TEXAS DEPARTMENT OF LICENSING AND REGULATION

Ex Officio Report
to
Governor's Committee on People with Disabilities

October 18, 2023

Report submitted by Marsha Godeaux
Program Specialist VI, Architectural Barriers Program
512-539-5684, Marsha.Godeaux@tdlr.texas.gov

P. O. Box 12157, Austin Texas 78711

https://www.tdlr.texas.gov/ab/abtas.htm

Mike Arismendez, Executive Director

Marsha Godeaux, Exofficio Representative to GCPD

Additional information provided by:

Jessica Escobar, Jeff Copas, Stewart Myrick, Michael Strawn, Mary Hoffman, Sanghee Dobson, and Debbie Hawkins

Executive Summary

The Texas Department of Licensing and Regulation continues to grow with the addition of new programs and expansion of some existing programs following Texas' 88th Legislative Session. Construction does not seem to take a break in Texas and requires a growing reliance on the Architectural Barriers Program for sound and consistent direction interpreting the Texas Accessibility Standards. In addition, the Driver Safety and Transportation Network Companies expand TDLR's reach to include transportation issues relevant to persons with disabilities. Medical and Health Profession programs bring a heightened TDLR emphasis on serving Texans with disabilities.

Long-range strategic plans for people with disabilities

TDLR's Strategic Plan for 2023-2027, "Leading Texas to a Brighter Stronger Future" may be viewed at:

TDLR Strategic Plan FY 2023-27.pdf (texas.gov)

TDLR will be getting ready for a new strategic plan in spring 2024. This helps us develop our legislative agenda for the upcoming session. Please be on the look out for surveys and save the dates for in person planning meetings. We will be asking for you input.

88th Texas Legislative Session (Regular)

TDLR monitors bills that are filed that may impact any of TDLR's regulated programs. The most up to-date information is posted on TDLR's website. Some of the tracked bills include:

- **HB 1** General Appropriations Bill.
    - Appropriates TDLR funds for a new, cloud-based licensing platform for all 38 programs, helping streamline licensing functions; additional anti-trafficking efforts; and other items.

- **SB 1802** relating to administrative procedures in the architectural barriers program at the Texas Department of Licensing and Regulation.
    - Makes minor changes to administrative procedures for consistency with TDLR's enabling law (Chapter 51, Occupations Code).
    - Removes a requirement to provide a building owner with an extra 90 days to rectify a violation. The building owner will still have a full year to get an inspection after construction is complete, and the 270 additional days to correct any deficiencies noted in the inspection.
- **SB 2304** Relating to providing information regarding the Texas Driving with Disability Program to certain public school students and in the curriculum of driver education courses and driving safety courses.
    - Requires schools to provide certain students with information about the Texas Driving with Disability Program.
    - TEA must collaborate with DPS, DMV, and GCPD to develop the materials to be provided, which must include specific information.
    - TDLR must include information about the Texas Driving with Disability Program in each driver education and driving safety course.
- **HB 3928** Relating to a students' eligibility for special education services provided by a school district, including services for dyslexia and related disorders.
    - Updates requirements to provide evaluations for dyslexia and instruction to students with dyslexia, including creating an IEP for such students.
- **HB 617** Relating to a pilot project to provide emergency telemedicine medical services and telehealth services in rural areas.
- **HB 1745** relating to civil actions or arbitrations involving transportation network companies.
    - Limits the liability of Transportation Network Companies in certain actions where the company was not grossly negligent or fulfilled its obligations with respect to a driver.

Human Trafficking

TDLR continues its involvement to address the challenges in preventing human trafficking in Texas. With the passage of H.B. 2313, 88th Regular Session, transportation network companies (TNCs) must annually provide

their drivers with digital human trafficking awareness and prevention training materials. Among several requirements, the trainings must include an explanation of why human trafficking occurs in the transportation industry, guidance on how to identify individuals who are most at risk, guidance on the role of the driver in reporting and responding to human trafficking, and the contact information of the appropriate entities for reporting human trafficking.

The Texas Attorney General's Office also offers training to rideshare drivers to spot the warning signs of human trafficking. More information is available at https://www.texasattorneygeneral.gov/

Starting September 1, 2020, certain health care practitioners who provide direct patient care must complete an approved human trafficking prevention training course before each license renewal. The training course must be approved by the Texas Health and Human Service Commission. TDLR programs impacted include Athletic Trainers, Behavior Analysts, Dietitians, Dyslexia Therapy, Hearing Instrument Fitters and Dispensers, Massage Therapy, Midwives, Orthotists and Prosthetists, Podiatry, and Speech-Language Pathologists and Audiologists.

