

The Texas Medical Board (Board) proposes the repeal of current Chapter 182, concerning Use of Experts, §182.1, §182.3, §182.5, and §182.8.

The Board also proposes new Chapter 182, concerning Texas Physician Health Program, §§182.1 – 182.4.

Also, the Board contemporaneously proposes the repeal of current Chapter 180, concerning Texas Physician Health Program, §§180.1 – 180.4.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 182 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §182.1, Definitions, defines terms used in new Chapter 182.

New §182.2, Governing Board and Physician Health and Rehabilitation Advisory Committee Standards, explains the process of appointment of the Governing Board and Physician Health and Rehabilitation Advisory Committee. It also details the grounds for removal of members and conflicts of interest for members.

New §182.3, Operation of the Program, details how the Texas Physician Health Program (PHP) operates, including referrals to the program, agreements with participants, and drug and alcohol testing of participants. It also explains the Case Advisory Panel of the PHP.

New §182.4, Authority for the Program to Accept Gifts, Grants, and Donations, describes the process for acceptance of gifts, grants, and donations to the Governing 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 repeals 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/63DZ1ji8iq>. 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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§182.1. Purpose.

§182.3. Definitions.

§182.5. Expert Reviewer Qualifications.

§182.8. Expert Physician Reviewers.

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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 Texas Occupations Code, Chapter 167. 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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§182.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Agency--the Texas Medical Board and its advisory boards and committees.
- (2) Agreement--a contract entered into between a participant and the TXPHP, detailing the terms of participant monitoring by TXPHP.
- (3) Program or TXPHP--the Texas Physician Health Program.

§182.2. Governing Board and Physician Health and Rehabilitation Advisory Committee Standards.

(a) Appointment of Governing Board. The president of the Medical Board shall appoint a Governing Board of:

(1) 11 qualified individuals with appropriate experience as follows:

- (A) six doctors of medicine (M.D.) licensed in Texas;
- (B) two doctors of osteopathic medicine (D.O.) licensed in Texas;
- (C) one physician assistant licensed in Texas for at least five years;
- (D) one mental health professional licensed in Texas; and
- (E) one public member who meets the requirements of §152.003 of the Act.

(2) The president of the Medical Board shall appoint the president of the Governing Board

(3) Members shall serve staggered six-year terms and may be reappointed.

(4) Any vacancies that occur are filled by the president of the Medical Board.

(b) Appointment of the Physician Health and Rehabilitation Advisory Committee (“Advisory Committee”). In accordance with § 167.004 of the Act, the Governing Board appoints an Advisory Committee.

(1) The Advisory Committee shall be composed of a minimum of three physicians licensed in Texas with appropriate experience.

(2) The members serve staggered six-year terms at the pleasure of the Governing Board.

(3) Any vacancies that occur shall be filled by the Governing Board.

(c) Grounds for Removal. A member may be removed from the Governing Board or Advisory Committee if:

(1) grounds for removal exist under §152.006 of the Act; or

(2) the member fails to meet standards of professional conduct described in §160.2 of this title (relating to Functions and Duties).

(d) Conflicts of Interest.

(1) Governing Board and Advisory Committee members should avoid conflicts of interest and recuse themselves from participating in matters or decisions that represent such conflicts.

(2) Members must recuse themselves in any matter or decision relating to a participant that the member has treated or is currently treating.

§182.3. Operation of the Program.

(a) A Memorandum of Understanding (MOU) with the Medical Board shall be adopted by the Governing Board. The MOU is required to be reviewed as part of the program's internal audit in accordance with Chapter 167 of the Act.

(b) Referrals.

(1) Referrals to the program shall be accomplished in accordance with Chapter 167 of the Act.

(2) The program may accept a self-referral from an individual with credentials acceptable to the program, applicant for licensure with the Agency, or licensee of the Agency, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, an education program, a hospital or hospital system licensed in this state, a residency program, or the Agency.

(3) Agency referrals to the program may be public or private.

