

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 135. Ambulatory Surgical Centers  
Subchapter A. Operating Requirements For Ambulatory Surgical Centers  
Amendment §135.3

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 §135.3 concerning ambulatory surgical centers license 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 Ambulatory Surgical Centers 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 §135.3 contain increases in fees assessed against licensed ambulatory surgical centers for initial and renewal applications. Specifically, §135.3(a) increases the fee for an initial license application by \$1,200; and §135.3(b) increases the fee for a renewal license application by \$1,200.

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 \$112,800 in 2006 and \$186,000 in 2007 through 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 ambulatory surgical center.

## 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 business that operate licensed ambulatory surgical centers related to the increase in licensing fees. It is assumed that a large percentage of ambulatory surgical centers will meet the definition of a micro-business or a small business. These facilities will experience an adverse economic impact of \$1200 for a 2-year licensing period. There will be an increase in the licensing fees for those businesses or persons required to maintain an ambulatory surgical center license. There is no anticipated negative 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 ambulatory surgical centers 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 §135.3 is authorized by Health and Safety Code, §§12.0111 and 243.007, which require 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 12, 243, 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 agency's 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

§135.3. Fees.

(a) Initial license fee. The fee for an initial license (includes change of ownership or relocation) is \$5,200 **[\$4,000]**. The license term is two years.

(b) Renewal license fee. The fee for a renewal license is \$5,200. The license term is two years.

**[(1) The fee for renewal licenses issued through December 31, 2005, will be either \$2000 for a one-year license, or \$4000 for a two-year license. The department will determine the license term and notify the ASC prior to the license renewal date.]**

**[(2) The fee for a renewal license issued January 1, 2006, and after will be \$4,000. The license term will be two years.]**

(c) – (g) (No change.)