Beginning January 1, 2023, all licensed Barber and Cosmetology establishments must display a new Human Trafficking Awareness sign containing information concerning services and assistance available to victims of human trafficking. The sign must:

(1) be in English, Spanish, Vietnamese, and any other language required by commission rule; and

(2) include a toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

Calendar

Meetings of the TDLR Commission and program advisory groups are subject to COVID-19 considerations. The most up-to-date information will be posted on TLDR's web site at:

https://www.tdlr.texas.gov/meetings.htm

The next Advisory meeting for the Hearing Instrument Fitters and Dispensers program is scheduled for October 31, 2023 at 9:00AM.

The next Advisory meeting for the Speech-Language Pathologists and Audiologists program is scheduled for October 31, 2023 at 1:30 PM.

Texas Accessibility Academy (TAA) and two other courses on rules and law that regulate the Texas Accessibility Standards (TAS) were presented in conjunction with Building Professional Institute (BPI) on 07/24-26/2023 in Irving. The next Academy and courses will be taught on 11/13-15/2023 in Austin. Specific details are available on the BPI website. In addition, the Accessibility Professionals Association (APA) hosted TDLR teaching the 2-day virtual Academy on 06/13/2023 and 06/15/2023 as well as again on 10/10/2023 and 10/12/2023. Specific details are available on the APA *website*.

Learn More: https://www.tdlr.texas.gov/ab/taa.htm

The EAB program has also been asked to conduct additional trainings. A course on the differences between the Texas Accessibility Standards and Public Right-of-Way projects was taught for the National Floor Safety Institute in Dallas on September 26th. A presentation on TDLR and TAS updates was provided virtually at the APA quarterly meeting on 09/15/2023 and then again for their Texas chapter on 10/03/2023. TDLR has also been asked by The Houston Chapter of the International Code Counsel (ICC) to teach a course on program law and rules along with project registration to be taught on October 19th, 2023. TDLR will also be presenting two courses at the annual APA conference January 24th through the 26th, 2024.

Disability Program Updates

Architectural Barriers Program

Project registrations continue to climb at over 2,000 construction projects per month, new and renovations. The Texas Architectural Barriers online System (TABS) has over 294,354 registered projects on record with 82,110 of those open projects. This is a steady percentage of 28% of the projects registered in TABS

are open projects. Since rolling out the TABS online project management system on December 3, 2018, the number of online users has grown to over 20,904.

For the most-recently concluded fiscal year March through August, 83 Variance Applications or Appeals were processed. Results are different from previous quarters: 30% disapprovals, 53% postponements, 8% approvals, 8% Mixed or Not Required. These applications are examples where compliance with TAS could not be achieved due to existing constraints or postponed based on nature and use of the facility.

Our Enforcement division receives both consumer and department filed complaints. Most consumer complaints we receive typically draw attention to items regarding parking signage, accessible routes, and curb ramps issues. These are usually closed because they are outside our jurisdiction and the complainant is directed to contact the Department of Justice for violations of ADA. In addition, the Enforcement division has been working hard on processing department complaints filed within the department against owners that have failed to get the required inspection or failed to notify the department of corrections to violations found during the inspection. Last fiscal quarter the department pursued compliance and resolved 109 cases.

TechInfo inquiries keep staff busy with 70 -100 contacts each day. Topics include various aspects of the program: the standards, the law, the rules, TABS online registration, procedures for Registered Accessibility Specialists, etc. The majority of the workload, however, are with regards to updates and specific questions on individual projects. Below, is an indication of the ratio of emails responded to on a daily basis in the last fiscal quarter. Most inquiries are received via techinfo@tdlr.texas.gov email. The remainder are telephone contacts.

