

**Department of State Health Services
Council Agenda Memo for State Health Services Council
September 15, 2011**

Agenda Item Title: Repeal of rules concerning the sanitary standards of barber shops, barber schools, and colleges

Agenda Number: 4.c

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Division for Regulatory Services, Environmental and Consumer Safety Section, Policy, Standards, and Quality Assurance Unit was the inspection authority for sanitary conditions of barber shops, barber schools, and colleges. Senate Bill 411, 79th Legislature, Regular Session, 2005, amended Occupations Code, Chapters 1601 and 1602, and added Chapter 1603, transferring the authority for regulating sanitary conditions of barber shops, barber schools, and colleges to the Texas Department of Licensing and Regulation (TDLR) as of January 1, 2006.

The Department of State Health Services (DSHS) had been the regulatory authority for barber shops, barber schools, and colleges in Texas through inspection, licensure, and enforcement.

Summary:

The purpose of the repeal is to remove rules that are no longer necessary and eliminate duplication of rules concerning the regulation of barbering. The protection of the environment and/or reduction of risks to human health from environmental exposure will continue to be enforced under the TDLR.

The rules found in 25 Texas Administrative Code (TAC) Chapter 265, required DSHS to ensure the sanitary conditions of barber shops, barber schools, and colleges. TDLR rules were promulgated in 16 TAC, Chapter 82, under the authority of the Occupations Code, Chapters 51, and 1601 - 1603 concerning the regulation of barbering.

The barber shop, barber school, and college industry will not be impacted by this rule repeal since the requirements are now located in 16 TAC, Chapter 82.

The amendments also comply with the four-year review of rules required by Government Code, Section 2001.039, and DSHS has determined that the rules are no longer necessary in the DSHS rule base.

Key Health Measures:

Repeal of the rules will not change the current regulation of barbering since the regulation has already transferred to TDLR. The expected outcome of repealing these rules is to eliminate confusion caused by having outdated rules in the DSHS rule base.

Summary of Input from Stakeholder Groups:

None - not applicable.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #4.c

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| Approved by Assistant Commissioner/Director: | Kathryn C. Perkins, R.N., M.B.A | Date: | 8/2/2011 |
| Presenter: Paula Anderson, R.S., M.P.H., Manager, Public Health Sanitation & Consumer Product Safety Group | Program: Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section | Phone No.: | 834-6788 |
| Approved by CCEA: | Carolyn Bivens | Date: | 8/01/2011 |

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 265. General Sanitation
Subchapter G. Sanitary Conditions of Barber Shops, Barber Schools, and Colleges
Repeal §§265.91 - 265.102

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§265.91 - 265.102, concerning the sanitary standards of barber shops, barber schools, and colleges.

BACKGROUND AND PURPOSE

The repeal of the barber shop rules is necessary as a result of Senate Bill 411, 79th Legislature, Regular Session, 2005, which amended Occupations Code, Chapters 1601 and 1602, and added Chapter 1603. Senate Bill 411 transferred the regulation of barbering from the Texas State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation (TDLR) effective January 1, 2006.

Government Code, §2001.039 requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.91 - 265.102 have been reviewed, and the department has determined that the reasons for adopting the sections no longer exist.

SECTION-BY-SECTION SUMMARY

These rules are no longer necessary and will eliminate duplication concerning the regulation of barbering. New rules were promulgated in 16 Texas Administrative Code, Chapter 82, under the authority of the Occupations Code, Chapters 51, and 1601 - 1603.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the repeals are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed for repeal.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the repeals as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are impacted by the repeal. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the repeals are in effect, the public will benefit by eliminating duplicate rule requirements resulting from amendments incorporated into 16 Texas Administrative Code, Chapter 82, Barbers, and Chapter 83, Cosmetologists.

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 for repeal will only remove rule duplication; and protection of the environment and/or reduction of risks to human health from environmental exposure will continue to be enforced under the TDLR.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals do 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 proposed repeals may be submitted to Paula Anderson, Public Health Sanitation and Consumer Product Safety Group, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2303, or by email to paula.anderson@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, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are a result of the passage of Senate Bill 411, 79th Legislature, Regular Session, (2005), which amended Occupations Code, Chapters 1601 and 1602, and added Chapter 1603.

