



Fee Schedule Review – Fiscal Year 2017

As Required by

**The 2018-19 General Appropriations Act,
S.B. 1, 85th Legislature, Regular Session,
2017 (Article II, Department of State
Health Services, Rider 25)**



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Executive Summary

[The 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 \(Article II, Department of State Health Services, Rider 25\(e\)\)](#) requires the Department of State Health Services (DSHS) to annually review all fees under its authority. In previous legislative sessions, a similar fee review requirement was limited to specific budget strategies, resulting in a Fee Resource Manual.

DSHS conducted a systematic review of all fee schedules, and also compiled a Fee Resource Manual, which is available in Appendix A. This year's Fee Resource Manual includes additional fee schedules compared to prior years. It also includes fee schedules for areas that have now transferred to the Texas Department of Licensing and Regulation or the Health and Human Services Commission per Sunset legislation. Next year's fee review report and resource manual will only include those fees remaining at DSHS.

DSHS collects fees when directed or authorized by Texas statute. These fees help support program operations and decrease the need for additional General Revenue appropriation to the Department. When setting fee levels, DSHS considers stakeholder input, budgetary needs, and the impact to businesses and public health. This fee review focuses on a handful of fee schedules authorized by statute. Through this process, DSHS has identified follow up efforts related to the DSHS laboratory budget and drug manufacturing licensure program.

1. Introduction

[The 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 \(Article II, Department of State Health Services, Rider 25\(e\)\)](#) calls on the Department to conduct a review of the fees under the agency's authority on an annual basis. The Department of State Health Services (DSHS) is required to submit a report detailing this review to the Legislative Budget Board and the Governor no later than January 1 of each year. In previous biennia, there was a similar rider in the General Appropriations Act (GAA), but the report was restricted to fees within specific budget strategies. Rider 25(e) includes all DSHS fees.

To address Rider 25(e) requirements, this report contains a detailed review of specific fees under DSHS' authority within three broad categories: data and statistics, consumer protection, and laboratory and infectious disease services. In addition to the analysis of individual fees of interest, the accompanying Fee Resource Manual in Appendix A contains information about DSHS fees, including associated revenue and costs.

2. Background

The DSHS mission is to improve the health, safety, and well-being of Texans through good stewardship of public resources, and a focus on core public health functions. To achieve this mission, the Department administers a variety of programs focused on promoting and protecting the health of people and their communities. For some DSHS programs, fees help maintain their ability to conduct public health functions.

Individual fee amounts are set through one of two mechanisms. Some fees, like those related to Emergency Medical Service (EMS) licensing and regulation, are set in statute. Others, such as those established for laboratory testing, are set through the agency rulemaking process. Because of the broad-ranging impact of public health, DSHS must be mindful when establishing fee amounts. On one hand, fee revenue reduces the need for additional General Revenue appropriations to cover increasing costs. At the same time, a too-high fee could have unintended consequences that increase economic burdens on businesses or increase risk to the health and safety of Texans and their communities.

The DSHS activities supported by fees can be divided into three broad categories: data and statistics, consumer protection, and laboratory and infectious disease services.

3. Data and Statistics

Overview

One way DSHS fulfills its public health mission is through the collection, analysis, and provision of data. Safe, efficient, and effective data management requires straightforward means to collect data, as well as safe methods to house and disseminate data in line with current statute and rule.

While DSHS collects data from a number of sources, this analysis focuses on data programs that are supported in part by fee collection: Vital Statistics and the Texas Center for Healthcare Information Collection (THCIC).

Vital Statistics fees are maintained in a General Revenue-Dedicated account and may not exceed the cost of administering the program. THCIC may use fees to support some or all of its program operations in addition to General Revenue funds. THCIC fees cover 33 percent of the program's operating costs.

Vital Statistics

Vital Statistics Overview

DSHS houses, maintains, and safeguards original records of important events in Texans' lives, including births, deaths, marriages, divorces, adoptions, and paternity changes. Statute requires DSHS to preserve records on behalf of all persons born, died, married, divorced, or whose adoption occurred in Texas, resulting in the following:

- Over 60 million records dating back to 1866 housed and preserved by DSHS
- About 900,000 new vital events annually registered in Texas

The DSHS Vital Statistics office responds to customer requests for certified copies or verification of vital event records and other supplemental documents. DSHS produces documents that federal and state entities use to establish identity, citizenship, ownership, entitlement to benefits, and passport travel authorizations.

DSHS collects Vital Statistics fees per Texas Health and Safety Code, Section 191.0045(a), and these fees in aggregate may not exceed the cost of administering

the program. The DSHS budget for Vital Statistics is appropriated from funds collected by fees as authorized by Texas statute and codified in Section 191.005. The last update to Vital Statistics fee amounts occurred in 2006.

