



TO: Health and Human Services Commission
Executive Council

DATE: February 22, 2018

FROM: Kirk Cole, Interim Assistant Deputy
Commissioner

AGENDA ITEM: 2.b

SUBJECT: Health Workforce Planning and Development

BACKGROUND: Federal Legislative Other: Program Initiative

This proposal aims to make necessary updates to Department of State Health Services (DSHS) rules covering health planning and resource development, specifically those pertaining to health workforce planning and development. The proposed changes include rule revisions, the creation of new rules, and the repeal of an outdated rule in Texas Administrative Code, Title 25, Chapter 13.

Proposed revisions aim to better conform to current statutory language of the Texas Occupations Code, Chapter 157, reduce unnecessary application requirements for medical practices seeking designation as practices serving medically underserved populations, and produce improved clarity and organization. New rules would provide DSHS a mechanism by which it can verify the continued designation eligibility of practices designated as serving medically underserved populations and enact in rule DSHS data collection procedures already in practice for the data collection mandated by Texas Health and Safety Code, Chapters 104 and 105. Finally, the rule repeal of §13.61 is the removal of a rule rendered obsolete by statutory rescission of the Texas Education Code, §61.924.

ISSUES AND ALTERNATIVES:

Stakeholders have shared no concerns, issues, or objections to the proposal.

STAKEHOLDER INVOLVEMENT:

The proposed rule amendments were sent to external stakeholders for review. No comments were received from stakeholders. External stakeholders included: all practices currently designated as sites serving medically underserved populations; the Texas Medical Board, the Texas

Board of Nursing, and other health professions licensure boards affected by the formalization of data collection procedures under Texas Health and Safety Code Chapters 104 and 105; professional organizations, including the Texas Medical Association, the Texas Nurses Association, the Texas Academy of Physician Assistants, and the Texas Pharmacy Association; the Texas Higher Education Coordinating Board; and all subscribers of the DSHS Health Professions Resource Center's mailing list.

FISCAL IMPACT:

None

SERVICES IMPACT STATEMENT:

These rules are expected to have no direct impact of the health and human services client population, but will provide public benefit. Specifically, the public benefits anticipated as a result of enforcing or administering the sections will be greater rule clarity, the provision of a mechanism by which DSHS can confirm the continued designation of practices serving medically underserved populations, the clarification and dissemination of the existing processes used to collect data under Texas Health and Safety Code Chapters 104 and 105, and the removal of references to obsolete statute and programs.

RULE DEVELOPMENT SCHEDULE:

February 22, 2018	Present to HHSC Executive Council
March 2018	Publish proposed rules in <i>Texas Register</i>
July 2018	Publish adopted rules in <i>Texas Register</i>
July 2018	Effective date

PROPOSED PREAMBLE

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes amendments to §13.31, concerning Purpose and Scope; §13.32, concerning Definitions; §13.33, concerning Criteria for Designating Practice-MUPs; and §13.34, concerning Application Process; proposes new §13.35, concerning Changes in Status of Practice-MUP Designation; new Subchapter E, concerning Data Collection; new §13.51, concerning Purpose and Scope; and new §13.52, concerning Data Collection Procedures; and the repeal of Subchapter F, concerning Medically Underserved Areas and Resident Pharmacists, and §13.61, concerning Medically Underserved Areas and Resident Pharmacists.

BACKGROUND AND PURPOSE

The purpose of the amendments to §§13.31-13.34 is to update these rules to better conform to current statutory language of the Texas Occupations Code, Chapter 157, reduce unnecessary application requirements for practices seeking designation as practices serving medically underserved populations, and improve clarity and organization.

The purpose of the new §13.35 is to provide a mechanism by which DSHS can verify the continued designation eligibility of designated practices. Current rules are ambiguous and do not ensure that DSHS designations will be updated biannually. Designated sites and state agencies that rely on DSHS designations need guidance and assurance that DSHS designations are current.

The purpose of the new §13.51 and §13.52 is to enact in rule procedures already in practice for the data collection mandated by Texas Health and Safety Code, Chapters 104 and 105.

The purpose of the repeal of §13.61 is the removal of a rule rendered obsolete by statutory rescission of the Texas Education Code, §61.924.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §13.31 revises language to reflect legislative changes to the Texas Occupations Code, Chapter 157. Specifically, this amendment updates statutory references from “§157.052” to “157.051(11)(F),” and replaces instances of “site” with “practice” to reflect statutory changes. Also, the “Texas Board of Nurse Examiners” is updated to the “Texas Board of Nursing.”

