

The Texas Medical Board (Board) proposes the repeal of current Chapter 176, concerning Health Care Liability Lawsuits and Settlements, §§176.1 – 176.9.

The Board also proposes new Chapter 176, concerning Reporting Malpractice Claims, §§176.1 and 176.2.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 176 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §176.1, Definitions, defines terms used in new Chapter 176.

New §176.2, Required Reporting, explains the content required and the process for reporting healthcare liability and malpractice claims to the board.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/MB7fZRdD8K>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

§176.1. Definitions.

§176.2. Reporting Responsibilities.

§176.3. Separate Reports Required and Identifying Information.

§176.4. Timeframes and Attachments.

§176.5. Alternate Reporting Formats.

§176.6. Penalty.

§176.7. Claims not Required to be Reported.

§176.8. Board Review of Health Care Liability and Settlements.

§176.9. Reporting Form.

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The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 160 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

<rule>

§176.1. Definitions.

(a) Claim--any claim for damages with or without a lawsuit filed, against a physician relating to a departure from accepted standards of medical or health care.

(b) Report--the information provided to the board, pursuant to §160.052 of the Act.

(c) Settlement:

(1) a payment made on a claim on which no lawsuit has been filed;

(2) an agreement to settle a lawsuit on a claim for a specified amount;

(3) a dismissal or non-suit of a lawsuit on a claim with no payment; or

(4) a final judgment in a lawsuit on a claim entered by the trial court.

§176.2. Required Reporting.

(a) Chapter 160, Subchapter B, of the Act mandates that physicians and insurers have a duty to report healthcare liability and malpractice claims to the board.

(b) The required report must be timely submitted by either the insurer or physician, in accordance with Chapters 160.052 and 160.053 of the Act.

(c) Content of Report.

(1) The information required to be reported by §160.053 of the Act, may be reported either on the board-approved Claims Report set out below or in an alternate format.

(2) If an alternate format is used, the information must include at least the information required by the board-approved Claims Report.

Figure 1:22 TAC §176.2

**TEXAS MEDICAL BOARD
HEALTH CARE LIABILITY CLAIMS REPORT**

FILE ONE REPORT FOR EACH DEFENDANT LICENSEE

SUBMIT COMPLETED FORM TO: es.response@tmb.state.tx.us

PART I. COMPLETE FOR ANY COMPLAINT FILED IN A LAWSUIT. Attach a copy of the Complaint and Expert Report. If an Expert Report is not filed with the Court at the time the lawsuit is filed, the Expert Report shall be filed with the Board within 30 days after it is received.

1. Name of insurer:

Address of insurer:

2. Defendant licensee:

License number:

3. Plaintiff's name:

4. Patient Name (if different from plaintiff):

Patient DOB:

5. Policy number:

6. Date claim reported to insurer/self-insured licensee:

7. Date of Incident:

8. State of incident:

County of incident:

9. Cause No.:

Court:

County of Suit:

10. Initial reserve amount after investigation: \$

(If a reserve is not determined within 30 days, report this data within 30 days after determination.)

Person completing this report:

Phone number:

Date:

PART II. COMPLETE UPON SETTLEMENT OF THE CLAIM. Attach a copy of any Court Order or Settlement Agreement. "Settlement" is defined in 22 TEX. ADMIN. CODE, Section 176(1)(c), and includes payment on a claim on which a lawsuit has not been filed and dismissal, settlement, or judgment in a lawsuit that is based on a health care liability claim.

11. Date of Settlement:

12. Type of Settlement:

(1) Payment or agreement to pay a claim or lawsuit

(2) Judgment in a lawsuit after trial

(3) Dismissal or Non-suit of a Lawsuit

(4) Other (please specify)

13. Amount of indemnity agreed upon or ordered on behalf of this defendant:

\$

Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: \$100,000/3)

14. Appeal, if known: Yes No

If yes, which party:

Person completing this report:

Phone number:

Date: