

**Department of State Health Services
Agenda Item for State Health Services Council
January 12-13, 2006**

Agenda Item Title: Amend 25 TAC, §§123.1 – 123.16, rules relating to the certification and regulation of respiratory care practitioners.

Agenda Number: 3i

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: Revisions to the rules are necessary to implement provisions of House Bill (HB) 2680, 79th Legislature, Regular Session (2005), relating to reduced fees and continuing education requirements for retired health professionals, including respiratory care practitioners, engaged in the provision of voluntary charity care; and HB 102, 79th Legislature, Regular Session (2005), relating to the renewal requirements for a respiratory care practitioners certificate.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 123.1-123.16 have been reviewed and the need for the rules continues to exist; however, revisions are necessary to implement recent legislation and to update and clarify the rules.

Summary: The proposed amendments implement HB 102, 79th Legislature, Regular Session, which amended Occupations Code, Chapter 604, to set forth the number of continuing education hours required for each two-year renewal period. The agency rule review updates language, clarify the amount of time a person can hold a temporary permit; adds language to establish that a temporary permit can be renewed; removes obsolete language regarding one-year renewals; removes references to the abolished Texas Board of Health and Administrator; and reflects the name change of the “Texas Department of Health” to “Department of State Health Services”.

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

Stakeholder input has been solicited through verbal and written communication with stakeholders and through the respiratory care practitioners program web site.

Proposed Motion: Motion to recommend to HHSC approval for publication of rules contained in agenda item # 3i.

Agenda Item Approved by: Richard B. Bays /s/ _____ -

Presented by: Debbie Peterson _____ **Title:** Unit Manager _____

Debbie Peterson

Program/Division: PLC _____ **Contact Name/Phone:** 834-6768 _____

Date Submitted

12-01-05

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 123. Respiratory Care Practitioners
Amendments §§ 123.1 - 123.16

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§123.1-123.16, concerning the certification and regulation of respiratory care practitioners.

BACKGROUND AND PURPOSE

The amendments implement House Bill (HB) 2680, 79th Legislature, Regular Session (2005), located in Occupations Code, Chapter 112, relating to reduced fees and continuing education requirements for retired health professionals, including respiratory care practitioners, engaged in the provision of voluntary charity care; and HB 102, 79th Legislature, Regular Session (2005), which amended Occupations Code, Chapter 604, relating to the renewal requirements for a respiratory care practitioner certificate. In addition, the proposed amendments reflect the name change of the “Texas Department of Health” to the “Department of State Health Services”; clarify the amount of time a person can hold a temporary permit and renew a temporary permit; and remove obsolete language regarding one-year renewals.

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 123.1-123.16 have been reviewed and the need for the rules continues to exist; however, revisions are necessary to implement recent legislation and to update and clarify the rules.

SECTION-BY-SECTION SUMMARY

An amendment to §123.1 updates language to include references for advisory committee. Sections 123.2, 123.3, 123.4, 123.5, 123.6, 123.8, 123.11, 123.13, 123.14, and 123.15 are amended to update the name change of the “Texas Department of Health” to “Department of State Health Services” and accompanying references to the abolished “Texas Board of Health” and “administrator” to “department”. Amendments to §123.4 remove obsolete language regarding the one-year application fee and temporary extension fee. Section §123.5 is amended to change 45 days of graduation to 30 days of graduation to apply for a temporary permit. Amendments to §123.6 remove language on requiring a photo with the application for certification, and the medical director’s signature on the application to reflect changes necessary to facilitate online application for certification, change the deadline from 180 days for denial of certification to 90 days, and remove temporary extension language. Section 123.7 is amended to remove obsolete language related to issuing a license for a one-year term, and remove language regarding the temporary permit extension. Amendments to §123.9 remove the required signature of the supervising physician on the renewal form, remove language regarding temporary permit extension, clarify renewal of a temporary permit, and add new language regarding respiratory care practitioners performing voluntary charity care. Section 123.10 is amended to remove obsolete language regarding one-year renewal, and add standards for renewal for respiratory care

practitioners performing voluntary charity care. Amendments to §123.12 update the standards in the practice of respiratory care regarding patient records and substandard care. Section 123.14 is amended to set out the department's options for enforcement if a licensee violates an order issued by the department. An amendment to §123.16 removes language related to renewal of a temporary permit.