Fees

The Vital Statistics fee schedule is outlined in 25 Texas Administrative Code, Section 181.22. Fees range from \$3 to \$60 depending on the documents and services requested. Fee types include certified copies of birth records, marriage verification letters, and death records. See Appendix A, the Fee Resource Manual, for a complete list of fees types and amounts.

Fee exemptions are codified in Texas statute for specific circumstances, including:

- If necessary for admission to school or to secure employment
- To a veteran or to the veteran's widow, orphan, or other dependent if the copy is for use in settling a claim against the government
- Court orders involving cases related to child labor or the public schools
- Uncertified birth or death records to a child fatality review team
- For purpose of obtaining an election identification
- For a child in the managing conservatorship of the Department of Family and Protective Services if parental rights to the child have been terminated and the child is eligible for adoption

Overall, DSHS has observed increased demand for production of vital event records. For example, DSHS has received an increased amount of requests for a second copy of a death certificate. The current fee amount is \$3. As mailing fees for records increases at a rate of six percent each year, the current fee amount may not cover total costs in the near future.

DSHS has taken steps to address limitations posed by increased mailing fees and other costs. For example, DSHS recently discontinued paying for overnight shipping of death certificates to funeral homes as a cost containment step. This does not prohibit overnight shipping in all cases. Rather, funeral homes, along with other requestors, may pay an expedited processing surcharge to achieve the same turnaround in document production.

Additionally, the WD Carroll Records Building, where Texas vital records are stored, lacks contemporary systems for preservation and security of archival materials from fire and smoke, water, and inadequate environmental conditions. At the current

rate of growth, the building will also reach capacity in the central stacks, sealed file room, and other secure areas within 2.49 years. This situation, while not directly related to fees, is a key consideration as DSHS plans for the future.

TxEVER Development

Vital Statistics fees were modified in 2006 to provide for the digitization of approximately 60 million paper records. The fee increase did not contemplate several issues that have emerged in the past decade, such as replacing the aging Texas Electronic Registrar (TER) system or facility needs.

In 2014, DSHS obtained an agreement with the Department of Information Resources (DIR) to fund the replacement of TER using convenience fees collected to support technology that allows electronic ordering of records through Texas.gov.

The new Texas Electronic Vital Events Registrar (TxEVER) system will be a web-based application platform replacing TER and other ancillary systems used to manage vital records. TxEVER will support a user base located in thousands of locations across the state, increase user friendliness and maintain security of vital event records.

TxEVER is expected to go live January 1, 2019.

Texas Health Care Information Collection (THCIC)

THCIC Overview

The Texas Health Care Information Collection (THCIC) was created in 1995 to serve as a repository for health care facilities and health benefit plans data. The data collected enables consumers to have information on the charges and quality of health care in Texas. The fee information below is specific to data collected on health care facilities under Texas Health and Safety Code, Chapter 108.

Section 108.012(b) authorizes fee collection sufficient to operate the program, while individual fees are established in rule 25 Texas Administrative Code (TAC) Section 421.47. Fee collection supports some of THCIC operations, but the General Revenue Fund primarily supports the program. The THCIC fee structure is guided by a few parameters:

- The fee structure depends on the type of requestor, as well as the dataset involved
- Statute prohibits charging a fee to state health and human service agencies for datasets
- Statute prohibits charging all state agencies for the Public Use Data Files (PUDFs)
- DSHS policy eliminates or reduces fees for state-owned universities, depending on the type of data request
- DSHS policy eliminates or reduces fees for local health Departments PUDF requests¹

The fees collected generally cover about 25 to 40 percent of contractor operating costs and DSHS program operational costs. In Fiscal Year 2017, the total THCIC cost was \$1.72 million.

Fees are collected for the PUDF for certain years and DSHS Institutional Review Board (IRB)-approved research data file requests. While PUDF datasets are readymade products, THCIC must create research data files for each IRB-approved request, which requires varying amount of time and effort by agency staff to compile and securely transfer.

DSHS contracts with a third party for the collection of health care facilities data, which includes administrative claims data from over 1,200 hospitals and ambulatory surgical centers. Upon completing some quality assurance measures, the contractor sends the information to THCIC through secure servers. The information received must be further audited for format and content errors. The contracted vendor processes approximately 3 million inpatient records a year, and about 18 million outpatient visits. This includes approximately 8 million hospital-based emergency department visits.

DSHS also contracts with a third party to collect Health Effectiveness Data Information Set (HEDIS) data from health benefit plans. HEDIS data is released to the Office of Public Insurance Counsel (OPIC) as authorized by Texas Insurance Code, Section 501.23. OPIC uses the data produce publicly available reports on the health plans. The contract cost for collection of this data in Fiscal Year 2017 is \$24,000. HEDIS data is, on request, available at no cost to the public.

¹ A forthcoming rule change will eliminate this fee for local health departments.

