

Department of State Health Services
Agenda Item for State Health Services Council
May 11-12, 2006

Agenda Item Title: Amend 25 TAC, §448.505, Rule Relating to General Environment in Chemical Dependency Treatment Facilities.

Agenda Number: 5b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The licensing rules for chemical dependency treatment facilities establish the licensing procedures and standards for operation. The current rule prohibits alcohol on the program site. The proposed amendments to §448.505 make available to all facilities by rule a limited exception to the prohibition against alcohol on the program site, which had been previously granted by variance to a facility requesting it. The proposed amendments provide for a narrow exception, with safeguards, for presiding clergy members' possession and consumption on the program site of a limited amount of alcohol as a standard part of a sacramental rite in order to avoid undue governmental interference with the free exercise of religion.

Summary:

Proposed amendments allow four ounces of alcohol to be brought onto the program site by a clergy member, and while on site, to remain in the sole possession, custody, and control of the clergy member. The alcohol is permitted to be brought onto the program site and used solely for the purpose of enabling a clergy member to preside over a sacramental rite. The chemical dependency treatment facility is not permitted to allow any person other than the clergy member to be in possession, custody, or control of, or to consume any portion of, the alcohol brought to the program site. The facility is required to maintain and make available to the Department of State Health Services upon request documentation of the clergy member's identification, and each date and time when alcohol is permitted to be brought onto the program site.

Summary of Stakeholder Input to Date (including advisory committees):

A chemical dependency treatment facility requested a variance to permit a priest's use of sacramental wine during communion at a facility, which initiated consideration of a rule amendment. The Diocese of San Angelo wrote a letter in support of the variance request and received a draft copy of the rule with an opportunity to provide input. The Association of Substance Abuse Professionals (ASAP) also received a draft copy of the rule and was given an opportunity to provide input. In addition, the draft proposed rule will be placed on the department website.

Proposed Motion: Motion to recommend HHSC approval for publication of proposed rule contained in agenda item # 5b.

Agenda Item Approved by: _____

Date Submitted

Presented by: Kathy Perkins_____

Title: Section Manager_____

May 8, 2006

Nance Stearman

Program/Division: Regulatory Services **Contact Name/Phone:** 512-834-6752_____

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 448. Standard of Care
Subchapter E. Facility Requirements
Amendment §448.505

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §448.505 concerning the general environment in chemical dependency treatment facilities.

BACKGROUND AND PURPOSE

The proposed amendments to §448.505 make available to all chemical dependency treatment facilities by rule a limited exception to the prohibition against alcohol on the program site, which had been previously granted by variance to a facility requesting it. The proposed amendments provide for a narrow exception, with safeguards, for presiding clergy members' possession and consumption on the program site of a limited amount of alcohol as a standard part of a sacramental rite in order to avoid undue governmental interference with the free exercise of religion.

SECTION-BY-SECTION SUMMARY

Amendments to §448.505 allow four ounces of alcohol to be brought onto the program site by a clergy member, and while on site to remain in the sole possession, custody, and control of the clergy member. The alcohol is permitted to be brought onto the program site and used solely for the purpose of enabling a clergy member to preside over a sacramental rite. The chemical dependency treatment facility is not permitted to allow any person other than the clergy member to be in possession, custody, or control of, or to consume any portion of the alcohol brought to the program site. The facility is required to maintain and make available to the department upon request documentation of the clergy member's identification, and each date and time when alcohol is permitted to be brought onto the program site.

FISCAL NOTE

Kathy Perkins, Director, Healthcare Quality Section, Regulatory Division, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed in that costs and workload resulting from the rule amendment will be absorbed within the existing budget.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses that operate chemical dependency treatment facilities will not be required to significantly alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed because the alcohol would be brought onto the program site by a clergy member and additional documentation requirements are minimal and can be absorbed within facilities' existing costs. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is the prevention of state interference with the free exercise of religion by chemical dependency treatment facility clients by permitting, with safeguards, a clergy member's use of alcohol during a sacramental rite at a facility.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Jane Guerrero, Facility Licensing Group, Regulatory Licensing Unit, Department of State Health Services, 1100 West 49th Street, Mail Code 1980, Austin, Texas 78756, 512/834-6639 or by email to jane.guerrero@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §464.009, which authorizes the Executive Commissioner of the Health and Human Services Commission (Executive Commissioner) to adopt rules governing chemical dependency treatment facilities, including their policies and procedures, client living environment, protection of client rights, and standards to ensure client safety, protection, health and comfort; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive

Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendment affects the Health and Safety Code, Chapters 464 and 1001, and Government Code, Chapter 531.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

Subchapter E. Facility Requirements.

