

The Texas Medical Board (Board) proposes the repeal of current Chapter 175, concerning Fees and Penalties, §§175.1 – 175.5.

The Board also proposes new Chapter 175, concerning Telemedicine, §§175.1 – 175.3.

Also, the Board contemporaneously 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 has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 175 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §175.1. License Required, explains that a physician practicing telemedicine in Texas must hold a full Texas medical license, with some limited exceptions.

New §175.2. Telemedicine Services, explains that telemedicine services must be performed in compliance with the Medical Practice Act and Chapter 111 of the Texas Occupations Code.

New §175.3. Requirements for a Valid Prescription, explains the requirements for a valid prescription using telemedicine. It also explains the requirements for prescribing for chronic pain using telemedicine.

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. It will also increase patient accessibility to properly licensed, trained, and educated medical providers.

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 repeal 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/e6riGJaRDp>. 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>

§175.1. Application and Administrative Fees.

§175.2. Registration and Renewal Fees.

§175.3. Penalties.

§175.4. Fee Exemption for Military Service Member, Military Veteran, or Military Spouse.

§175.5. Payment of Fees or Penalties.

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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 111 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

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§175.1. License Required.

In accordance with Chapters 155.001 and 111 of the Texas Occupations Code, a physician may not provide telemedicine medical services to patients in Texas unless they hold a full Texas medical license, except for those who held an out-of-state telemedicine license as of September 1, 2022.

§175.2. Telemedicine Services.

Telemedicine medical services, including supervision, delegation, and posting of notices regarding filing a complaint with the board, must be provided in accordance with Chapter 111 of the Texas Occupations Code and the Medical Practice Act.

§175.3. Requirements for a Valid Prescription.

(a) In accordance with §111.006 of the Texas Occupations Code, a valid prescription requires:

(1) establishing a physician-patient relationship; and

(2) compliance with all other applicable laws before prescribing, dispensing, delivering, or administering a dangerous drug or controlled substance, including, but not limited to, the Medical Practice Act and Texas Health and Safety Code, Chapters 481 and 483.

(b) Requirements for Prescribing for Chronic Pain via Telemedicine.

(1) A physician must use audio and video two-way communication, unless the patient:

(A) is an established pain patient of the prescribing physician;

(B) receives a prescription identical to the prescription issued at the previous visit; and

(C) was seen by the prescribing physician, or their delegate, in the last 90 days either;

(i) in-person; or

(ii) by audio and video two-way communication.