

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 448. Standard of Care  
Subchapter D. Facility Licensure Information  
Amendment §448.408

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 §448.408, concerning chemical dependency treatment facilities' licensure fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85 makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Chemical Dependency Treatment Facility Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

SECTION-BY-SECTION SUMMARY

Amendments to §448.408(c) contain increases in fees assessed against licensed chemical dependency treatment facilities for base fees, fees per residential and outpatient site, and fees per bed, and eliminate the maximum fee per facility. Specifically, the separate \$100 fee for a license application is eliminated, and renumbered §448.408(c)(1) establishes a combined base fee for a license at \$1,200, which includes application and review fees, increasing the net fee for licensure by \$100; renumbered §448.408(c)(2) increases the fee per residential site by \$25, and adds a fee of \$125 per outpatient site; and renumbered §448.408(c)(3) increases the fee per bed by \$5. The maximum \$4,000 fee per facility is eliminated.

FISCAL NOTE

Cindy Bednar, Manager, Facility Licensing Group, Regulatory Licensing Unit, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of \$24,100 in 2006, \$144,270 in 2007, \$33,710 in 2008, \$144,270 in 2009 and \$33,710 in 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity

pay, and travel reimbursement. Implementation of the proposed section would have fiscal implications for local government only if the local government owned or operated a licensed chemical dependency treatment facility.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bednar has also determined that there will be an adverse economic effect on both micro-businesses and small businesses that operate licensed chemical dependency treatment facilities related to the increase in licensing fees. It is assumed that a large percentage of chemical dependency treatment facilities will meet the definition of a micro-business or a small business. All facilities will experience some increase in fees. The average fee increase will be approximately \$590. There will be no impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Bednar 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 to generate funding sufficient for continued operation of the program to ensure that chemical dependency treatment facilities are licensed and maintain compliance with minimum licensing standards.

#### 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, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Nance Stearman, Health Care Quality Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Mail Code CEN, Austin, Texas 78756, 512/834-6752 or by email to Nance.Stearman@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

#### STATUTORY AUTHORITY

The proposed amendment to §448.408 is authorized by Health and Safety Code, §464.007, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

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

#### 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.

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 D. Facility Licensure Information.

§448.408. Licensure Fees.

(a) A facility shall pay the full licensure fee for any licensure period during which it provides chemical dependency treatment. Failure to notify the **[Commission's]** licensure department of closure does not excuse a licensee from paying fees.

(b) No change.

(c) The schedule for licensure fees is:

**[(1) application fee--\$100;]**

(1) [(2)] base fee for initial and renewal licenses, which includes application and review fees--\$1,200 [**\$1,000**];

(2) [(3)] fee [per] for each outpatient or residential site located at a separate physical address--\$125 [**\$100**]; and

(3) [(4)] fee per bed--\$35. [**\$30**];

**[(5) maximum fee per facility (excluding application fees)--\$4,000.]**

(d)–(e) (No change.)