§448.505. General Environment.

(a) The facility shall comply with applicable requirements of the Americans with Disabilities Act (ADA). The facility shall maintain documentation that it has conducted a self-inspection to evaluate compliance and implemented a corrective action plan, as necessary, with reasonable time frames to address identified deficiencies.

(b) The facility shall have a certificate of occupancy from the local authority that reflects the current use by the occupant or documentation that the locality does not issue occupancy certificates.

(c) The site, including grounds, buildings, electrical and mechanical systems, appliances, equipment, and furniture shall be structurally sound, in good repair, clean, and free from health and safety hazards.

(d) The facility shall provide a safe, clean, well-lighted and well-maintained environment.

(e) The facility shall have adequate space, furniture, and supplies.

(f) The facility shall have private space for confidential interactions, including all group counseling sessions.

(g) The facility shall prohibit smoking inside facility buildings and vehicles and during structured program activities. If smoking areas are permitted, they shall be clearly marked as designated smoking areas and shall not be less than 15 feet from any entrance to any building(s) and comply with local codes and ordinances. Staff shall not provide or facilitate client access to tobacco products.

(h) The facility shall prohibit firearms and other weapons, alcohol, illegal drugs, illegal activities, and violence on the program site or at or during the course of any program activity, except as provided for in paragraphs (1) and (2) of this subsection. The facility shall be responsible for any noncompliance with this subsection.

(1) The facility may allow a clergy member to bring four ounces or less of alcohol on site or to a program activity for purposes of presiding over a religious or spiritual rite, as long as the alcohol remains in the possession, custody, or control of the presiding clergy member at all times while on the program site or at the program activity, is not distributed, and is consumed only by the presiding clergy member, if at all.

(2) The facility shall inform any clergy member bringing alcohol on site or to a program activity under paragraph (1) of this subsection. The facility shall create and maintain documentation, which shall be available to staff of the Department of State Health Services upon request, reflecting each date and time when alcohol is permitted to be brought onto the program site or to a program activity pursuant to this subsection. The documentation shall include the name, address, and title of the clergy member, and shall document staff verification that the clergy member was self-identified as such, that alcohol was brought on site or to a program activity and that it was thereafter either removed from the site or program activity, or represented by the presiding clergy member to have been personally consumed.

(i) Animals shall be properly vaccinated and supervised.

Agency Unit/Section/Division Facility Licensing Group, Regulatory Licensing Unit, Health Care Quality Section, Regulatory Services, Department of State Health Services	Council Meeting Date May 04, 2006
Agency Program Contact Nance Stearman	Telephone No. 512-834-6752
Rule Topic Rule amendment relating to the standard of care for the licensing and operation of chemical dependency treatment facilities, specifically general environment.	

1. Rule Summary.

(Briefly summarize the rule change and why the rule may or may not have fiscal implications.)

This proposed rule amendment makes available to all facilities by rule a limited exception to the prohibition against alcohol on the program site, which had been previously granted by variance to a facility requesting it. The proposed amendment provides for a narrow exception, with safeguards, for presiding clergy members' possession and consumption on the program site of a limited amount of alcohol as a standard part of a sacramental rite in order to avoid undue governmental interference with the free exercise of religion.

2. Fiscal Impact.

Does the rule have foreseeable fiscal implications to either costs or revenues of state government for the first five years the rule is in effect?

