Determine the appropriate percent of the member's accrued benefit payable to the alternate payee under the terms of the QDRO.
- (4) Calculate the alternate payee's actuarial equivalent monthly benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent. Then, divide that figure by the life annuity factor at alternate payee's age.
- (j) To calculate the member's adjusted standard annuity, there are two scenarios:
- (1) the alternate payee elects a monthly income and survives until the member annuity commencement date (MACD); or
- (2) the alternate payee elects monthly income and dies before the MACD.
- (k) When the alternate payee elects under subsection (j)(1) of this section, the formula used to reduce the member's standard annuity is the member's standard annuity monthly benefit amount minus the figure derived by dividing the total reserve for benefits to the alternate payee by the life annuity factor of the member at the member's age at MACD. The total reserve for the benefits to the alternate payee is the reserve for payments made to the alternate payee prior to MACD plus the reserve for payments made to the alternate payee after MACD. The reserve for payments made to the alternate payee after MACD is the alternate payee monthly benefit amount times the life annuity factor of the alternate payee at the alternate payee age at MACD. The reserve for payments made to the alternate payee prior to MACD is the alternate payee monthly benefit amount times the interest annuity factor to reflect payments of the number of payments before MACD.
- (l) When the alternate payee elects under subsection (j)(2) of this section, the formula used to reduce the member's standard annuity monthly benefit amount is the member's standard annuity monthly benefit amount before the reflection of payments to the alternate payee under this section minus the figure derived by dividing the total reserve for payments made to the alternate payee by the life annuity factors of the member at the member's age at MACD. The total reserve for payments made to the alternate payee is the alternate payee monthly benefit amount times the interest annuity factor to reflect payment of the number of payments before death times the interest accumulation factor to reflect interest of the number of full months from the date of death of the alternate payee to the MACD.
- (m) If the member dies before MACD and a standard annuity is used to calculate any benefit due after death, benefits payable on behalf of the member must be based on the member's adjusted standard annuity. The balance of the accumulated contributions in the member savings account payable to a beneficiary must also be adjusted to reflect the payment to the alternate payee by reducing the accumulated contributions in the member savings account by the QDRO percentage described in subsection (i)(3) of this section. A benefit of an amount equal to twice the member's annual compensation for the school year immediately preceding the school year in which the member dies, or twice the member's rate of annual compensation for the school year in which the member dies, payable under Government Code, §824.402(a)(1) and (2), or a lump sum payment of \$2,500.00 plus an applicable monthly benefit as described in Government Code, §824.404, is not reduced by payments made to the alternate payee under Government Code, §804.005.
- (n) If the member dies after MACD, the \$10,000.00 lump sum survivor benefits or the \$2,500.00 lump sum payment plus an applicable monthly benefit payable to a beneficiary under Government Code, §824.501 and §824.404, are not reduced as a result of payments to an alternate payee under this rule. Any payments paid pursuant to Government Code, §824.407 must be reduced by first reducing the account balance at the time of retirement by the QDRO percentage described in subsection (i)(3) of this section.

(o) If the member elects to terminate membership in TRS before MACD, the member contributions in the member account before a refund is processed, must be reduced by the QDRO percentage described in subsection (i)(3) of this section.

(p) When new law provides for an increase in the benefit payable to the member after the commencement of the payment of an annuity to the member, the increase will be distributed by increasing the member's and the alternate payee's benefit as provided by the law for an increase to the member's benefit so long as there is no additional actuarial cost to the system unless provided otherwise by the legislature.

(q) A person, who has previously withdrawn service that was reduced by a QDRO percentage as described in subsection (o) of this section and who wishes to reinstate the service, must deposit the amount withdrawn or refunded and the fees required by law. Benefits payable based even in part on the terminated service will be reduced as described in this section as if the service had not been terminated.

(r) When a member who has an alternate payee drawing benefits enters a Deferred Retirement Option Plan (DROP), TRS will use the adjusted standard annuity in the calculation for the member's DROP.

(s) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, the retirement system will use the adjusted standard annuity to calculate all future DROP transfers beginning with the initial month that a distribution is payable to the alternate payee. When calculating the member's adjusted standard annuity, the amount of the annuity paid to the alternate payee that represents the annuitized portion of the DROP balance shall not be included in the calculation. TRS shall use only the portion of the payment to the alternate payee that represents the alternate payee's share of the monthly annuity.