FISCAL NOTE

Kathy Perkins, Director, Health Care Quality Section, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to state or local government as a result of enforcing or administering the sections as proposed. The impact of the possible decrease in renewal fees collected due to the implementation of reduced renewal fees for retired respiratory care practitioners over the age of 55 providing voluntary charity care is estimated to be \$9,200 each fiscal year. Approximately 368 respiratory care practitioners are estimated to provide retired voluntary charity care services at a reduced renewal fee of \$25 biennially.

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 sections 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 in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. 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 sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the certification and regulation of respiratory care practitioners.

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 specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules 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 proposal may be submitted to Pam K. Kaderka, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6628 or by email to Pam.Kaderka@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 rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, Chapters 112 and 604; 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 amendments affect the Occupations Code, Chapters 112 and 604, Health and Safety Code, Chapter 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

§123.1. Context. These sections cover definitions; the advisory committee **[committee's operation]**; fees; exceptions to certification; application requirements and procedures; types of certificates, temporary permits, and applicant eligibility; examination; certificate renewal; continuing education requirements; changes of name or address; professional and ethical standards; certifying or permitting persons with criminal background to be respiratory care practitioners; violations, complaints and subsequent actions.

§123.2. Definitions.

(1)-(2) (No change.)

[(3) Administrator--The department employee designated as the administrator of certification activities authorized by the Act.]

(3) **[(4)]** Advisory committee--The Respiratory Care Practitioners Advisory Committee.

(4) **[(5)]** Aides/orderlies--Health care workers who perform routine tasks under the direct supervision of a respiratory care practitioner such as transporting patients, assembling treatment equipment, preparing work areas, and other assigned duties. Aides/orderlies may not perform respiratory care procedures.

(5) **[(6)]** AMA--The American Medical Association.

(6) **[(7)]** Applicant--A person who applies to the **[Texas]** Department of State Health Services for a certificate or temporary permit.

(7) **[(8)]** Appropriate educational agency--The Texas Education Agency or other governmental agency authorized by law or statute to approve educational institutions and curriculum, or an educational accrediting body of a professional organization, such as the Committee on Accreditation for Respiratory Care (COARC) and its predecessor or successor organization.

[(9) Board—The Texas Board of Health]

(8) **[(10)]** BME – Texas State Board of Medical Examiners.

(9) **[(11)]** Certificate – A respiratory care practitioner certificate issued by the **[Texas]** Department of State Health Services.

(10) ~~[(12)]~~ Commissioner – The commissioner of the ~~[Texas]~~ Department of State Health Services.

(11) ~~[(13)]~~ Delegated authority – As defined in the Texas Medical Practice Act, Texas Occupations Code, Chapter 157 and the rules pertaining thereto adopted by the BME.

(12) ~~[(14)]~~ Department – The ~~[Texas]~~ Department of State Health Services.

(13) ~~[(15)]~~ Diagnostic – Of or relating to or used in the art or act of identifying a disease or disorder.

(14) ~~[(16)]~~ Educational accrediting body – The Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor organization which approves respiratory care education programs.

(15) ~~[(17)]~~ Formally trained--Completion of an organized educational activity which:

(A) includes supervised and directed instruction specific to the respiratory care procedures to be performed by the individual;

(B) includes specific objectives, activities, and an evaluation of competency; and

(C) is supervised and directed by another individual qualified to provide the training and supervision.

(16) ~~[(18)]~~ NBRC--The National Board for Respiratory Care, Inc., and its predecessor or successor organizations.

(17) ~~[(19)]~~ Palliative--Serving to moderate the intensity of pain or other disease process.

(18) ~~[(20)]~~ Practice--Engaging in respiratory care as a clinician, educator, or consultant.

(19) ~~[(21)]~~ Qualified medical director--A physician licensed and in good standing with the BME, and who has special interest and knowledge in the diagnosis and treatment of respiratory care problems who is actively engaged in the practice of medicine. This physician must be a member of the active medical staff of a health care facility, agency or organization who supervises the provision of respiratory care.

(20) ~~[(22)]~~ Respiratory care--The treatment, management, control, diagnostic evaluation, and care of inpatients or outpatients who have deficiencies and abnormalities associated with the cardiorespiratory system. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted here as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).

(21) [(23)] Respiratory care education program--

(A) a program in respiratory care approved by the educational accrediting body;

(B) a program approved by an appropriate education agency and working toward becoming an approved program in respiratory care. A program will qualify as a respiratory care education program under this subparagraph only for a period of one year from the date of the first class offered by the program; after that one year, the program must be an approved program in respiratory care; or

(C) a program accredited by the Canadian Medical Association and whose graduates are eligible to take the national registry exam given by the Canadian Board of Respiratory Care.

(22) [(24)] Respiratory care practitioner (RCP)--A person permitted or certified under the Act to practice respiratory care.

(23) [(25)] Respiratory care procedure--Respiratory care provided by the therapeutic and diagnostic use of medical gases, the delivery of humidification and aerosols [**humidifiers, and aerosols**], the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring or treating, as ordered by the patient's physician, the cardiorespiratory system. These procedures include:

(A) administration of medical gases - such as nitric oxide, helium and carbon dioxide;

(B) providing ventilatory assistance and ventilatory control - including high frequency oscillatory ventilation and high frequency jet ventilation;

(C) providing artificial airways - including insertion, maintenance and removal;

(D) performing pulmonary function testing - including neonatal and pediatric studies;

(E) hyperbaric oxygen therapy;

(F) monitoring - including pulse oximeter, end-tidal carbon dioxide and apnea monitoring;

(G) extracorporeal membrane oxygenation (ECMO);

(H) patient assessment, respiratory patient care planning; and

(I) implementation of respiratory care protocols.

(24) [(26)] Respiratory therapist--A person permitted or certified under the Act to practice respiratory care.

(25) [(27)] Temporary permit--A permit issued in accordance with §123.7(d) of this title (relating to Types of Certificates, Temporary Permits, and Applicant Eligibility) for a period of six months.

(26) [(28)] Therapeutic--Of or relating to the treatment of disorders by remedial agents or methods.

(27) [(29)] Under the direction--Assuring that established policies are carried out; monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.

§123.3. Respiratory Care Practitioners Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Department of State Health Services [**Texas Board of Health (board)**] to establish advisory committees.

(b) (No change.)

(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the department [**board**].

(d) Tasks.

(1) (No change.)

(2) The committee shall carry out any other tasks given to the committee by the department [**board**].

(e) Review and duration. By November 1, 2007, the department [**board**] will initiate and complete a review of the committee to determine whether the committee should be continued,

consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the department [board]. The composition of the committee shall include:

(1) – (3) (No change.)

(g) (No change.)

(h) Officers. The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year.

(1) (No change.)

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the department [board]. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) - (6) (No change.)

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of the Department of State Health Services [Texas Department of Health] (department) staff and either the presiding officer or at least three members of the committee.

(2) – (7) (No change.)

(j) - (k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) - (4) (No change.)

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A summary of the meeting shall be provided to the department [board] and each member of the committee within 30 days of each meeting.

(B) (No change.)

(m) (No change.)

(n) Statement by members.

(1) The **[board, the]** department[,], and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the **[board,]** department[,], or committee.

(2) The committee and its members may not participate in legislative activity in the name of the **[board, the]** department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) - (6) (No change.)

(o) Reports to department **[board]**. The committee shall file an annual written report with the department **[board]**.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the department **[board]**, the status of any rules which were recommended by the committee to the department **[board]**, and anticipated activities of the committee for the next year.

(2) - (3) (No change.)

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, §2110.004 **[Chapter 2110]**, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) - (5) (No change.)

(q) (No change.)