(4) Notwithstanding §167.0015 of the Act, the program may accept a referral from the board following a TMB investigation related to impairment resulting in a violation of the standard of care or the commission of a boundary violation. The referral to the program is solely for any impairment issue, and TMB will address disciplinary issues, if any, related to the standard of care violation or the commission of a boundary violation. A self-referral by an individual accused of a standard of care or boundary violation does not prohibit investigation by TMB for the standard of care or boundary violation.

(c) Eligibility Determinations.

(1) The Medical Director, designee of the Medical Director, or Governing Board president shall meet with a referred individual to determine eligibility for the program. The eligibility determination may be delegated to another qualified medical professional as necessary. This meeting with the referred individual may be waived if the Medical Director determines that good cause exists.

(2) A referred individual may be requested to undergo a clinically appropriate evaluation as either a condition for eligibility or as a term of an agreement. Refusal to undergo an evaluation may be referred to the Agency.

(d) Case Advisory Panel.

(1) The Case Advisory Panel is appointed by the president of the Governing Board to assist and advise the Medical Director, as needed, in eligibility determinations or monitoring recommendations. The Case Advisory Panel consists of the president, secretary, and one other Governing Board member.

(2) The Governing Board member is appointed on a four-month rotating basis.

(3) Cases reviewed by the Case Advisory Panel shall be reported on at the next scheduled meeting of the Governing Board.

(e) Agreements.

(1) Agreements are effective upon signature by the program participant and are subject to review by the Governing Board.

(2) Agreements between participants and the program may include, but are not limited to, the following terms and conditions:

(A) abstinence from prohibited substances and drug testing;

(B) agreement to not treat one's own self, family, or friends;

(C) agreement to not receive treatment from family or friends;

(D) participation in mutual support groups, such as Alcoholics Anonymous;

(E) participation in support groups for recovering professionals, such as Caduceus and International Doctors in Alcoholics Anonymous (IDAA);

(F) worksite monitoring;

(G) practice restrictions; or

(H) treatment by an appropriate health care provider.

(f) Drug and alcohol testing of participants shall be provided by a vendor using protocols approved by the Medical Board.

§182.4. Authority for the Program to Accept Gifts, Grants, and Donations.

(a) This subsection is set forth pursuant to §167.013 of the Act, which allows the Governing Board to receive a donation for the program.

(b) Texas Government Code, Chapter 572, governs the standards of conduct between the Governing Board, program, and donors.

(c) The Governing Board may not accept donations from individual applicants for a license or licensees under the Texas Medical Board's jurisdiction.

(d) In order for donations to be considered by the Governing Board:

(1) the donor must complete a form required by the Governing Board providing information including a description of the donation, the purpose, and any restrictions;

(2) the donation's purpose may not be for the funding of employee positions or services; and

(3) the donation must be considered in an open meeting by a majority of the members of the Governing Board and, if accepted, reported in the minutes including the name of the donor, and the purpose and a description of the donation.

(e) Following acceptance of the donation by the Governing Board, the donor and the program shall execute a donation agreement, which includes:

(1) a description of the donation, including a statement of the value;

(2) a statement by the donor attesting to the donor's ownership rights in the donation and the donor's authority to make the donation;

(3) a signature of the donor or designee;

(4) a signature of the program designee;

(5) restrictions on the use of the donations, if any;

(6) the mailing address of the donor and principal place of business if the donor is a business entity;

(7) a statement identifying any official relationship between the donor and the program; and

(8) a statement advising the donor the lack of tax-deductible status and to seek legal and/or tax advice from its own legal counsel.

(f) Monetary donations will be deposited and disbursed in accordance with the General Appropriations Act and for the purpose specified by the donor, and in accordance with any local, state, and federal laws. In no event will donations be used for purposes not within the program's statutory authority.

(g) Conflict of Laws. These rules shall not conflict with a requirement of a statute regulating the conduct of an officer or employee of the program or the procedures of the program. In the event there appears to be a conflict between these rules and a state statute, the state statute controls.