(t) When a member who has an alternate payee drawing benefits elects a partial lump-sum option, TRS will use the adjusted standard annuity in the calculation for the member's partial lump-sum payment.

(u) In the event the total distribution amount awarded to the alternate payee in a QDRO is limited to a specific dollar amount, the following procedure will be followed to calculate the alternate payee's actuarial equivalent benefit:

(1) Determine the alternate payee's age as of the alternate payee's benefit commencement date.

(2) Calculate the alternate payee's actuarial equivalent monthly benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent. Compare the product to the specific dollar limit amount. If the specific dollar limit amount is the smaller amount, divide the specific dollar limit amount awarded to the alternate payee by the life annuity factor at alternate payee's age to determine the alternate payee's monthly benefit. If the specific dollar limit amount is larger than the product of the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent, divide the product by life annuity factor at alternate payee's age to determine the alternate payee's monthly benefit.

(v) In the event the alternate payee dies prior to receiving the total limited distribution awarded to the alternate payee in a QDRO and before the MACD, calculate the member's adjusted standard annuity as described in subsection (j)(2) of this section.

(w) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, TRS will calculate the alternate payee's actuarial equivalent benefit by multiplying the member's accrued benefit times the life annuity factor at

member's age plus the balance of the DROP times the alternate payee's percent. That figure shall then be divided by the life annuity factor at alternate payee's age.

(x) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, TRS will reduce the DROP account by applying the percentage of the member's accrued benefit payable to the alternate payee under the terms of the qualified domestic relations order beginning with the initial month that a distribution is payable to the alternate payee.

(y) In the event the amount of monthly retirement benefit awarded to the alternate payee in the QDRO is a stated monthly amount rather than a percentage, determine the alternate payee's actuarial equivalent benefit by multiplying the stated monthly amount times the life annuity factor at the member's age and then by dividing the product ~~stated monthly amount~~ by the life annuity factor at the alternate payee's age.

(z) In the event the amount of monthly retirement benefit awarded to the alternate payee in the QDRO is a percentage of the benefit but limited to no more than a stated monthly amount, determine the alternate payee's actuarial equivalent benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent, then dividing that product by the life annuity factor at alternate payee's age. If the amount derived from this calculation is smaller than the stated monthly amount, the amount calculated is the alternate payee's actuarial equivalent benefit. If the amount derived from this calculation is larger than the stated monthly amount, the alternate payee's actuarial equivalent benefit is calculated by dividing the stated monthly amount by the life annuity factor at the alternate payee's age.

Tab 4 B



Legal Services

## Memorandum

**DATE:** May 28, 2013

**TO:** Policy Committee of the Board of Trustees

**FROM:** Rebecca M. Smith, Assistant General Counsel

**COPY:** Brian Guthrie, Executive Director  
Ken Welch, Deputy Director  
Carolina de Onís, General Counsel  
Rebecca Merrill, Special Advisor to the Executive Director and  
Manager of Special Projects

**RE:** Proposed Amendments to Chapter 25, relating to Membership Credit

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### Background

The purpose of this memorandum is to inform the Policy Committee of proposed amendments to §25.1 that have been published under the authority of the Executive Director without consideration by the Policy Committee. (Section 5.7 of the Bylaws of the Board of Trustees (board) authorizes the Executive Director to draft and submit proposed rules to the Secretary of State.) The expedited publication of the proposed amendments to §25.1 was necessary because there was not sufficient time between the June and July board meetings to meet the required timelines for publication for public comment of the proposed amendments before adoption and staff believed it was important to have the amended rule in place by the start of the 2013-2014 school year.

Although the board recently adopted many of the proposed amendments to this rule at the April, 2013 board meeting, after the amendments were adopted staff received comments from community college employers and community college adjunct faculty members who were concerned that the amendments resulted in minimum eligibility requirements that were too restrictive. TRS was asked to provide an exception to the minimum eligibility requirements for adjunct faculty members that would allow the individual to teach the equivalent of three 3-hour classes without becoming eligible for membership in TRS.

To avoid confusion about the two sets of amendments, staff recommends reposting the amendments previously adopted by the board as well as the additional amendments that were

recently identified so that the revised rule will be in place by the start of the 2013-2014 school year.

The proposed amendments will be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption at the July board meeting.

### **Why the Action is Requested**

As you may recall, the proposed rule changes to §25.1 address how employment in institutions of higher education that is expressed in terms of the number of courses or semester hours taught is considered in determining eligibility for TRS membership. The change establishes the same standard for workloads expressed in course credits or semester hours for determining membership eligibility as the one used for one-half time employment for retirees.

