

The Texas Medical Board (Board) proposes the repeal of current Chapter 174 concerning Telemedicine. This includes Subchapter A, concerning Telemedicine, §§174.1 – 174.8; and Subchapter B, concerning Mental Health Services, §§174.9.

The Board also proposes new Chapter 174, concerning Business Organizations. This includes new Subchapter A, concerning Non-Profit Health Organizations, §§174.1 and 174.2; Subchapter B, concerning Jointly Owned Entities; §174.5; and Subchapter C, concerning Physician Call Coverage Arrangements, §174.10.

Also, the Board contemporaneously proposes the repeal of current Chapter 177, concerning Business Organizations and Agreements. This includes Subchapter A, concerning Definitions, §177.1; Subchapter B, concerning Non-Profit Health Organizations, §§177.2 – 177.13; Subchapter C, concerning Jointly Owned Entities, §§177.14 – 177.16; Subchapter D, concerning Employment of Physicians, §177.17; and Subchapter E, concerning Physician Call Coverage Medical Services, §177.18 and §177.20.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 174 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

SUBCHAPTER A. NON-PROFIT HEALTH ORGANIZATIONS.

New §174.1, Definitions, gives definitions for terms used in new Chapter 174.

New §174.2, Certification of a Non-Profit Health Organization, describes the process of certification of a Non-Profit Health Organization.

SUBCHAPTER B. JOINTLY OWNED ENTITIES.

New Section 174.5. Joint Ownership, provides the requirements for the Physician and Physician Assistant's joint ownership in compliance with Chapter 301, Texas Business Organizations Code.

SUBCHAPTER C. CALL COVERAGE AGREEMENTS.

New Section 174.10. Call Coverage Agreement Minimum Requirements, sets forth minimum requirements for a physician to follow regarding a call coverage agreement for another physician.

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 repeals 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/jq6GTK5RFJ>. 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.

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SUBCHAPTER A. TELEMEDICINE.

§174.1. Purpose.

§174.2. Definitions.

§174.3. Prevention of Fraud and Abuse.

§174.4. Notice to Patients.

§174.5. Issuance of Prescriptions.

§174.6. Minimum Standards for the Provision of Telemedicine Medical Services.

§174.7. Enforcement Authority.

§174.8. State Licensure.

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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.

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SUBCHAPTER B. MENTAL HEALTH SERVICES.

§174.9. Provision of Mental Health Services.

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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 162. The new rules are 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 re adoption, re adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

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SUBCHAPTER A. NON-PROFIT HEALTH ORGANIZATIONS.

§174.1. Definitions.

The following word and term when used in this chapter shall have the following meaning, unless the contents clearly indicate otherwise:

Actively engaged in the practice of medicine--currently licensed by the board to practice medicine and has no restrictions.

§174.2. Certification of a Non-Profit Health Organization.

(a) The board shall certify a Non-Profit Health Organization in accordance with §162.001(b) of the Act upon:

- (1) submission of the required application and supporting documentation;
- (2) the board's receipt of the \$2,500 non-refundable application fee; and
- (3) verification by the board that the organization meets the requirements of §162.001(b) of the Act, including the requisite number of Board of Directors in accordance with Title 2, §22.204 of the Texas Business Organizations Code.

(b) The board shall certify a Non-Profit Health Organization to contract with or employ physicians in accordance with §162.001(c) or (c-4) of the Act upon:

- (1) submission of the required application and supporting documentation; and

(2) verification by the board that the organization meets the requirements for certification under the Act.

(c) A certified Non-Profit Health Organization must file a biennial report with the board in accordance with §162.006 of the Act. The board shall renew the certification of a Non-Profit Health Organization upon:

(1) submission of the required biennial report, recertification application and supporting documentation;

(2) the board's receipt of the \$1,125 non-refundable biennial application fee, except those certified under §162.001(c) or (c-4) do not pay a fee; and

(3) verification by the board that the organization meets the requirements for recertification under the Act.

(d) The failure of a certified health organization to timely submit a biennial report and/or required renewal fee within 90 days of its due date may result in decertification.

(e) If a certified health organization has been decertified, it will be required to submit a new application for certification in accordance with Chapter 162 of the Act.

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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 162. The new rules are 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.

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SUBCHAPTER B. JOINTLY OWNED ENTITIES.

§174.5. Joint Ownership.

(a) Physician and Physician Assistants may jointly own an entity in accordance with the provisions of Chapters 22, 152, and 301 of the Texas Business Organizations Code.

(b) Physicians and Physician Assistants who jointly own an entity must annually submit a Jointly-Owned Entity Annual Report form, accompanied by an \$18 fee.

(c) Restrictions on joint ownership by certain professionals, as set forth in §301.012 of the Texas Business Organizations Code, only apply to those entities formed after June 17, 2011.

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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 162. The new rules are 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.

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SUBCHAPTER C. CALL COVERAGE AGREEMENTS.

§174.10. Call Coverage Agreement Minimum Requirements.

A call coverage agreement:

- (1) may be oral or written;
- (2) allows for and sets forth the terms in which a physician will provide medical services to established patients of another physician; and
- (3) describes the timing and method by which the covering physician will provide a report to the patient's primary physician about the medical intervention or advice provided during the coverage period.