§123.4. Fees. The following fees **[are prescribed by the board and]** are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

(1) Schedule of fees for certification as a respiratory care practitioner:

(A) application (includes initial certificate) fee - \$120 [for applications filed on or before December 31, 2004--\$60];

[**(B) application (includes initial certificate) fee for applications filed on or after January 1, 2005--\$120;**]

(B) [(C)] renewal fee for a license issued for a one-year [**one year**] term is \$50 [**\$45**];

(C) [(D)] renewal fee for a license issued for a two-year [**two year**] term is \$100 [**\$90**];

(D) renewal fee for a license issued to a retired respiratory care practitioner performing voluntary charity care for a two-year term is \$50;

(E) - (M) (No change.)

(N) for all applications and renewal applications, the department [(or board)] is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online; and

(O) for all applications and renewal applications, the department [(or board)] is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(2) Schedule of fees for a temporary permit as a respiratory care practitioner:

(A) (No change.)

(B) temporary permit renewal [**extension**] fee - \$20;

(C) - (E) (No change.)

(3) - (4) (No change.)

(5) The department [**administrator, on behalf of the board,**] shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the respiratory care practitioner certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments approved by the department [**board**].

§123.5. Exemptions.

(a) - (b) (No change.)

(c) Student status.

(1) - (4) (No change.)

(5) Students who are within 30 [45] days of graduation may apply to the department for a temporary permit in accordance with §123.6 of this title (relating to Application Requirements and Procedures). A person who holds a temporary permit may perform any and all respiratory care procedures which he or she has been trained to perform.

(d) (No change.)

§123.6. Application Requirements and Procedures.

(a) (No change.)

(b) Required application materials.

(1) Application form. The application form shall contain:

(A) - (H) (No change.)

(I) the signature of the applicant which has been dated. [;]

[(J) A full face color photograph signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two year period prior to application to the department and the minimum size is one and one-half inches by one and one-half inches.]

(2) Educational record for regular certification. The department shall issue a regular certificate to an applicant who is currently credentialed by the National Board for Respiratory Care (NBRC) and nationally certified as a Certified Respiratory Therapist [Practitioner] (CRT), [a Certified Respiratory Therapy Technician (CRTT),] or a Registered Respiratory Therapist (RRT), upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue a regular certificate to a person which is currently credentialed by the National Board for Respiratory Care (NBRC).

(3) (No change.)

(4) Examination results.

(A) If the applicant is making application for a temporary permit, an examination score release form shall be signed allowing the department to obtain the applicant's examination results from the NBRC, or other agency administering the examination prescribed by the department **[board]**.

(B) (No change.)

(5) (No change.)

[(6) Medical direction requirement. If the applicant is practicing respiratory care in Texas at the time of application to the department, the applicant shall provide on the application form the signature and license number of the qualified medical director as defined in §123.2 of this title (relating to Definitions) or other Texas licensed physicians directing the provision of respiratory care services.]

(c) (No change.)

(d) Application processing.

(1) Time periods. The department shall comply with the following procedures in processing applications for a permit or certificate.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for permit or certification--14 working days. The notice of acceptance may include a statement that an application for temporary permit received more than 30 **[45]** days from the date of the applicant's graduation will be held pending until the applicant is within 30 **[45]** days of graduation; and

(ii) (No change.)

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:

(i) (No change.)

(ii) letter of denial of permit or certificate - 90 **[180]** working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made to the program administrator. If the department [**program administrator**] does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) (No change.)

[(3) Appeal. If a request reimbursement under paragraph (2) of this subsection is denied by the program administrator, the applicant may appeal to the commissioner of health for a timely, resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The program administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.]

(3) **[(4)]** Contested cases. The time periods for contested cases related to the denial of licensure renewals are not included with the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. **[a hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.]**

(e) (No change.)

(f) Disapproved applications.

(1) The department shall disapprove the application if the person:

(A) (No change.)

(B) has failed to pass the examination prescribed by the board as set out in §123.8 of this title (relating to Examination) during the period for which the temporary certificate, or temporary permit [**or temporary permit extension,**] was valid, if applicable;

(C) - (I) (No change.)