The proposed amendment to §13.32 revises language to reflect legislative changes to the Texas Occupations Code, Chapter 157, and adds a definition of a “practice serving a medically underserved population.” Instances of “site” are replaced with “practice” to reflect statutory changes. Also, the definition of “primary care physicians” is revised to include the practice of “geriatrics.” The definition of a “practice serving a medically underserved population” is added to clarify the term’s use in subsequent rules.

The proposed amendment to §13.33 revises language to reflect legislative changes to the Texas Occupations Code, Chapter 157, replacing “site” with “practice” to reflect statutory changes. Also, in subsection (a), the reference to “physicians” is revised to “primary care physicians” to be consistent with definitions provided in §13.32 and current practice.

The proposed amendment to §13.34 revises language to reflect legislative changes to the Texas Occupations Code, Chapter 157, where instances of “site” are replaced with “practice.” Subsection (a) is revised to reduce the amount of information practices must submit on the application for designation as a practice serving a medically underserved population. Subsection (c) which addresses a change in location of a designated practice is deleted and added to new §13.35. Subsection (d) is amended to allow applications to be submitted via email.

Proposed new §13.35 provides procedures adequate to monitor and confirm the continued designation eligibility of practices previously determined to have served medically underserved populations. Subsection (a) specifies DSHS’s responsibility to verify, every two years, the continued designation eligibility of practices designated as Practice-MUPs. Subsection (b) specifies a designated practice’s responsibility to notify DSHS if it ceases to be eligible for designation as a Practice-MUP and the responsibility of DSHS to cancel that designation. Subsection (c) specifies a designated practice’s responsibility, upon a change in location of designated practice, to verify its continued eligibility with DSHS. Subsection (d) provides information on communicating changes to DSHS.

Proposed new §13.51 provides the purpose and scope of new Subchapter E, which details the data collection processes of DSHS under Texas Health and Safety Code, Chapters 104 and 105.

Proposed new §13.52 details the procedures for data collection as required by Health and Safety Code, §105.003. These procedures are consistent with those currently practiced in soliciting and receiving data from the relevant members of the Health Professions Council.

The proposed repeal of §13.61 deletes the rule as no longer necessary, as the statutory requirement and its related program at the Texas Higher Education Coordinating Board no longer exist.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC/DSHS has determined that during the first five years that the sections will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will repeal an obsolete rule and expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rule; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Matthew Turner, Health Professions Resource Center, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed.

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT

Matthew Turner, Health Professions Resource Center, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefits anticipated as a result of enforcing or administering the sections will be greater rule clarity, the provision of a mechanism by which DSHS can confirm the continued designation of practices serving medically underserved populations, the clarification and dissemination of the existing processes used to collect data under Texas Health and Safety Code Chapters 104 and 105, and the removal of references to an obsolete statute and program.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Matthew Turner at (512) 776-6541 in the DSHS Center for Health Statistics.

Written comments on the proposal may be submitted to Matthew Turner, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, TX 78756; by fax to (512)-776-7344; or by e-mail to hprc@dshs.texas.gov within 30 days of publication of this proposal in the *Texas Register*. When faxing or e-mailing comments, please indicate "Comments on Proposed Rules 25R035" in the subject line.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit

comments falls on a Sunday; however, comments postmarked, shipped, or emailed before midnight on the following Monday will be accepted.

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Occupations Code, §157.051, which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Texas Health and Safety Code, §104.042, that authorizes the executive commissioner by rule to establish reasonable procedures for the collection of data by the department from health care facilities; Texas Health and Safety Code, §105.005, which authorizes the executive commissioner to adopt rules to govern the reporting and collection of data; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Texas Health and Safety Code, Chapter 1001. The repeal of §13.61 is authorized by statutory rescission of the Texas Education Code, §61.924.

The amendments, new sections, and repeal of a rule implement Texas Occupations Code, Chapter 157; Texas Health and Safety Code, Chapters 104, 105, and 1001; and Texas Government Code, Chapter 531.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 13 HEALTH PLANNING AND RESOURCE DEVELOPMENT
SUBCHAPTER C DESIGNATIONS OF PRACTICES [~~SITES~~] SERVING
MEDICALLY UNDERSERVED POPULATIONS

§13.31. Purpose and Scope.