Fees

The fee structure for health care facility administrative claims data and information is largely driven by data source and year(s) of data requested.

Public Use Data File Fees

PUDF claim information is available by quarter for inpatient and outpatient datasets. Emergency department datasets will be available after 2019. The most recent three years of data are available at the default rate, while older data are available at a reduced fee and eventually at no cost regardless of the type of requestor.

The basic fee for PUDF datasets is \$6,000 per calendar year (four calendar quarters) or \$1,750 per calendar quarter. This amount is charged for the three most recent years of data. For data that is four to six calendar years old from the current year, the price drops to \$2,500 per calendar year or \$625 per calendar quarter. Data older than six years from the current year are made available at no charge from the DSHS website. The following entities are subject to the basic fee:

- Texas private universities/colleges
- Out-of-state media, state agencies, universities, hospitals
- All other businesses or consumers, including health data organizations, institutions, and corporate offices

The reduced fee is \$3,000 per calendar year or \$1,750 per calendar quarter for the three most recent years; \$625 per calendar year or \$156.25 per calendar quarter for data that is between four and six calendar years old from the current year; and data older than six years from the current year are made available at no charge from the DSHS website. The following entities are subject by policy to the reduced fee:

- Texas hospitals that report to the state
- Texas in-state media groups
- Out-of-state health departments

Research Data Files

Fees for creating customized research data files for non-exempt DSHS IRB approved projects are established in rule at \$30 per data element per calendar

quarter.² Additional fees may be assessed if significant work is required to extract or filter unnecessary data to protect those patients' identity and privacy, or to link the data to another data set. The fees are based on the estimated time required multiplied by the hourly midpoint range rate of the Salary Group for Class Title "Research Specialist IV" determined by the State Auditor's Office.

² 25 Texas Administrative Code, Section 421.47(b)

4. Consumer Protection

Overview

DSHS regulates, per Texas statute, people and entities that provide consumer health goods and services to the public. DSHS consumer protection efforts safeguard the general public's health by encouraging compliance with standards that ensure safety and efficacy of services, goods, and facilities.

DSHS consumer protection program areas include Emergency Medical Services (EMS)/Trauma Systems Coordination, Food and Drug Safety, Radiation Control, and Environmental Health. While these areas support the broader public health mission of the department, each program provides functions that generally consist of:

- Issuing licenses and certifications
- Conducting compliance activities (including licensing surveys, inspections, sampling, and complaint investigations)
- Taking formal compliance actions when appropriate (such as fines, revocations, suspensions, etc.)
- Setting standards through rule and policy development
- Providing technical assistance
- Engaging the public on issues related to consumer safety and public health

This section will focus on the fees associated with the EMS and drug manufacturing licensing programs.

EMS Programs

Overview

EMS and trauma services provide the vital link between sudden injury or illness and emergency medical care for all Texans. Through its role, DSHS develops, implements, and evaluates these services, with an emphasis on trauma, pediatrics, disaster preparedness, and stroke. This includes designation of trauma, stroke, and neonatal facilities, as well as dissemination of grant funding.

Fees

Fees for the DSHS EMS program are assessed to license EMS providers, personnel, instructors, examiners, and coordinators. The application fees in Health and Safety Code, Chapter 773, range from a \$60 Emergency Care Attendant fee to a \$500 EMS provider fee. The revenue from EMS program fees is deposited to a General Revenue-Dedicated account.

The legislature appropriates funds from the General Revenue-Dedicated account to DSHS for program operating costs. Any fee revenue deposited into the account in excess of the appropriation is retained in the fund balance.

In 2017, the total operating costs, including indirect and administrative costs, were \$2.49 million; and revenue collections were \$2.31 million. In Fiscal Year 2017, the EMS program fee structure has covered 93 percent of the program costs. Because fees are established in the Health and Safety Code, DSHS cannot adjust fees to cover the gap between revenue collections and costs. Additionally, any fee increase would need to be accompanied by a related increase in appropriation.

Drug Manufacturing

Overview

The Drug Manufacturing program is related to DSHS food and drug safety responsibilities. The Food and Drug Safety program protects Texans from unnecessary morbidity and mortality through its regulation of people and entities that provide products and services that could pose a health danger if manufactured or used in casual or careless manner. The Drug Manufacturing program ensures that drugs are safe to consume and use, are properly labeled, and are not fraudulently presented.

The Drug Manufacturing program covers two specific license types: prescription and non-prescription drug manufacturing.

Fees

The Drug Manufacturing fee is bundled within the dual-purpose Drug Distributors and Manufacturers fee. The Drug Distributor portion of the fee covers those entities that deliver drugs in or into Texas. The Drug Manufacturing portion of the fee covers entities that manufacture drugs within Texas. Revenue from both programs is deposited in General Revenue Dedicated Account – Food and Drug Registration

No. 5024, Revenue Codes 355403, 355407, and 355413. The combined prescription Drug Distributors and Manufacturers fee structure collects approximately \$1.3 million each fiscal year, approximately 15 percent of the total FY 2017 Fund 5024 amount of \$9.04 million.