After the original amendments to the rule were adopted, staff received comments expressing the concerns of administrators of community college districts as well as adjunct faculty members that the requirements under the Affordable Care Act to provide health benefits to employees who work 30 hours or more and the 2-to-1 standard adopted by TRS for converting instructional hours to clock hours could result in employers having to limit adjunct faculty to teaching fewer classes. Administrators were concerned that additional faculty would have to be hired and employees were concerned that their incomes would be reduced. The additional amendments represent a compromise effort to provide relief to both the employers and the employees.

### **Summary of Proposed Amendments**

Section 25.1. The standards for membership eligibility in TRS are established in §25.1: employment for one-half or more of the standard full-time work load, for a period of four and one-half months or more, with pay at a rate comparable to the rate of compensation for other persons employed in similar positions. Consistent application of this standard is difficult when the work load is expressed in terms of semester hours or course credits taught rather than clock hours as is the common practice for faculty employed in institutions of higher education.

The previously adopted rule amendments establish the same ratio for converting semester hours or course credits to clock hours used for the purpose of determining the number of hours worked by a retiree under the one-half time exception: two clock hours for every hour of instruction in the classroom or lab. This conversion ratio reflects the instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. Providing the same conversion ratio for membership eligibility and employment after retirement reduces confusion, eases communication, and improves consistent administration of the standard. The proposed amendments also clarify that employment in an institution of higher education is “regular” employment if it is *expected* to continue more than one full semester in the same school year or if it continues for more than one full semester in a school year.

The new amendments establish an eligibility requirement specifically for adjunct faculty. Historically, it has proven difficult to apply the membership eligibility requirements consistently to this group of employees. By nature, employment as an adjunct faculty member is not permanent employment but a large percentage of the faculty for many community colleges are employed as adjunct faculty. The purpose of the proposed amendments is to carve out a standard for membership eligibility for adjunct faculty that allows the employee to teach the equivalent of three 3-hour classes each semester without becoming membership-eligible. Under the prior amendments, teaching three 3-hour classes is the equivalent of working 18 clock hours ( $(3 \times 3) \times 2 = 18$  clock hours). However because there is no full-time equivalent position for adjunct faculty, §25.1(e) established a 15-hour minimum threshold for membership eligibility. For adjunct faculty, the 15-hour minimum threshold limits the employee to teaching no more than two 3-hour classes to avoid membership eligibility and the benefits provided by the employer that are tied to TRS membership eligibility. The proposed amendment will effectively allow the employee to teach one additional 3-hour class without becoming eligible for membership in TRS.

The proposed amendments for adjunct faculty also establish a definition for an adjunct faculty position that is lacking in the TRS rules. The definition will also aid in the consistent administration of the membership eligibility requirements for adjunct faculty.

Finally, staff received input from representatives of Texas Community College Teachers Association (TCCTA) and Texas Association of Community Colleges (TACC) that confirmed that allowing adjunct faculty to teach the equivalent of three 3-hour classes without establishing eligibility for membership in TRS will avoid a conflict with the anticipated requirements under the Affordable Care Act to count three 3-hour classes as the equivalent of 27 clock hours, which amount is under the 30-hour minimum eligibility requirement for providing health benefits to employees of community colleges. Both groups indicate that they support the amendment to §25.1 proposed by staff.

**RULE §25.1 Full-time Service.**(a) Employment of a person by a TRS covered employer for one-half or more of the standard full-time work load at a rate comparable to the rate of compensation for other persons employed in similar positions is regular, full-time service eligible for membership.

(b) Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of subsection (a) of this section if his or her customary employment is for 20 hours or more for each week and for four and one-half months or more.

(c) Membership eligibility for positions requiring a varied work schedule is based on the average of the number of hours worked per week in a calendar month and the average number of hours worked must equal or exceed one-half of the hours required for a similar full-time position.

(d) For purposes of subsection (a) of this section, full-time service is employment that is usually 40 clock hours per week. If the TRS-covered employer has established a lesser requirement for full-time employment for specified positions that is not substantially less than 40 hours per week, full-time service includes employment in those positions. In no event may full-time employment require less than 30 hours per week.

(e) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) Except as provided in subsection (j) of this section regarding adjunct faculty, if there is no equivalent full-time position of a given position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) The requirement in this subsection applies to all positions, including bus drivers.