(2) If after review the department [administrator] determines that the application should not be approved, the department [administrator] shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the Administrative Procedure Act, Texas Government Code 2001, et seq. Within 10 days after receipt of the written notice, the applicant shall give written notice to the department [administrator] that the applicant either waives the hearing, or wants the hearing. Receipt of the written notice is deemed to occur on the tenth day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the department [administrator] that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the department shall disapprove the application.

(3) An applicant whose application has been disapproved under paragraph (1)(E) and (F) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with all rules of the department [board] and the provisions of the Act in effect at the time of reapplication. The date of disapproval is the effective date of a disapproval order signed by the commissioner of health or the commissioner's designee.

§123.7. Types of Certificates and Temporary Permits and Applicant Eligibility.

(a) (No change.)

(b) Issuance of certificates and permits.

(1) (No change.)

(2) [**Certificates issued within three months of the practitioner's birth month shall be issued for the next full renewal period.**] Certificates shall expire on the last day of the practitioner's birth month.

(c) (No change.)

(d) Applicant eligibility.

(1) Temporary permit. Temporary permits are valid for a six-month period. The department shall issue a temporary permit to practice respiratory care to:

(A) an applicant who:

(i) – (iii) (No change.)

(iv) meets all qualifications for a certificate except taking the written examination prescribed by the department for certification. An applicant may file an application if he or she is within 30 [45] days prior to graduation. A temporary permit is valid for six months from date of issuance by the department. After the applicant passes the examination, as set out in §123.8 of this title (relating to Examination), and pays the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void;

(B) (No change.)

[(C) an applicant who holds a valid temporary permit pending reexamination who has applied for an extension of the temporary permit on the form prescribed by the department and who has paid the additional prescribed fee. This temporary permit shall expire not more than 12 months from the date of issuance of the original permit. A temporary permit holder is not entitled to an extension if the person has not submitted a certificate of completion from a respiratory care education program in accordance with §123.6(b)(2)(C) of this title (relating to Application Requirements and Procedures). After the applicant passes the examination as set out in §123.8 of this title (relating to Examination) and has paid the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void.]

(2) - (3) (No change.)

§123.8. Examination.

(a) - (d) (No change.)

(e) Results.

(1) Results of an examination prescribed by the department [board] but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) - (5) (No change.)

(f) Refunds. Examination fee refunds to persons who fail to appear for the examination will be in accordance with policies and procedures of the NBRC, or other agency approved by the department [board] to administer an examination prescribed in this section.

§123.9. Certificate Renewal.

(a) - (b) (No change.)

(c) Certificate renewal.

(1) (No change.)

(2) The renewal form for all practitioners shall require the provision of the preferred mailing address, primary employment address and telephone number, and category of employment, misdemeanor and felony convictions, statement concerning status with The National Board for Respiratory Care, Inc., and continuing education completed. **[If the applicant is practicing as a respiratory care practitioner at the time of renewal the name, signature and license number of the physician directing the provision of respiratory care and the physician's institutional affiliations(s), if any, shall be provided on the renewal form if requested by the department.]**

(3) - (4) (No change.)

(5) A temporary permit may be renewed once for an additional six-month period.

(d) Late renewal or reapplication.

(1) A person whose certificate has expired may renew the certificate by submitting to the department the renewal form, continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements) completed since the last renewal, and if respiratory care procedures were performed after the certificate expired, a statement indicating how the person complied with the Act, §604.003.

(A) - (B) (No change.)

[(C) If the person received a 90-day extension of the person's certificate pursuant to §123.10(f) of this title (relating to Continuing Education Requirements), the expiration date under subparagraphs (A)-(B) of this paragraph is the expiration date of the person's last annual certificate.]

(C) [(D)] After the certificate is renewed, the next continuing education reporting period starts on the date the certificate is renewed and continues until the next expiration date.

[(2) The department shall inform a person who has not renewed a certificate by the expiration date of the amount of the fee required for renewal, the continuing education required for renewal, and the date the certificate expired.]

(2) [(3)] A person whose certificate has been expired for one year or more may apply for a new certificate by complying with the then-current requirements for obtaining a certificate.

(3) [(4)] After a certificate is expired and until a person has renewed the certificate, a person may not practice respiratory care in violation of the Act.

