

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 133. Hospital Licensing
Subchapter B. Hospital License
Amendment §133.26

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 §133.26, concerning hospital 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 Hospital Licensing 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 §133.26 contain increases in fees assessed against licensed hospitals for initial and renewal applications based on the number of licensed beds, as well as for certain types of architectural plan reviews, and include clarification of the language related to application requirements. Specifically, §133.26(b)(1) increases the fee for initial and renewal license applications by \$19 per bed; §133.26(b)(1)(A) clarifies beds which must be included in the fee calculation; §133.26(b)(2) requires that the applicant submit the \$39 per bed fee when adding a multiple location hospital to the license; §133.26(c)(5) increases the fee per square foot by \$100 for architectural plan reviews when the applicant is unable to establish an estimated construction cost; and §133.26(f) adds language authorizing the collection of subscription and convenience fees to recover costs for application processing through the Texas Online authority.

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 \$427,842 in 2006, \$670,738 in 2007, \$670,468 in 2008, \$670,738 in 2009 and \$670,468 in 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. In addition, these additional revenues will offset the increased costs associated with implementation of several bills:

- SB 872 requiring DSHS to conduct a study of the impact of niche hospitals on general hospitals
- HB 677 requiring hospitals to establish a program relating to emergency services for sexual assault survivors
- SB 316 requires DSHS to develop a pamphlet for distribution by Hospitals and Birthing Centers on Shaken Baby Syndrome

Implementation of the proposed section would have fiscal implications for local government if the local government owned or operated a licensed hospital.

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 hospitals related to the increase in license renewal fees. The number of hospitals meeting the definition of a micro-business would likely be very low, but there are a substantial number of hospitals that could meet the definition of a small business. Those hospitals meeting the definition of a small business will likely fall in the category of 100 beds or less, so the financial impact would be approximately \$1900 or less for a 2 year licensing period. There will be an increase in the licensing fees for those businesses or persons required to maintain a hospital 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 hospitals 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 §133.26 is authorized by Health and Safety Code, §§12.0111 and 241.025, 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, 241, and 1001; and Government Code, Chapter 531.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

Subchapter B: Hospital License.

§133.26 Fees.

(a) General.

(1) All fees paid to the **[Texas]** Department of State Health Services (department) are nonrefundable with the exception of inspection fees for inspections that were not conducted.

(2) All fees shall be paid by check or money order made payable to the **[Texas]** Department of State Health Services.

(b) License fees.

(1) The fee for an initial license or a renewal license is ~~\$39~~ **[\$10]** per bed **[per 12 months]** based upon the design bed capacity of the hospital. The design bed capacity of a hospital is determined as follows.

(A) The design bed capacity is the maximum number of patient beds that a hospital can accommodate in rooms that comply with the requirements for patient room suites in §133.163 of this title (relating to **[Hospital]** Spatial Requirements for New Construction) including beds, bassinets or cribs in critical care units (including neonatal nurseries), continuing care nursery beds, hospital-based skilled nursing units, medical nursing units, mental health and chemical dependency nursing units, pediatric and adolescent nursing units, obstetrical suites (including labor/delivery/recovery/postpartum (LDRP) beds), and surgical suites. The design bed capacity does not include labor/delivery/recovery (LDR) beds, newborn nursery bassinets, or recovery beds.

(B) The maximum design bed capacity includes beds that comply with the requirements in §133.163 of this title even if the beds are unoccupied or the space is used for other purposes such as offices or storage rooms, provided such rooms can readily be returned to patient use. All required support and service areas must be maintained in place. For example, the removal of a nurse station in an unused patient bedroom wing of 20 beds would effectively eliminate those 20 beds from the design capacity. Eliminating access to the medical gas outlets and nurse call would also remove bed(s) from the design capacity.

(C) (No change.)

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(2) A hospital shall submit a license fee for each design bed added as a result of adding a multiple location hospital to its license. The fee is \$39 per bed, regardless of the number of months remaining in the license period.

(3) [(2)] A hospital shall submit an additional license fee with the Final Construction Approval form [notarized affidavit for final construction approval] for each new design bed [an increase in the number of beds] resulting from an approved construction project. The fee is \$39 per bed, regardless of the number of months remaining in the license period. The hospital shall also submit [and] an additional plan review fee if the construction cost increases to the next higher fee schedule according to subsection (c)(4) of this section.

(4) [(3)] A hospital will not receive a refund of previously submitted fees should the hospital's design capacity decrease as a result of an approved construction project.

(c) Plan review fees. This subsection outlines the fees which must accompany the application for plan review and all proposed plans and specifications covering the construction of new buildings or alterations to existing buildings which must be submitted for review and approval by the department in accordance with §133.167 of this title (relating to Preparation, Submittal, Review and Approval of Plans).

(1) – (4) (No change.)

(5) If an estimated construction cost cannot be established, the estimated cost shall be based on \$225 [**\$125**] per square foot. No construction project shall be increased in size, scope, or cost unless the appropriate fees are submitted with the proposed changes.

(d) (No change.)

(e) Cooperative agreement application fee. The application fee for a cooperative agreement is \$10,000. The application fee shall be submitted with an application for a cooperative agreement and other documents in accordance with §133.62 [**§133.62(b)(2)**] of this title (relating to Cooperative Agreements).

(f) Subscription and convenience fee. The department 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, in accordance with Texas Government Code, §2054.111.