(f) For school years prior to the 2011-2012 school year:

(1) If there is no equivalent full-time position of a given non-certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) If there is no equivalent full-time position of a given certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 20.

(3) Persons regularly employed as bus drivers for routes approved by the Transportation Department of the Texas Education Agency are eligible for membership. A person will be considered regularly employed as a bus driver if his or her customary employment requires driving at least one such route per day.

(g) For purposes of subsection (a) of this section, regular employment is employment that is expected to continue for four and one-half months or more. Employment with an institution of higher education (including community and junior colleges) is regular employment if it is expected to continue for more than one full semester or continues for more than one full semester in the same school year. Employment that is expected to continue for less than four and one-half months or for no more than one full semester in a school year is temporary employment and is not eligible for membership.

(h) For purposes of subsection (a) of this section, a rate of compensation is comparable to other persons employed in similar positions if the rate of compensation is within the range of pay

established by the Board of Trustees for other similarly situated employees or is the customary rate of pay for persons employed by that employer in similar positions.

(i) For purposes of this section, employment in institutions of higher education (including community and junior colleges) measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be converted to clock hours and counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's standard will be used to determine the number of clock hours scheduled for work.

(j) Beginning on the first day of the 2013-2014 school year, the minimum number of hours required per week that will qualify an adjunct faculty position for TRS membership is 20. For purposes of this section, an adjunct faculty position is an instructor position that is filled on a semester-by-semester basis, compensated on a per class basis, and the duties include only those directly related to instruction of students.

Tab 5



## **M E M O R A N D U M**

**To:** TRS Policy Committee and TRS Board of Trustees

**From:** Wm. Clarke Howard, TRS Assistant General Counsel

**Copy:** Brian Guthrie, TRS Executive Director  
Ken Welch, TRS Deputy Director  
Carolina de Onís, TRS General Counsel

**Date:** May 31, 2013

**Re:** Proposed Amendment to 34 Texas Administrative Code (TAC),  
TRS-ActiveCare Rule § 41.41

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### **Background**

Currently, on or about the fifteenth (15<sup>th</sup>) of each month, the Teacher Retirement System of Texas (TRS) or the administering firm (*i.e.*, Blue Cross and Blue Shield of Texas or BCBSTX) sends bills for premiums to participating entities in TRS-ActiveCare. Under TRS-ActiveCare rule § 41.41, each participating entity is required to remit payment on or before the sixth day after the last day of each month in which TRS or BCBSTX issues the bill to the participating entity. The bill issued is for that month of coverage, which means that payment is then rendered a month in arrears.

During the current plan year, TRS-ActiveCare has experienced an unexpectedly high level of claims. This high level of claims has placed the solvency of the TRS-ActiveCare fund at risk. This risk constitutes an imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare.

As a result, TRS staff and the TRS health benefits consultant, Gabriel, Roeder, Smith & Company (GRS), are recommending that each participating entity be required to remit payment on or before the fifteenth day of each month in which TRS or BCBSTX issue the bill to the participating entity, beginning with bills generated on or after September 1, 2013. By moving the due date of each bill forward in time by approximately three (3) weeks, the amendment moves the payment from a month in arrears to the month of coverage. With this change, the risk to the solvency of the TRS-ActiveCare fund can

be alleviated and the imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare can be eliminated.

Additionally, TRS staff is seeking adoption of the above noted changes to TRS-ActiveCare rule § 41.41 as quickly as possible due to the need to provide adequate notice, direction, and instruction to both BCBSTX and the participating entities in TRS-ActiveCare.

### **Summary of Proposed Amendments to TRS-ActiveCare Rule § 41.41**

As noted above, each participating entity is currently required to remit payment on or before the sixth day after the last day of each month in which TRS or BCBSTX issues the bill to the participating entity. The proposed amendments will require each participating entity to remit payment approximately three (3) weeks earlier, on or before the fifteenth day of each month in which TRS or BCBSTX issue the bill to the participating entity, beginning with bills generated on or after September 1, 2013. Attached to this memorandum are the marked rule texts for your review.

### **Adoption of an Emergency Rule**

Staff submits these amendments for the consideration of the TRS Policy Committee (committee), requesting that the committee recommend to TRS Board of Trustees (board) the adoption, on an emergency basis, of the attached resolution amending TRS-ActiveCare rule § 41.41.

Staff submits these amendments for the consideration of the board, requesting that the board adopt, on an emergency basis, the attached resolution amending TRS-ActiveCare rule § 41.41, in order to avoid the insolvency of the TRS-ActiveCare fund and the imminent peril, caused thereby, to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare.

