

University of Texas Medical Branch
Texas Education Code Section 51.3525 Compliance Audit
 Fiscal Year 2024



Background: The 88th Texas State Legislature passed, and the Texas Governor signed into law, Senate Bill 17, which amended Section 1, Subchapter G, Chapter 51 of the *Texas Education Code* by adding Section 51.3525, “Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives” (TEC §51.3525). TEC §51.3525 requires the Board of Regents of The University of Texas Medical Branch (UTMB Health), as summarized below, to ensure the institution does not, except as required by federal law:

- Establish or maintain a diversity, equity, and inclusion (DEI) office;
- Hire or assign an employee of the institution or contract with a third party to perform the duties of a DEI office;
- Compel, require, induce, or solicit any person to provide a DEI statement or give preferential consideration to any person based on the provision of a DEI statement;
- Give preference on the basis of race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any function of the institution; and
- Require, as a condition of enrolling at the institution or performing any institution function, any person to participate in DEI training, which includes a training, program, or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.

UTMB Health Audit Services performed an audit to assess UTMB Health’s compliance with TEC §51.3525.

Objective: The primary objective of this engagement was to provide the President and Executive Leadership reasonable assurance as to whether UTMB Health has complied with the requirements of TEC §51.3525. This included determining whether UTMB Health has:

- ❖ Closed the DEI office or made appropriate changes to offices, divisions, or other units that were previously responsible for DEI initiatives.
- ❖ Complied with the restriction on hiring or assigning employees to perform DEI duties.
- ❖ Updated staff hiring and employment practices to remove requirements for DEI statements and to not provide preferential treatment based on race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any function of the institution.
- ❖ Complied with the prohibition on requiring participation in DEI training as a condition of performing any institutional function.
- ❖ Discontinued programs and activities which promote differential treatment of, or provide special benefits to, individuals based on race, color, or ethnicity.
- ❖ Developed or updated disciplinary policies and procedures, if necessary, to comply with TEC §51.3525.

Conclusion on Compliance with TEC §51.3525: Based on the work we performed, we believe that UTMB Health, has achieved compliance with TEC §51.3525:

TEC §51.3525 Requirements	Based on Audit Procedures and Management Actions
“Does not, except as required by federal law: (A) establish or maintain a diversity, equity, and inclusion office[.]”	Complies
“Does not, except as required by federal law:… (B) hire or assign an employee of the institution or contract with a third party to perform the duties of a diversity, equity, and inclusion office[.]”	Complies

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TEC §51.3525 Requirements	Based on Audit Procedures and Management Actions
“Does not, except as required by federal law:… (C) compel, require, induce, or solicit any person to provide a diversity, equity, and inclusion statement or give preferential consideration to any person based on the provision of a diversity, equity, and inclusion statement [.]”	Complies
“Does not, except as required by federal law:… (D) give preference on the basis of race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any function of the institution[.]”	Complies
“Does not, except as required by federal law:… (E) require as a condition of enrolling at the institution or performing any institution function any person to participate in diversity, equity, and inclusion training, which: (i) includes a training, program, or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation; and (ii) does not include a training, program, or activity developed by an attorney and approved in writing by the institution's general counsel and the Texas Higher Education Coordinating Board for the sole purpose of ensuring compliance with any applicable court order or state or federal law[.]”	Complies
“(2) adopts policies and procedures for appropriately disciplining, including by termination, an employee or contractor of the institution who engages in conduct in violation of Subdivision (1).”	Complies

In fall 2023, UT System implemented UTS 197 *Compliance with State Law Regarding Diversity, Equity, and Inclusion in Institutions of Higher Education* (UTS 197) to help achieve and enable ongoing compliance with TEC§51.3525. UTS 197 includes activities which are considered important but are not specifically required by statute. The secondary objective of this audit was to provide reasonable assurance that UTMB Health has complied with the requirements of UTS 197.

Based on the work we performed, we believe that UTMB Health has achieved significant compliance with the key requirements of UTS 197. However, while not specifically required by statute, we have identified opportunities, as described below, to help ensure ongoing compliance with TEC§51.3525:

Observations and Recommendations (by Rating)	Management Action Plans
<p>Medium: Management was considering but had not implemented risk-based monitoring activities to provide itself reasonable assurance over ongoing compliance with UTS 197 and TEC §51.3525.</p> <p>Develop a Monitoring Plan to Ensure Ongoing Compliance with TEC §51.3525.</p>	<p>Management is drafting a monitoring plan and will adopt following discussion with the Executive Institutional Compliance Committee by November 30, 2024.</p>

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Observations and Recommendations (by Rating)	Management Action Plans
<p>Medium: Management was considering but had not yet implemented, an institution-wide certification process to provide the chancellor with reasonable assurance that all offices and departments of UTMB Health are operating in compliance with TEC §51.3525.</p> <p>Implement a UTMB Health certification process to provide the President with reasonable assurance that all offices and departments are operating in compliance with TEC §51.3525.</p>	<p>Management will receive confirmation from Deans, Executive Vice Presidents, and the Vice President of Human Resources of compliance with TEC §51.3525 for certification by August 13, 2024.</p>
<p>Low: While management has communicated to department leadership its commitment to comply with TEC §51.3525, all employees may not be aware of their roles and responsibilities with respect to compliance with the law.</p> <p>Ensure employees are educated about TEC §51.3525 requirements.</p>	<p>TEC §51.3525 content will be added to a general compliance training module by September 16, 2024.</p>
<p>Low: Management identified some web pages that referenced discontinued activities, web pages that did not adequately reflect current activities, or web pages requiring other clarifications. We also identified other web pages where references to past DEI activities were not clear or where updates might need to be made.</p> <p>Periodically review and update websites and social media accounts.</p>	<p>As part of compliance monitoring plan approved by Executive Institutional Compliance Committee, management will begin reviewing and updating websites and social media accounts by November 30, 2024.</p>

We will follow up on the action plans to determine the implementation status. Follow-up will help ensure that timely action is taken to address the observations in this report.

Methodology & Scope

UTMB Audit Services conducted this engagement in accordance with the *International Standards for the Professional Practice of Internal Auditing* and generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the engagement to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our objectives. UTMB Health Audit Services is independent per GAGAS requirements for internal auditors. The procedures we performed included, but were not limited, interviews with management, reviewing policies and procedures, reviewing hiring practices, reviewing financial information, obtaining and reviewing supporting documentation, testing controls, data analytics, and other work which we deemed necessary to achieve our audit objective.

The scope of this audit covered activities management undertook to address DEI-related:

- Offices and duties that may have been performed elsewhere within the institution;
- Staff hiring and employment practices and DEI statements;
- Training;
- Programs and activities;
- Applicable policies and procedures;
- Internal controls and monitoring;
- External facing web pages and social media accounts that may have referenced active DEI activities; and
- Funding.

The scope of the audit included activities taken from January 1, 2024, until July 2024.

Observation Ratings

Priority	An issue that, if not addressed timely, has a high probability to directly impact achievement of a strategic or important operational objective of the University or the UT System as a whole.
High	An issue considered to have a medium to high probability of adverse effects to a significant office or business process or to the University as a whole.
Medium	An issue considered to have a low to medium probability of adverse effects to an office or business process or to the University as a whole.
Low	An issue considered to have minimal probability of adverse effects to an office or business process or to the University as a whole.

Criteria

- TEC §51.3525
- UTS 197
- UT System SB 17 Guidance
- Other key institutional policies where applicable

REPORT DATE

August 13, 2024

REPORT DISTRIBUTION

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