Project registrations for plan review and inspection continue to avoid the compliance process. Last two fiscal quarters over 7,000 notices were sent out and for the total of fiscal year 2023 there were a total of over 14,000 notices sent out. Trends showed that these notices resulted in a higher than previous fiscal year number of plan reviews (1% increase) and inspections (13% increase) being performed and find that despite our efforts the number of overdue projects continues to rise. We have found some building officials still seem unaware of the state law requiring that certain projects be registered with TDLR and hope that our courses in conjunction with BPI may assist in educating those officials. There is evidence to indicate that some owners avoid the process altogether or start the process but do not complete the basic steps of registration, plan review

and inspection. TDLR staff continue to refer violators found to our Enforcement Division for our investigators to review and process complaints.

The TABS system is continuing to be developed and improved. Currently, we are working with our development team to further correct several project records to accurately reflect open projects in TABS. TDLR staff will continue to work on updates correcting glitches and provide enhancements such as an audit feature to ensure RAS procedures.

TDLR began the rule review process on 09/02/2022 with a posting in the Texas Registrar and public comment period ended on 10/17/2022. As we reviewed the comments it was determined that a general cleanup of items that needed clarification or have become obsolete was needed. This was already going to be part of the TAS update process since some of the items being placed in TAS need to be removed from the rules once placed into TAS. However, in order to better serve Texas, it was decided that we would move forward with the cleanup of items that needed clarification in lieu of waiting for the 2023 TAS update to be finalized. Therefore, the department focused our attentions in the 02/27/23 advisory meeting on finalizing a rules update. This rules update including reorganization of the rules into subchapters for easier reading, clarification to several items, and incorporation of the RAS procedures into the rules. These rules were approved by the commission to be adopted and became effective September 1, 2023. In addition, all TDLR forms for the EAB program were updated that coincide with the clarifications to owner responsibilities, including references and detailed instructions for information needs.

We continue to discuss, analyze, and research areas elements to updates for the 2023 TAS to consolidate the accessibility requirements into one area, as well as provide requirements to new technologies and needs. TDLR also continues to get suggestions of areas from stake holders regarding thoughts to improve accessibility requirements in Texas. This edition is intended to include requirements that mirror the proposed federal outdoor developed guidelines. It will integrate the new parking requirements from Rule 68.104 and the proposed public right of way guidelines allowed by Rule 68.102. Also added, will be

requirements for electrical vehicle charging station and adult changing tables. We will also be editing and clarifying some areas of the 2012 TAS that need further explanation. None of these edits will violate the federal ADA requirements. The advisory workgroup will meet again this spring once the rules update has been brought to Advisory Board.

Behavior Analysts

Behavior analysts design, implement, and evaluate instructional and environmental modifications to produce socially significant improvements in human behavior. Behavior analysts provide a wide range of services, including services to individuals with intellectual disabilities and autism, among others.

The regulation of behavior analysts in Texas began on June 15, 2018. Through FY 2023, the licensed population is now 4,491.

TDLR proposed amendments to the Behavior Analyst program rules at 16 Texas Administrative Code, Chapter 121. The proposed rules were published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4964). Anyone interested in the Behavior Analyst program may review the rule proposal online.

The primary stakeholder association is Texas Association for Behavior Analysis.

Driver Education Program, American Sign Language Driver Education Course

TDLR regulates and licenses providers, instructors, and schools (about 3,000 licensees) for teen and adult driver education courses to obtain a Class C driver license in the state of Texas. Driver education is taken by thousands of students each year for whom these courses must be accessible.

Through a legislative initiative, TDLR has created a driver education course presented in American Sign Language for teens and adults. Education & Examination staff at TDLR report the project has been finished and is in action.

TDLR does not keep statistics on usage of the materials. TDLR and GCPD separately disseminated information about the ASL course through list-serve.

Dyslexia Therapists and Practitioners

Dyslexia therapists and practitioners treat persons with dyslexia using multisensory structured language education. The Texas Education Code, Sec. 38.003, defines "dyslexia" as a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity. Over 1,100 licensed dyslexia therapists and practitioners work primarily in academic settings, although dyslexia therapists may also engage in private practice.

The primary stakeholder association is the Academic Language Therapy Association.

Hearing Instrument Fitters & Dispensers

Hearing instrument fitters & dispensers use audiometers and other methods to measure the hearing of those individuals affected by hearing impairment. Through those tests, fitters & dispensers are authorized to select, adapt, and sell a hearing instrument to help improve or correct impaired human hearing. Through FY 2023, TDLR licenses 879 fitters and dispensers.

With the passage of SB 2017 in the 88th Regular Session, a license is no longer required to sell over-the-counter hearing aids.