### **Authorization to Publish Proposed Rule Amendments for a Permanent Rule**

Staff also submits these amendments for the committee's consideration, requesting that the committee authorize staff to publish the proposed amendments to TRS-ActiveCare rule § 41.41 in the *Texas Register* for public comment. At this time, this course of action does not seek final adoption of these proposed amendments as a permanent rule. The public will have at least 30 days to comment on the proposed rule amendments as a permanent rule. After the public comment period, the rule amendments will be brought before the committee and the board to consider final adoption as a permanent rule, most likely during the September 2013 meetings.

### **Requested *Committee* Action**

Staff requests that the committee adopt the proposed resolution that does the following:

- 1) It recommends that the board adopt a related resolution that amends TRS-ActiveCare rule § 41.41 on an emergency basis, as described in this memorandum and the attached marked rule texts.
- 2) It authorizes public comment publication in the *Texas Register* of the same proposed amendments to rule § 41.41, as part of a concurrent process to adopt the amended rule on a permanent, non-emergency basis.

### **Requested *Board* Action**

Staff asks the board, if recommended by the committee, to adopt the proposed resolution amending TRS-ActiveCare rule § 41.41 on an emergency basis, as described herein and the attachments hereto. Adopting the emergency rule amendments will avoid the insolvency of the TRS-ActiveCare fund and the imminent peril, caused thereby, to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare.

**Texas Administrative Code**

**TITLE 34**

PUBLIC FINANCE

**PART 3**

TEACHER RETIREMENT SYSTEM OF TEXAS

**CHAPTER 41**

HEALTH CARE AND INSURANCE PROGRAMS

**SUBCHAPTER C**

TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

**RULE §41.41**

**Premium Payments**

- (a) For each bill generated by TRS or its designee on or before August 31, 2013, ~~E~~each participating entity shall remit to TRS the amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the sixth day after the last day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (e.g., currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for TRS-ActiveCare.
- (b) For each bill generated by TRS or its designee on or after September 1, 2013, each participating entity shall remit to TRS the amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the fifteenth day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (e.g., currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for TRS-ActiveCare.
- (c)(b) A participating entity will be billed for all full-time and part-time employees enrolled in TRS-ActiveCare who were employed by the participating entity on the date that TRS or its designee generates the bill for that billing month as reported by the participating entity. In addition, a participating entity will be billed retroactively for all full-time and part-time employees who enroll after the date on which the bill is generated for that month and choose coverage for that month. A participating entity will also be billed for any individual covered in accordance with §41.40 of this title (relating to Coverage Continuation While on Leave Without Pay.) Participating entities are responsible for collecting all applicable premiums and other costs that are required to be paid by its full-time employees, part-time employees, and any individuals covered in accordance with §41.40 of this title. A participating entity shall remit the full amount billed each month.
- (d)(e) Participating entities shall not modify the amount of any bill or remit any amount different from the amount billed. A participating entity shall report adopted adjustments, including those seeking credit for terminated employees, to the administering firm no later than the 45th day after the billing date. TRS may reject any adopted adjustments that are inappropriate or untimely, including those adjustments seeking credit for terminated employees reported later than 45 days after the billing date on which the employee was first incorrectly reported as eligible for coverage. Approved adjustments will be reflected on a subsequent bill.

| [\(e\)\(4\)](#) TRS may take corrective action against a participating entity that fails to remit payment in accordance with the timelines and other requirements of this section, including but not limited to placement of a warrant hold with the Comptroller of Public Accounts.



## Teacher Retirement System of Texas

### **POLICY COMMITTEE OF THE BOARD OF TRUSTEES**

#### Committee Resolution

#### Authorizing Public Comment Publication and Recommending Emergency Adoption of Amendments to TRS-ActiveCare Rule 34 Tex. Admin. Code § 41.41