(4) ~~[(5)]~~ A person who fails to renew a certificate within one year may obtain a new certificate without examination if the person:

(A) pays a fee that is equal to two times the renewal fee;

(B) is currently certified as a respiratory care practitioner in another state;

(C) has been practicing respiratory care in the state where the certification is held for the two years preceding the date of application for renewal; and

(D) submits proof of completion of the continuing education requirements as set out in §123.10 of this title within the 24-month ~~[12 month]~~ period preceding the date of the renewal application ~~[for a new certificate]~~.

(e) - (f) (No change.)

(g) Inactive status. A respiratory care practitioner who holds a certificate under the Act and who is not actively engaged in the practice of respiratory care may make application to the department in writing on a form prescribed by the department to be placed on an inactive status list maintained by the department. The application for inactive status and the inactive fee must be postmarked prior to the expiration of the respiratory practitioner's annual certificate. No refund will be made of any fees paid prior to application for inactive status.

(1) – (7) (No change.)

(8) If a person on inactive status desires to reenter active practice, the person shall:

(A) - (B) (No change.)

(C) pay a renewal fee for the current renewal period ~~[plus a reinstatement fee equal to one-half the renewal fee]~~; and

(D) submit to the department proof of successful completion, within 24-month ~~[12-month]~~ period prior to reentering active status, of the continuing education hours as set out in §123.10 of this title.

(9) (No change.)

(h) (No change.)

(i) Renewal for retired respiratory care practitioners performing voluntary charity care.

(1) A “retired respiratory care practitioner” is defined as a person who is:

(A) above the age of 55;

(B) is not employed for compensation in the practice of respiratory care;

and

(C) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.

(2) “Voluntary charity care” for the purposes of this subsection is defined as the practice of respiratory care by a retired respiratory care practitioner without compensation or expectation of compensation.

(3) A retired respiratory care practitioner providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired respiratory care practitioner renewal fee required by §123.4 of this title (relating to Fees); and the continuing education hours required by §123.10 of this title (relating to Continuing Education Requirements).

§123.10. Continuing Education Requirements.

(a) General. Continuing education requirements for renewal shall be fulfilled each renewal period [year].

(1) The initial period shall begin with the date the department issues the certificate and end on the last day of the birth month at the time of **[the second]** renewal.

[(2) At the time the certificate is mailed, each practitioner shall be notified of the beginning and ending dates of the continuing education period].

(2) [(3)] A respiratory care practitioner must complete 24 [12] hours of continuing education acceptable to the department during each renewal period [year].

(3) [(4)] A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) A respiratory care practitioner who is approved by the department for renewal in accordance with §123.9 of this title (relating to Certificate Renewal) may complete reduced continuing education requirements equal to half of the number of continuing education hours required for renewal for a certified respiratory care practitioner.

(b) - (g) (No change.)

§123.11. Changes of Name or Address.

(a) (No change.)

(b) Notification of address changes shall be made in writing, including the name, mailing address, and zip code and be mailed to the department **[administrator]**.

(c) - (d) (No change.)

§123.12. Professional and Ethical Standards. The purpose of this section shall be to establish the standards of professional and ethical conduct required of a respiratory practitioner pursuant to the Act, §604.201(b)(4).

(1) Professional representation and responsibilities.

(A) – (L) (No change.)

(M) A practitioner shall conform to medically accepted principles and standards of respiratory care which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the American Association for Respiratory Care, the National Board for Respiratory Care, the Texas Society for Respiratory Therapy, **[the board,]** the department, and other professional or governmental bodies.

(N) – (Q) (No change.)

(R) A respiratory care practitioner shall not falsify or make grossly incorrect, grossly inconsistent, or unintelligible entries in any patient's, hospital or other record.

(S) A respiratory care practitioner shall not exhibit a pattern of substandard care in the performance of duties related to the practice of respiratory care.

(T) A respiratory care practitioner shall not change the prescription of a physician or falsify verbal or written orders for treatment diagnostic regimen received, whether or not that actions resulted in actual patient harm.

(2) – (6) (No change.)