DSHS licenses over 3,000 prescription drug distributors and manufacturers. Of those licenses, approximately 239 licensees are prescription drug manufacturers. Drug manufacturing licensing fees are charged on a biennial basis and are based on whether drug manufacturers produced prescription or non-prescription drugs. The initial and renewal fee structure is made of three tiers for both drug manufacturing license type. The tiered fee structure is based on gross annual drug sales.

Gross Annual Drug Sales	
Tier 1	\$0 - \$199,999.99
Tier 2	\$200,000 - \$19,999,999.99
Tier 3	\$20,000,000 or more

Actual fees for each tier range from \$1,040 to \$2,295. Minor changes in filing status can incur additional, smaller fees if the change affects licensure enforcement.

On average, DSHS conducts approximately 75 prescription drug manufacturer inspections each year. In some instances, these entities are also registered and inspected by the Food and Drug Administration (FDA). DSHS attempts to inspect prescription drug manufacturers at least every two years. There is an exception for facilities inspected by the FDA during that period to prevent duplication of efforts.

While the current drug manufacturing fee structure consists of three tiers, other DSHS tiered fees include more tiers to ensure that the amount of fees assessed better align with the size and profitability of licensed entities. This fee structure bears further analysis with the help of stakeholders and licensees.

5. Laboratory & Infectious Disease Services

Overview

The Texas Health and Safety Code allows DSHS to collect fees to recoup some cost for performing public health services, including laboratory testing, delivery of certain services to individuals necessary for protecting public health, and providing certain training courses for public health officials. In some cases, fee collection is not always feasible if there is no payor source. DSHS depends on General Revenue and federal funding sources to ensure appropriate public health testing and infectious disease control efforts take place.

Laboratory Testing

The DSHS Laboratory performs many types of testing essential for ensuring public health, including rabies testing to identify exposed animals, food testing to control foodborne outbreaks, and newborn screening to detect life-threatening conditions. Texas Health and Safety Code, Chapter 12, Subchapters B & D allows DSHS to charge a fee for laboratory services. However, services may not be denied based on a person's ability to pay. In many cases, fees are not collected, or are collected at less than cost. For this reason, the Laboratory budget has historically relied on General Revenue in addition to fee revenue.

Over time, the challenge of maintaining lab operations within the current budget has grown. This is due to increased cost of running the Laboratory, the continual evolution of more refined testing techniques and equipment, ongoing Lab maintenance needs, and the volume of testing without a payor source. While fee revenue can potentially help mitigate this budget gap, other solutions will also be required.

TB/HIV/STD Services

DSHS collects fees for insurance notification of positive HIV test results under 25 Texas Administrative Code Section 97.139. These fees are paid by insurance companies to the General Revenue Fund. In fiscal year 2017, DSHS collected \$1,050 out of a total cost of \$6,435, recouping about 16 percent of costs.

According to federal guidelines, DSHS has the authority to institute a sliding-scale fee to assist Texas HIV Medication Program (THMP) clients purchase of HIV

medications. However, DSHS has opted not to institute fees. Medications are essential for helping people living with HIV achieve viral suppression, meaning their infectiousness is significantly reduced or eliminated. Because the majority of THMP clients experience financial hardship, instituting a fee could impact an individual's ability to acquire needed medication, which could increase their infectiousness and lead to increased transmission of HIV in the state. Additionally, DSHS is able to support the THMP within existing funds and without harming other HIV services. Thus, the current structure allows individuals to access medication without a financial burden, while at the same time maintaining the financial viability of the program.

6. Conclusion

As detailed in the report, the DSHS collects a variety of fees to help support programmatic activities and achieve the agency's public health goals. While fees provide an important source of funding, General Revenue and other funding sources continue to be critical in maintaining public health operations.

An in-depth review was conducted of specific fees within DSHS authority related to data and statistics, consumer protection, and laboratory and infectious disease services. This effort highlighted two areas that bear further focus: the drug manufacturing fee structure and the laboratory budget.

DSHS is considering changing the drug manufacturing fee to include additional tiers of fees. The purpose of this change would be to ensure smaller businesses are not paying a fee disproportionate to their amount of sales. This process will require additional analysis and stakeholder input before any changes to the fee structure can be made through the rulemaking process.

In light of the complexity of the DSHS Laboratory budget, the Department has also undertaken an internal project to conduct a comprehensive analysis of the Laboratory budget. The purpose of this exercise is to identify options to close the DSHS laboratory budget gap and ensure this critical public health capability remains available. This effort will not only include examination of internal efficiencies and legislative options; it will also examine whether any fee changes are appropriate without harm to public health.