These statutory changes authorized the Texas Department of Licensing and Regulation to promulgate sanitary rules and regulations for the conduct of barbering and cosmetology under 16 Texas Administrative Code, Chapter 82, Barbers, and Chapter 83, Cosmetologists; and by 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 Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The repeals affect the Occupations Code, Chapters 51, 1601 - 1603; Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

Sections for repeal.

- §265.91. Shop Conditions.
- §265.92. Water Supply, Sewerage, and Toilet Facilities.
- §265.93. Use of Equipment.
- §265.94. Attendants to Wash Hands.
- §265.95. Instruments to Be Cleaned and Disinfected.
- §265.96. Towels.
- §265.97. Use of Stick Astringent Prohibited.
- §265.98. Creams, Lotions, and Cosmetics.
- §265.99. Powder Boxes.
- §265.100. Sanitary Removal of Creams and Semisolid Substances.
- §265.101. Communicable Diseases and Infections.
- §265.102. Regulations To Be Posted.

Proposed Repealed Language
~~Strikethrough=repealed text~~

~~Subchapter G. Sanitary Conditions of Barber Shops, Barber Schools, and Colleges~~

~~§265.91 Shop Conditions~~

~~(a) Establishments to be lighted and ventilated. Every public barber shop and barber school and college as defined in Texas Civil Statutes Article 8401 shall be properly and adequately lighted and ventilated. An adequate volume of air must be exhausted to remove contaminants from aerosol products. Fresh air must be provided to replace air exhausted.~~

~~(b) Walls, ceilings, etc. to be kept clean. The walls, ceilings, furniture and other fixtures, and all other exposed surfaces in every such establishment shall be kept clean, free from dust, and maintained in a state of good repair.~~

~~(c) Floors to be kept clean. Floors of every such establishment shall be thoroughly cleaned each day. All hair dropping upon the floor shall be removed therefrom as soon as practicable and in such a manner as not to cause a nuisance. Floors shall be maintained in a state of good repair.~~

~~(d) Suitable equipment. Establishments shall be suitably equipped to give adequate service to patrons and shall never be used as a living, dining, or sleeping apartment.~~

~~(e) Sleeping quarters prohibited. A barber shop or barber school or college must be in a separate room from sleeping quarters and the owner or operator shall permit no person to sleep in any room used wholly or in part as such facility. There shall be no entrances from the facility opening directly into sleeping quarters.~~

~~(f) Separation from food. A barber shop or barber school or college must be separated from a place where food is prepared or served by a solid wall from floor to ceiling of lath or plaster or glass or other solid material.~~

~~§265.92 Water Supply, Sewerage, and Toilet Facilities~~

~~(a) General. All barber shops, barber schools, or colleges shall be supplied with an adequate supply of hot and cold water under pressure. When water is not obtained from an acceptable public supply, water must meet the bacteriological, chemical, and physical requirements for drinking water systems of the Texas Department of Health. Whenever possible, the source of water supply shall be from an existing public drinking water system. Cross connections between potable water systems and other systems or equipment containing water or other substances of unknown or questionable safety are prohibited. Protection against backflow and back siphonage shall be provided by proper airgaps or approved backflow preventers where necessary.~~

~~(b) Sewerage facilities. Adequate and safe sewage facilities shall be provided. Whenever possible, the facility shall be connected to a public sewerage facility. Where public sewerage is not available, adequate treatment facilities meeting the standards of the Texas Department of Health and approved by the local health authority shall be installed to dispose of sewage~~

~~(c) Toilet facilities:~~

~~(1) Toilet facilities with flush toilets shall be suitably located in adequately and properly ventilated compartments with self-closing doors. Toilet facilities in toilet rooms, separate for each sex, shall be provided in all places of employment in accordance with the following table. The number of facilities to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where only one toilet room is required, contains at least one water closet and can be locked from the inside, the rule requiring separate toilet rooms for each sex can be waived. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purposes of the following table: Number employees—Number water closets: 1 to 15—1; 16 to 35—2; 36 to 55—3.~~