§123.13. Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners.

(a) (No change.)

(b) Procedures for revoking, suspending, suspending on an emergency basis, or denying a certificate or temporary permit to persons with criminal backgrounds.

(1) The department **[administrator]** shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary permit after

hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 2001 **[§2001]**, Texas Government Code, Texas Occupations Code, Chapter 53.

(2) If the department denies, suspends, suspends on an emergency basis, or revokes a certificate or temporary permit under these sections after hearing, the department **[administrator]** shall give the person written notice:

(A) – (D) (No change.)

§123.14. Violations, Complaints, and Subsequent Actions.

(a) General. This section establishes standards relating to:

(1) – (3) (No change.)

(4) the department's investigation of complaints and the department's and commissioner's actions, on behalf of the department **[board]**, when offenses and prohibited actions and violations have occurred.

(b) (No change.)

(c) Filing of complaints.

(1) (No change.)

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against a practitioner or other person shall notify the department **[administrator]**. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department **[administrator's office]**. (Mailing address: 1100 West 49th Street, Austin, Texas 78756-3183, Phone: 512-834-6632.

(3) Upon receipt of a complaint the department **[administrator]** or the department's **[administrator's]** designee shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the department **[administrator]** or the department's **[administrator's]** designee before action can be taken. If the complaint is made by a visit to the department **[administrator's office]**, the form may be given to the complainant at that time; however, it must be completed and returned to the department **[administrator]** or the department's **[administrator's]** designee before further action may be taken. Copies of the complaint form may be obtained from the Department of State Health Services **[Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183]**.

(4) Anonymous complaints shall be investigated by the department **[administrator or the administrator's designee]**, provided sufficient information is submitted.

(d) Investigation of complaints.

(1) The **[administrator and the]** department is **[are]** responsible for handling complaints.

(2) The department **[administrator, or his or her designee,]** shall make the initial investigation and report the findings to the manager **[director]** of Professional Licensing and Certification Unit **[Division]** or his or her designee, or the manager **[director]** or designee of its successor.

(e) The department's action.

(1) – (2) (No change.)

(3) The department may determine that a practitioner has violated the Act or a department **[board]** rule and may institute disciplinary action in accordance with subsection (f) of this section.

(4) (No change.)

(f) Disciplinary actions.

(1) – (4) (No change.)

(5) The department may take action for violation of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department.

(g) Formal hearing.

(1) (No change.)

(2) Prior to institution of formal proceedings to revoke or suspend a permit or certificate, the department **[program administrator]** shall give written notice to the permit or certificate holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) To initiate formal hearing procedures, the department **[administrator]** shall give the practitioner written notice for the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the practitioner must give written notice to the department **[administrator]** that he or she either waives the hearing or wants the hearing. Receipt of the notice is deemed to occur on the 10th day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt.

(A) – (B) (No change.)

(h) Final action.

(1) If the department suspends a certificate or permit, the suspension remains in effect until the **[administrator or the]** department determines that the reasons for suspension no longer exist. The respiratory practitioner whose certificate or permit has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The **[administrator or the]** department shall investigate prior to making a determination.

(2) (No change.)

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the **[administrator or the]** department determines that the reasons for suspension have been removed.

[(4) If the department suspends a temporary permit and the suspension is in effect at the time of the expiration of the temporary permit, the former temporary permit holder must reapply in order to obtain a new temporary permit. The department may not issue a new temporary permit until the administrator or the department determines that the reasons for suspension have been removed.]

(5) – (6) (No change.)

§123.15. Informal Disposition.

(a) (No change.)

(b) If the department **[program administrator]** determines that the public interest might be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A temporary permit or certificate holder, or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the department **[program administrator]**.

(c) (No change.)

(d) The department **[program administrator]** shall decide upon the time, date, and place of the settlement conference and provide written notice to the temporary permit or certificate holder or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the temporary permit or certificate holder or applicant or by personal delivery. The ten days shall begin on the date of mailing or personal delivery. The temporary permit or certificate holder or applicant may waive the ten-day notice requirement.

(1) – (2) (No change.)

