

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 117. End Stage Renal Disease Facilities
Subchapter B. Facility Licensing
Amendment §117.14

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 §117.14, concerning end stage renal disease facilities licensing 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 End Stage Renal Disease Facilities 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 §117.14 contain changes in the manner in which fees are assessed against end stage renal disease facilities for initial and renewal licenses. Specifically, §117.14(b)(1) establishes a fee system based on the number of licensed stations. This new fee structure will result in an increase in the licensing fee for some facilities, and a decrease in the licensing fee for other facilities.

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 \$206,903 in 2006 and \$133,148 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 end stage renal disease 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 end stage renal disease facilities related to the increase in licensing fees. It is assumed that a large percentage of end stage renal disease facilities will meet the definition of a micro-business or a small business. Approximately 283 facilities will see an increase in the total fee, with an average increase of approximately \$1,089. Approximately 78 facilities will see a decrease in fees. There will be an increase in the licensing fees for businesses or persons required to maintain an end stage renal disease facility license. There is 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 end stage renal disease 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 §117.14 is authorized by Health and Safety Code, §§12.0111 and 251.002, 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, 251, 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

Subchapter B: Facility Licensing.

§117.14 Fees.

(a) (No change.)

(b) License fees.

(1) The fees for both initial and renewal licenses are as follows:

(A) \$3,500 for facilities licensed for 0 to 10 dialysis stations;

(B) \$4,300 for facilities licensed for 11 to 20 dialysis stations;

(C) \$5,100 for facilities licensed for 21 to 30 dialysis stations;

(D) \$5,900 for facilities licensed for 31 to 40 dialysis stations; and

(E) \$6,700 for facilities licensed for 41 dialysis stations or more.

[(1) The fee for an initial license is \$2,000 per 12-month period.]

(2) All licenses are valid for 24 months.

[(2) Renewal license fees.]

[(A) For renewal licenses issued prior to January 1, 2005, the license fee is determined by multiplying the number of treatments in the previous 12-month period by \$.25, except that the minimum fee is \$1,000 and the maximum fee is \$2,500.]

[(B) For renewal licenses issued January 1, 2005 or later, the license fee will be determined as follows.]

[(i) For licenses that the department determines will be valid for 12 months, the license fee is the total number of treatments in the past 12-month period multiplied by \$.25, except that the minimum fee is \$1,000 and the maximum fee is \$2,500.]

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[(ii) For licenses that the department determines will be valid for 24 months, the license fee is the total number of treatments in the past 12-month period multiplied by \$.50, except that the minimum fee is \$2,000 and the maximum fee is \$5,000.]

(c) (No change.)