June 14, 2013

***Resolved,*** That the Policy Committee (committee) of the Board of Trustees (board) hereby —

- 1) Finds that the solvency of the TRS-ActiveCare fund is at risk and that risk constitutes an imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare;
- 2) Finds that this risk can be alleviated and the imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare can be eliminated by requiring that each participating entity remit payment on or before the fifteenth day of each month in which TRS or BCBSTX issue the bill for TRS-ActiveCare premiums, beginning with bills generated on or after September 1, 2013;
- 3) Finds that there exists an urgent need for TRS to provide adequate notice, direction, and instruction to both the administering firm and the participating entities in TRS-ActiveCare concerning proposed new payment deadlines;
- 4) Finds that the above noted risk and need to provide prompt notice, direction, and instruction requires the adoption of amended rule 34 Tex. Admin. Code § 41.41, as marked in the attached and incorporated text, on an emergency basis with fewer than 30 days' notice;
- 5) Recommends that the board adopt the proposed board resolution for adopting amendments to rule § 41.41, as marked in the attached and incorporated text, on an emergency basis;
- 6) Authorizes TRS staff to publish the same proposed amendments to rule § 41.41 for public comment as part of the regular process to also adopt the amended rule on a non-emergency basis;

- 7) Authorizes TRS staff to work with the Secretary of State's Office and to make any technical changes required for publication of the rule proposal; and
- 8) Incorporates into this resolution the related proposed board resolution, adopted rule text, and applicable committee materials and deliberations considered in the adoption of this resolution.



## Teacher Retirement System of Texas

### BOARD OF TRUSTEES

#### **RESOLUTION AUTHORIZING EMERGENCY ADOPTION OF AMENDMENTS TO TRS-ACTIVECARE RULE 34 TEX. ADMIN. CODE § 41.41**

June 14, 2013

**Whereas**, Chapter 1579, Insurance Code, authorizes the Teacher Retirement System of Texas (TRS), as trustee, to implement and administer the uniform group health benefits program under the Texas School Employees Uniform Group Health Coverage Act (TRS-ActiveCare), as described in the statute;

**Whereas**, During the current plan year, TRS-ActiveCare has experienced an unexpectedly high level of claims, which has placed the solvency of the TRS-ActiveCare fund at risk;

**Whereas**, This risk constitutes an imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare;

**Whereas**, 34 TEX. ADMIN. CODE § 41.41 provides that each participating entity in TRS-ActiveCare shall remit to TRS the amount on each bill for premiums directed to the participating entity by TRS or the administering firm;

**Whereas**, 34 Tex. Admin. Code § 41.41 further provides that each participating entity shall remit payment on or before the sixth day after the last day of each month in which TRS or the administering firm issues a bill;

**Whereas**, TRS staff and the TRS health benefits consultant, Gabriel, Roeder, Smith & Company (GRS), have recommended that each participating entity be required to remit payment on or before the fifteenth day of each month in which TRS or the administering firm issue the bill to the participating entity, beginning with bills generated on or after September 1, 2013;

**Whereas**, By moving the due date of each bill forward in time by approximately three (3) weeks, the risk to the solvency of the TRS-ActiveCare fund can be alleviated and the imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare can be eliminated;

**Whereas,** By acting quickly, TRS can provide adequate notice, direction, and instruction to both the administering firm and the participating entities in TRS-ActiveCare concerning the proposed new payment deadlines;

**Whereas,** the TRS Policy Committee has recommended that the TRS Board of Trustees (board) adopt, on an emergency basis, the proposed amendments to 34 Tex. Admin. Code § 41.41, as marked in the text of 34 Tex. Admin. Code § 41.41 attached hereto and incorporated herein for all purposes; now, therefore, be it

**Resolved,** That the board hereby —

- 1) Finds that during the current plan year, TRS-ActiveCare has experienced an unexpectedly high level of claims, which has placed the solvency of the TRS-ActiveCare fund at risk;
- 2) Finds that this risk to the solvency of the TRS-ActiveCare fund constitutes an imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare;
- 3) Finds that this risk can be alleviated and the imminent peril to the public health, safety, or welfare of individuals enrolled in TRS-ActiveCare can be eliminated by requiring that each participating entity remit payment on or before the fifteenth day of each month in which TRS or BCBSTX issue the bill for TRS-ActiveCare premiums, beginning with bills generated on or after September 1, 2013;
- 4) Finds that there exists an urgent need for TRS to provide adequate notice, direction, and instruction to both the administering firm and the participating entities in TRS-ActiveCare concerning the proposed new payment deadlines;
- 5) Finds that the above noted risk and need to provide prompt notice, direction, and instruction requires the adoption of amended rule 34 Tex. Admin. Code § 41.41, as marked in the attached and incorporated text, on an emergency basis with fewer than 30 days' notice;
- 6) Adopts amendments to rule 34 Tex. Admin. Code § 41.41, as marked in the attached and incorporated text, on an emergency basis; and
- 7) Grants the Chairman of the board the authority to sign an order showing the action of the board.