(a) The Board may issue to a nonexempt institution a certificate of authority to grant a degree or degrees and to enroll students for courses which may be applicable toward a degree if the Board finds that the institution meets the standards set forth in §7.5 of this chapter (relating to Standards for Operation of Institutions).

(b) Certification Advisory Council.

   (1) The Board shall appoint a certification advisory council to advise the Board on standards and procedures related to certification of private, nonexempt postsecondary educational institutions, to assist the Commissioner in the examination of individual applications for certificates of authority, and to perform other duties related to certification that the Board finds to be appropriate.

   (2) The council shall consist of six members with experience in higher education, three of whom must be drawn from exempt private postsecondary institutions in Texas.

   (3) The members shall be appointed for two year fixed and staggered terms.

(c) Fees.

   (1) Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for certificates of authority, which shall be equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members, if an onsite review is conducted.

   (2) Each biennium, the Commissioner shall also set the fees for amendments to certificates of authority; initial reviews of branch campuses or extension centers; site visits to branch campuses or extension centers; and certificates of registration of agents.

   (3) The Commissioner shall report changes in the fees to the Board at a quarterly meeting.

(d) Board's review of applications.

   (1) The Commissioner, or the Commissioner's designated representatives, and an ad hoc team of independent consultants, if the Commissioner finds that such a team would provide a benefit to the Board or to the institution, may visit the institution and conduct an onsite survey to evaluate the application for a certificate of authority. The visiting team will be composed of people who have experience and knowledge relating to postsecondary institutions.

   (2) The visiting team will prepare a written report of its findings regarding the institution's ability to meet the standards for a certificate of authority. This report will be provided to the applicant institution, which
shall have thirty (30) days within which to submit a written response.

3) The certification advisory council will review the findings of the visiting team and the response of the institution and submit to the Commissioner a recommendation concerning the application.

4) The Commissioner will forward to the Board the recommendation of the advisory council with his endorsement or with an alternative recommendation.

5) Upon approval of the Board to award a certificate of authority to an institution, the Commissioner will act immediately to prepare and forward the certificate. It shall state, at a minimum, that the institution is authorized to grant certain degrees, the issue date, and the period for which the certificate is valid.

6) If the Board denies an institution's application for a certificate of authority, or for renewal of its certificate of authority, the Commissioner shall notify the institution in writing of the denial and of the reasons for the denial.

   A) The institution will not be eligible to reapply for a period of one hundred eighty (180) days.

   B) Until the certificate of authority is reinstated, the institution may not grant degrees or receive payments from students for courses which may be applicable toward a degree.

   C) The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

   D) The period of time during which the institution does not hold a certificate of authority shall not be counted against the eight (8) year period within which the institution must achieve accreditation from a recognized accrediting agency absent sufficient cause, as described in subsection (h) of this section; the time period begins to run again upon reinstatement.

7) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(e) Terms and limitations of a certificate of authority.

1) The certificate of authority to grant degrees is valid for a period of two (2) years from the date of issuance.

2) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in subsection (h)(3) of this section. Therefore, the institution awarded a certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(f) Eligibility to apply. The Board will accept applications for a certificate of authority only from those institutions:

1) proposing to offer a degree or credit courses alleged to be applicable to a degree; and
(2) which have been in operation for a minimum of two years, or held an alternative certificate of authority for one year. As a minimum, "in operation" means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a certificate of authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety bond, assignment of account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of postsecondary institutions, which is:

(A) In a form acceptable to the Board; and

(B) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a certificate of authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the guaranteeing entity will assume.

(g) Application for certificate of authority.

(1) Institutions seeking a certificate of authority are urged to contact Board staff before filing a formal application.

(2) Applications must be submitted with an original and four (4) copies and accompanied by the fee described in subsection (c) of this section.

(3) Documentary evidence of compliance with subsection (f)(2) of this section must be filed with the application.

(4) An institution must be fully operational as of the date of the on-site evaluation; i.e., it must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions. The conditions found at the institution as of the date of the on-site evaluation visit will provide the basis for the visiting team's evaluation and report, the certification advisory council's recommendation, the Commissioner's recommendation, and the Board's determination of the institution's qualifications for a certificate of authority.

(5) Evidence of approval from the Texas Workforce Commission must be submitted to the Board. The Board will not approve an application for a certificate of authority unless the Texas Workforce Commission has approved the institution to offer a course of instruction or has been issued an exemption.

(h) Renewal of certificate of authority.

(1) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current certificate of authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in subsection (c) of this section.

(2) The application for renewal of the certificate of authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the evaluation will include the institution's record of improvement and progress toward accreditation.
An institution may be granted consecutive certificates of authority for no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a recognized accrediting agency.

Subject to the restrictions of paragraph (3) of this subsection, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards.

Amendments to a certificate of authority.

An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by its current certificate may file an application for amendment, on forms provided by the Board upon request. An institution may begin operating such a program upon filing the application, and the application shall be deemed to be granted if not rejected by the Board within one hundred twenty (120) days.

Applications for amendment shall be accompanied by the fee described in subsection (c) of this section.

Unless the Board finds that the new program of study does not meet the required standards, the Board shall amend the institution's certificate accordingly.

Authority to represent transferability of course credit. Any institution as defined in §7.3 of this chapter (relating to Definitions), whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided:

1. the other institution is named in such representation, and is accredited by a recognized accrediting agency or has a certificate of authority;
2. the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and
3. the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' boards of trustees in writing, and is filed with the Board.

Duty to report.

Institutions holding a certificate of authority will be required to:

A. furnish a list of their agents to the Board; and
B. maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board.

Any change in principal location, ownership, governance, administrative personnel, faculty, or facilities at the institution, or any other changes relevant to the Board's standards for certification, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board staff to determine if such changes adversely affect the conditions under which the certificate was granted. For purposes of this provision, administrative personnel consist only of individuals in a leadership role that involves setting institutional policies. For purposes of this provision, facilities consist only of campuses taken as a unit. Notification is only required if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported. For purposes of this provision, changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of a faculty member shall trigger...
notification.

(1) If an order, decision, or determination made pursuant to this section is adverse to an institution, the reasons therefore shall be detailed in a notice to the institution. The order, decision, or determination shall become final and binding unless, within forty-five (45) days of its receipt of the adverse order, decision, or determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

Source Note: The provisions of this §7.7 adopted to be effective May 27, 2008, 33 TexReg 4134; amended to be effective March 2, 2009, 34 TexReg 1421.