~~(2) When persons other than employees are permitted use of toilet facilities on the premise, the number of such facilities shall be appropriately increased in accordance with the table. For each three required toilet facilities, at least one lavatory shall be located either in the toilet room or adjacent thereto. Where only one or two toilet facilities are provided, at least one lavatory so located shall be provided.~~

~~(d) Washing facilities to be provided. Every such establishment shall be provided with suitable and adequate washing facilities for barbering services. Sinks or wash basins must be of nonabsorbent material and properly trapped.~~

~~(e) Drinking water facilities. Where fountain facilities designed for drinking from the stream are provided for dispensing drinking water, such facilities shall be equipped with approved type angle jet fountain heads. No common drinking cups are permitted.~~

§265.93 Use of Equipment

~~(a) No barber or other person affected by these rules shall use on any person a comb, hairbrush, hair duster, mug, shaving brush, razor, shears, scissors, clippers, or tweezers or any similar Articles that are not thoroughly cleaned and disinfected since last used.~~

~~(b) The use of vacuum type devices for removal of loose hair is satisfactory provided that the portion of the device coming in contact with the patron is easily removed and constructed for easy cleaning and disinfection and shall be disinfected prior to use on each patron.~~

§265.94 Attendants to Wash Hands

~~Attendants shall wash their hands thoroughly with soap and hot water before attending any person.~~

§265.95 Instruments to be Cleaned and Disinfected

All brushes, combs, razors, scissors, tweezers, blackhead removers, files, pushers, buffers, and all massage and scalp applicators used in any such establishment shall be thoroughly cleaned and disinfected after each and every separate use. The disinfectant, germicide, or bactericide used shall be approved by the Environmental Protection Agency and used according to label instructions. When not in use, instruments may be placed in dry disinfectant equipment or under germicidal ultraviolet light. Metallic instruments with a cutting edge may be disinfected after proper washing by wiping carefully with a clean cotton pad saturated with a 70% alcohol solution, or clipper blades may be disinfected with spray type disinfectants approved by the Environmental Protection Agency.

§265.96 Towels

(a) No towels or washcloths shall be used in any such establishment for more than one person without being properly laundered and sanitized by regular commercial laundering or noncommercial laundering process. The process shall include washing with a laundry detergent and rinsing at a minimum temperature of 150 degrees Fahrenheit for not less than 20 minutes. A bleach or sanitizing cycle using a rinse containing 100 ppm of available chlorine for three minutes may be used in addition to the above wash and rinse cycle. A predrying procedure for towels and washcloths will facilitate the removal of hair. Pre or post drying temperatures should not exceed 165 degrees Fahrenheit.

(b) Wet towels and washcloths must be removed from work stands upon completion of service to the patron.

(c) Before any patron attended at any such establishment is permitted to recline in a chair, the headrest of the chair shall be covered with a clean towel or clean sheet or paper not previously used for any other purposes.

(d) Dipping towels, shaving mugs, brushes, etc., in water containers is prohibited.

(e) Clean linens, such as face towels, steam towels, and other linens used in any such establishment shall be kept in a closed cabinet at all times.

(f) Single-use towels may be used on only one person.

§265.97 Use of Stick Astringent Prohibited

No alums or other astringent in stick or lump form shall be used in any such establishment. (Powdered or liquid caustics are suggested.)

§265.98 Creams, Lotions, and Cosmetics

~~All creams, lotions, and other cosmetics used for patrons must be kept in clean and closed containers.~~

~~§265.99 Powder Boxes~~

~~Open powder boxes must not be used in a reception room and booths for patrons. Powder must be in shakers or similar receptacles.~~

~~§265.100 Sanitary Removal of Creams and Semisolid Substances~~

~~Creams and other semisolid substances must be dipped from the container with disinfected Articles or spatula; removing such substances with the fingers is prohibited.~~

~~§265.101 Communicable Diseases and Infections~~

~~(a) Employees. No person who is knowingly affected with a disease in communicable form shall work or be employed in such establishment as required in Texas Civil Statutes Article 8404.~~

~~(b) Patrons. No person who to their own knowledge is affected with a known disease in communicable form shall be attended in any such establishment.~~

~~§265.102 Regulations to be Posted~~

~~Sufficient copies of these regulations shall be kept posted in conspicuous places in every such establishment.~~