(e) – (g) (No change.)

(h) The program's legal counsel will be requested to attend each settlement conference. The department [**program administrator**] may call upon the program's attorney at any time for assistance in the settlement conference.

(i) – (l) (No change.)

(m) At the conclusion of the settlement conference, the department [**program administrator**] may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. They may also conclude that the department lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.

(n) (No change.)

(o) If the temporary permit or certificate holder or applicant rejects the proposed settlement, the matter shall be referred to the department [**program administrator**] for appropriate action.

(p) If the temporary permit or certificate holder or applicant signs and accepts the recommendations, the agreed order shall be submitted to the department [**program administrator**] for its approval.

(q) The department [**program administrator**] shall enter an agreed order approving the accepted settlement recommendations. The department [**program administrator**] may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the temporary permit or certificate holder or applicant agrees to other terms proposed by the department [**program administrator**].

(r) If the department [**program administrator**] does not approve a proposed agreed order, the temporary permit or certificate holder or applicant and the complainant shall be so informed.

(s) A temporary permit or certificate holder or applicant's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c).

(1) If the department [**program administrator**] determines that an informal conference shall not be held, the department [**program administrator**] shall give written notice to the temporary permit or certificate holder or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the temporary permit or certificate holder or

applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice described in paragraph (1) of this subsection. The complainant shall be informed that he or she may also submit a written statement to the department [**program administrator**].

§123.16. Suspension of License Relating to Child Support and Child Custody.

(a) – (d) (No change.)

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the standard renewal procedures in the Respiratory Care Practitioner Certification Act, Texas Occupations Code, §604.153, and §604.157, concerning the issuance of renewal certificates [**of this title (relating to Issuance of Renewal Certificate and Renewal of Temporary Permit)**]. However, the license will not be renewed until the requirements of subsections (g) and (h) of this section are met.

(f) – (h) (No change.)

Agency Unit/Section/Division Respiratory Care Practitioners Program, DSHS Professional Licensing and Certification Unit	Council Meeting Date January 12, 2006
Agency Program Contact Debbie Peterson	Telephone No. 512-834-2725
Rule Topic 25 TAC, Chapter 123, Amendments relating to the certification and regulation of respiratory care practitioners.	

1. Rule Summary.

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

The amendments implement 2005 legislation, clarify the number of continuing education hours per renewal period, and reduce fees and continuing education requirements for retired health professionals, including respiratory therapists, engaged in the provision of voluntary charity care.

The proposed rules constitute the agency review of rules required by Government Code §2001.

The impact of the possible decrease in renewal fees collected due to the implementation of reduced renewal fees for retired respiratory care practitioners over the age of 55 providing voluntary charity care is estimated to be \$9,200 each fiscal year. Approximately 368 respiratory care practitioners are estimated to provide retired voluntary charity care services at a reduced renewal fee of \$25 biennially. No fiscal impact is anticipated as a result of deleting the temporary extension fee, because most person holding temporary permits do not request an extension but instead request an upgrade.

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.

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

(d)	1. Fiscal Year <u>2006</u>	2. Fiscal Year <u>2007</u>	3. Fiscal Year <u>2008</u>	4. Fiscal Year <u>2009</u>	5. Fiscal Year <u>2010</u>
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)	Increase to revenue not determinable				
STATE FUNDS	(9,200)	(9,200)	(9,200)	(9,200)	(9,200)
FEDERAL FUNDS					
OTHER FUNDS					
TOTAL:	(9,200)	(9,200)	(9,200)	(9,200)	(9,200)

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.

The program does not anticipate any fiscal or non-fiscal impact on small businesses or micro-businesses because there are no fee increases being proposed.

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.

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).

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.

- 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.

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

_____ Signature – Budget Analyst (original signature on file)	_____ Date	_____ Telephone No.
_____ Signature – Budget Director (original signature on file)	_____ Date	_____ Telephone No.
_____ Signature – Chief Financial Officer (original signature on file)	_____ Date	_____ Telephone No.
_____ Signature – Deputy Executive Commissioner (as appropriate) (original signature on file)	_____ Date	_____ Telephone No.