TDLR proposes changes to the rules at 16 TAC, Chapter 112, Hearing Instrument Fitters and Dispensers. For information on the proposed rule changes and how you can submit public comments, please see the documents below:

- Summary of Proposed Rule Changes - English (PDF)
- Summary of Proposed Rule Changes – Español (PDF)

The Department will accept comments on the proposed rule changes until **October 23, 2023**.

The primary stakeholder association is the Texas Hearing Aid Association.

Orthotists & Prosthetists

Orthotists engage in the science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a medical device designed to provide for the support, alignment, prevention, or correction of a neuromuscular or musculoskeletal disease, injury, or deformity. Prosthetists engage in the science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a medical device used to replace a missing limb, appendage, or other external human body part.

Both professions provide services in TDLR-licensed orthotic and prosthetic facilities under orders from a licensed physician or podiatrist. Through FY 2023, there are 915 licensees under the Orthotists and Prosthetists program at TDLR.

With the passage of SB 490 in the 88th Regular Session, a licensed facility is required to send an itemized bill prior to attempting to collect any money from the patient.

TDLR staff attended the Texas Society of Prosthetics Professionals in San Antonio, Texas in August.

The primary stakeholder association is the Texas Association of Orthotists & Prosthetists.

Podiatry

Podiatry is defined as the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. The term includes podiatric medicine.

Among their duties, podiatrists sign the written statement that accompanies the application for Disabled Person Placards and License Plates. Texas Transportation Code Chapter 681 "Privileged Parking" provides that the required notarized written statement or written prescription that accompanies the initial application for a disabled person identification placard or license plate can be issued by a person licensed to practice podiatry in this state or a state adjacent to this state for a person with a mobility problem caused by a disorder of the foot that limits or impairs that person's ability to walk.

The regulation of podiatrists and podiatric medical radiological technicians was transferred to TDLR on September 1, 2017. Through FY 2023, the total licensed population is 1,414.

TDLR staff attended the TPMA Southwest Foot & Ankle Conference in Irving, Texas in October.

The primary stakeholder association is the Texas Podiatric Medical Association.

Speech-Language Pathologists & Audiologists

Speech-language pathologists (SLPs) evaluate, prevent, and treat speech, language, and swallowing disorders in individuals by applying non-medical principles, methods, and procedures for measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction.

Audiologists provide services to help treat or modify communicative disorders involving speech, language, or auditory or vestibular function or other aberrant behavior relating to hearing loss.

There are over 25,000 licensees in the speech-language pathologist and audiologist program at TDLR, which include SLPs, SLP interns, SLP assistants, Audiologists, Audiology interns, and Audiology Assistants.

With the passage of SB 2017 in the 88th Regular Session, a license is no longer required to sell over-the-counter hearing aids.

TDLR proposes changes to the rules at 16 TAC, Chapter 111, Speech-Language Pathologists and Audiologists. For information on the proposed rule changes and how you can submit public comments, please see the documents below:

- Summary of Proposed Rule Changes - English (PDF)
- Summary of Proposed Rule Changes – Español (PDF)

The Department will accept comments on the proposed rule changes until **October 23, 2023**.

In October, TDLR staff attended the National Council of State board of Examiners Conference in Charlotte, North Carolina and the Texas Academy of Audiology Annual Conference in San Marcos, Texas. The primary stakeholder associations are the Texas Speech-Language Hearing Association and the Texas Academy of Audiology.

Transportation Network Company Report

The Transportation Network Company (TNC) program at TDLR is responsible for the regulation and licensing of TNCs throughout the state. Legislation effective since May of 2017 requires each TNC to establish a pilot program in one of their four largest markets servicing persons requiring the use of fixed-frame wheelchair accessible vehicles. The Pilot program is to begin no later than the 90th day after the date the company is issued a permit.

The initial Report is due to TDLR after the 100th day of beginning their pilot program and TNCs may submit supplemental reports to the department every 90th day after that. This pilot program takes place over the course of 2 years and is reported to the state legislature at its conclusion.

The Department works closely with TNCs and people with disabilities to capture suggestions for enhancing and improving the program and its services. As such, Administrative Rules regulating TNCs were adopted on October 20, 2017, by TDLR and became effective on December 1, 2017. The first TDLR license for a TNC was issued on January 3, 2018. There are currently 16 TNCs licensed in Texas.