(a) Purpose. The purpose of these sections is to implement the provisions in the Texas Occupations Code, §157.051(11)(F) [~~§157.052~~], by the establishment of program rules for the designation [~~determination~~] of practices [~~sites~~] serving medically underserved populations (Practice-MUPs) [~~(Site-MUPs)~~]. Designated practices [~~sites~~] will be eligible for qualified advanced practice registered nurses [~~nurse practitioners~~] and physician assistants to carry out prescription drug orders in accordance with rules developed by the Texas Board of Nursing [~~Nurse Examiners~~] and the Texas Medical Board.

(b) Scope. The scope of these sections is to describe the criteria and procedures that the Department of State Health Services (department) will use in designating Practice-MUPs [~~determining Site-MUPs~~]. The criteria will apply to practices [~~sites~~] not already qualified under the other definitions of eligible practices [~~sites~~] identified in the Texas Occupations Code, §157.051(11) [~~§157.052~~].

(c) Administration. The department shall designate Practice-MUPs [~~Site-MUPs~~].

§13.32. Definitions.

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

(1) Area--A county, census tract, group of census tracts, or other identifiable geographic area in which the majority of the practice's [~~site's~~] patients live.

(2) Department--The Department of State Health Services.

(3) Eligible client populations--Residents meeting the eligibility criteria for participation in any of the following programs:

(A) federally funded health care programs, including, but not limited to: AIDS (health care delivery programs); community and migrant health

centers (Public Health Service Act, §§329 and 330 grantees); family planning; homeless (including Public Health Service Act, §340 grantees); Medicaid; or Medicare;

(B) state funded health care programs, including, but not limited to: AIDS (health care delivery programs); children with special health care needs (CSHCN); Medicaid; state primary health care; or student health centers (state funded colleges and universities); or

(C) locally funded health care programs, including, but not limited to: locally supported nonprofit health care programs; programs funded by city or county governmental entities; or programs funded by hospital districts.

(4) Primary care physicians--Physicians practicing in family/general practice, obstetrics/gynecology, internal medicine, geriatrics, or pediatrics.

(5) Practice serving a medically underserved population (Practice-MUP)-- An eligible practice designated by the department as a practice serving a medically underserved population in accordance with the Texas Occupations Code, §157.051(11)(F) and this subchapter.

§13.33. Criteria for Designating Practice-MUPs [~~Site-MUPs~~].

(a) The department will designate a practice [~~site~~] located in an area that has an insufficient number of primary care physicians providing services to the eligible client populations if it is determined that:

(1) the ratio of population-to-primary care physicians for the practice's [~~site's~~] service area is above 3,000:1; or

(2) the ratio of population-to-primary care physicians is above 3,000:1 for the geographic area surrounding the practice [~~site~~]. This applies to practices [~~sites~~] that draw patients from a broad geographic area, such as an entire city or county, where the practice's [~~site's~~] total service areas [~~area~~] may not have a ratio above 3,000:1 as required under paragraph (1) of this subsection, but the practice [~~site~~] may be located in an area with a shortage of primary care physicians.

(b) The department will designate a practice [~~site~~] serving a disproportionate number of clients within eligible client populations if it is determined that:

(1) over 50% of the practice's [~~site's~~] patients are from eligible client populations; or

(2) the proportion of the practice's [~~site's~~] patients representing eligible client populations is at least twice the proportion of persons in the practice's [~~site's~~] service area who are eligible client populations.

§13.34. Application Process.

(a) Applicants must submit an application form, provided by the department, which includes the following information:

(1) identification of the geographic area and types of eligible client populations served by the practice [~~site, along with a brief history of the site's operation~~];

(2) a description of the types of services offered at the practice [~~site, clinic hours, annual utilization rates, and number of each type of health professional staffing the site (including information on full-time equivalency)~~];

(3) adequate demonstration that the practice [~~site~~] meets criteria in §13.33(a) or (b) of this title (relating to Criteria for Designating Practice-MUPs [~~Site-MUPs~~]); and

(4) additional information, as determined necessary by the department.

(b) After making a determination that a practice [~~site~~] serves a medically underserved population, the department will notify the applicant in writing and publish notice of the designation in the *Texas Register*, providing opportunity for public comment. After the public comment period is over, the department will publish notice of any revision to the determination.

~~[(c) Change in location of a designated site. A Site-MUP designation remains in effect if an applicant verifies that the new site remains in the original service area and provides the same services and staffing and serves the same populations that were originally used to designate the site under subsection (a)(1) or (2) of this section.]~~

~~(c) [(d)]~~ If a practice [~~site~~] is determined ineligible based on the criteria defined in §13.33 of this title, the department will notify the applicant in writing.