Yes No If yes, complete the following:

(a) If there are estimated additional costs to the department, explain (1) what new responsibilities will be required; (2) what additional staff will be needed (numbers and classifications); and (3) what other expenses, such as capital or professional services, will be required. Explain any key assumptions that will be needed to reach the figures in the chart in 2(d).

n/a

(b) If there is an estimated reduction in costs, explain how the reductions will be accomplished.

n/a

(c) If there is an estimated increase in revenue, describe the source and amount. If there is an estimated loss of revenue, describe the source and amount.

n/a

Note: Staff may provide the information in (d) on a separate spreadsheet. If spreadsheet is attached, please check here:

(d)	1. Fiscal Year 2006	2. Fiscal Year 2007	3. Fiscal Year 2008	4. Fiscal Year 2009	5. Fiscal Year 2010
Estimated Additional/Reduction in Cost (specify reduction in parenthesis)					
STATE FUNDS					
FEDERAL FUNDS					
OTHER FUNDS					
TOTAL:					
Estimated Increase/Loss of Revenue (specify loss in parenthesis)					
STATE FUNDS					
FEDERAL FUNDS					
OTHER FUNDS					
TOTAL:					

3. Local Government Impact.

Does the rule have foreseeable positive or negative fiscal implications to either costs or revenues of local governments for the first five years the rule is in effect?

Yes No If yes, enter the amounts for each of the five years and explain key assumptions you used to reach the figures.

4. Small Businesses or Micro-Businesses Impact.

Does the rule have ANY adverse economic effect on small businesses or micro-businesses* (regardless of whether it will have an adverse effect on businesses in general)?

Yes No If yes, complete 4B-E. If no, complete 4A.

* A small business is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees OR less than \$1,000,000 in annual gross receipts.

A micro-business is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has 20 or fewer employees.

A. If the rule **will not** have an adverse economic effect on either small businesses or micro-businesses, or both, explain why there will be no adverse effect on one or both.

Small and micro-businesses that operate chemical dependency treatment facilities, and comply with current licensing rules will encounter no additional costs to comply with the proposed rule amendments because the alcohol would be brought onto the program site by a clergy member and additional documentation requirements are minimal and can be absorbed within the facilities' existing costs.

Complete (B)-(E) if rule will have an adverse economic effect on small businesses or micro-businesses or both.

Note: You must discuss both small businesses and micro-businesses in your analysis regardless of whether the rule will have an adverse economic effect on either one or both.

B. Explain why there will be an adverse economic effect, such as new fees, reduced revenues, or new regulatory requirements that will increase the cost of doing business.

n/a

C. Give an analysis of the cost to small businesses or micro-businesses of complying with the rule. Explain what assumptions you used to calculate these projected costs (for example, a survey of randomly selected assisted living facilities).

n/a

D. Compare the cost to small businesses or micro-businesses of complying with the rule with the cost to the largest businesses affected by the rule, analyzing, when possible:

- cost per employee,
- cost per hour of labor, or
- cost per each \$100 of sales.

n/a

- E. Give an analysis of whether it is legal and feasible to reduce the economic effect of the rule on small businesses or micro-businesses, while still accomplishing the intent of the state or federal law being implemented with the rule.

n/a

5. Other Cost Impacts.

If there will be costs to persons who must comply with this rule change, other than costs identified in preceding sections, enter estimated costs for the first five fiscal years of implementation:

FY 1	FY 2	FY 3	FY 4	FY 5

Explain assumptions used to arrive at these costs.

6. Fiscal Impact on Local Employment:

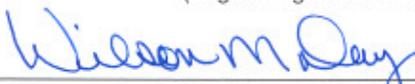
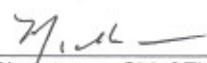
- Rule **will not** have an impact.
 Rule **will** have an impact. You must complete an Economic Impact Request and submit it to TWC at least 30 days before the Council meeting.

7. Takings Impact Assessment.

Does the proposed rule create a burden on private "real property" (i.e. real estate or the buildings and other structures attached to real estate)?

- Yes No If **yes**, contact Legal **immediately** to determine if you are required to complete a Takings Impact Assessment.

Approvals

	03-31-06	X6910
Signature – Budget Analyst (original signature on file)	Date	Telephone No.
	4/5/06	X-6929
Signature – Budget Director (original signature on file)	Date	Telephone No.
	4/5/06	458-7670
Signature – Chief Financial Officer (original signature on file)	Date	Telephone No.
Signature – Deputy Executive Commissioner (as appropriate) (original signature on file)	Date	Telephone No.