~~(d) [(e)]~~ Mail or email an application to [~~Applications should be directed to~~] the Health Professions Resource Center, Center for Health Statistics, Department of State Health Services [~~, 1100 West 49th Street, Austin, Texas 78756-3199~~].

§13.35. Changes in Status of Practice-MUP Designation.

(a) Certification of continued eligibility. The department shall verify a practice's continued eligibility for designation as a Practice-MUP under §13.33 of this title (relating to Criteria for Designating Practice-MUPs) no more than two years after its initial designation and within each two-year period thereafter.

(b) Change in designation eligibility. If a Practice-MUP no longer serves an area or client population eligible under §13.33 of this title, that practice shall notify the department of its change in eligibility and the department shall withdraw that Practice-MUP's designation.

(c) Change in location of a designated practice. If a Practice-MUP changes locations, the designation remains in effect if an applicant verifies that the new location:

(1) remains in the original service area;

(2) provides the same services; and

(3) serves the same populations that were originally used to designate the practice under §13.34(a)(1) or (2) of this title (relating to Application Process).

(d) Notification. Information concerning continued and changing eligibility and changes of address should be directed to the Health Professions Resource Center, Center for Health Statistics, Department of State Health Services via mail or email.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 13 HEALTH PLANNING AND RESOURCE DEVELOPMENT
SUBCHAPTER E DATA COLLECTION

§13.51. Purpose and Scope.

The purpose of the sections in this subchapter is to implement Texas Health and Safety Code, Chapters 104 and 105, that provides the department, through the executive commissioner of the Health and Human Services Commission, rulemaking authority covering the collection of data by the Statewide Health Coordinating Council and the Health Professions Resource Center. The scope of this subchapter is to describe the criteria and procedures which the department uses in implementing data collection requirements of the relevant members of the Health Professions Council.

§13.52. Data Collection Procedures.

The department uses these procedures to collect data from the relevant members of the Health Professions Council described by Texas Health and Safety Code, §105.003.

(1) To initiate data collection, the department submits a reasonably detailed request to a relevant member of the Health Professions Council. The request is submitted using the method prescribed by that member.

(2) The relevant member of the Health Professions Council receiving the request fulfills the request within a reasonable period of time, excepting:

(A) if that member is unable to fulfill the request as submitted, that member notifies the department of any necessary revisions to the initial request and the department submits a revised request; or

(B) if that member is unable to fulfill the request within a reasonable period of time, that member notifies the department of the reason for delay and the date by which the request will be fulfilled.

(3) The department provides a secure means of transmitting resultant data, or uses those means preferred and provided by the relevant member of the Health Professions Council.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES.
CHAPTER 13 HEALTH PLANNING AND RESOURCE DEVELOPMENT
SUBCHAPTER F MEDICALLY UNDERSERVED AREAS AND RESIDENT
PHARMACISTS

~~§13.61. Medically Underserved Areas and Resident Pharmacists:~~

~~(a) This section implements the responsibility of the Department of State Health Services (department) to define the term "medically underserved areas" under the Education Code, §61.924. That section provides that each college of pharmacy shall give priority consideration to an applicant for a resident pharmacist position who demonstrates a willingness to practice pharmacy in medically underserved areas of this state, as defined by the department.~~

~~(b) The term, "medically underserved areas," is defined as meeting any of the criteria:~~

~~(1) designated by the United States Secretary of Health and Human Services (secretary) as a whole county or partial county Health Professional Shortage Area (HPSA) in a metropolitan or non-metropolitan area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the secretary determines has a primary care physician shortage and which is not reasonably accessible to an adequately served area as delineated in 42 United States Code (U.S.C.), §254e (42 Code of Federal Regulations (C.F.R.), Part 5);~~

~~(2) designated by the secretary as a population group HPSA which the secretary determines to have a primary care physician shortage as delineated in 42 U.S.C., §254e (42 C.F.R. Part 5);~~

~~(3) designated by the secretary as a facility HPSA for a public or nonprofit private medical facility or other facility which the secretary determines has a primary care physician shortage as delineated in 42 U.S.C., §254e (42 C.F.R., Part 5); or~~

~~(4) designated by the secretary as an area with a medically underserved population (MUP) and having a shortage of primary care physicians and personal health services as defined in 42 U.S.C., §254c (42 C.F.R., Part 491.5, Subpart A).~~