

22 Texas Administrative Code 170.2, 3, 9
Proposed Amendments
April 03, 2020
Examining Boards

Prescription of Controlled Substances

The Texas Medical Board (Board) proposes to amend the title of 22 TAC Chapter 170 to "**Prescription of Controlled Substances.**" Further amendments are proposed to s.170.2, concerning Definitions, and s.170.3, concerning Minimum Requirements for the Treatment of Chronic Pain. The Board also proposes new s.170.9, in new Subchapter C, titled **Prescription Monitoring Program Check.**

22 TAC 170.2
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22 TAC 170.9

TITLE 22. EXAMINING BOARDS
PART 9. TEXAS MEDICAL BOARD
CHAPTER 170. PREScription OF CONTROLLED SUBSTANCES PAIN MANAGEMENT

The Texas Medical Board (Board) proposes to amend the title of 22 TAC Chapter 170 to "**Prescription of Controlled Substances.**" Further amendments are proposed to §170.2, concerning Definitions, and §170.3, concerning Minimum Requirements for the Treatment of Chronic Pain. The Board also proposes new §170.9, in new Subchapter C, Titled **Prescription Monitoring Program Check.**

The amendments to §170.2 are proposed pursuant to HB 2174, 86th Texas Legislature, which set forth certain opioid prescription limits for the treatment of acute pain. All proposed language represents the input and consensus of the Opioid Workgroup, composed of physicians, patients, hospitals, medical schools, and other stakeholders.

The amendments to §170.2 are as follows:

Section 170.2(2)'s definition for "acute pain" is proposed for amendment pursuant to HB 2174. The definition clarifies that acute pain is time limited to no more than 30 days from the date of initial prescription for opioids for treatment of the pain during a period of treatment for the acute condition or injury. This time limit defining acute pain is found in widely recognized literature and generally accepted throughout the medical community. This definition is fully endorsed and supported by the Opioid Workgroup.

Section 170.2(4) proposes to amend the definition for chronic pain by clarifying that chronic pain is pain that exists for a period that has continued for no less than 91 days from the date of initial prescription for opioids for treatment of the condition or injury. This time limit is found in widely recognized literature and generally accepted throughout the medical community. This definition is fully endorsed and supported by Opioid Workgroup.

Section 170.2(10) is added as a new definition for post-surgical, post-procedure, persistent non-chronic pain. The definition clarifies that there is pain that continues to exist in a period after the acute phase, but before becoming medically recognized as chronic pain. This period of pain exists for a period of more than 30 days but less than 91 days from the date of initial prescriptions for opioids during a period of treatment. This definition is found in widely recognized literature and generally accepted throughout the medical community. This proposed definition is fully endorsed and supported by Opioid Workgroup. This definition creates a period of time in which a physician will

be allowed to prescribe opioids for more than a 10-day period for a condition, injury, or disease not already excepted under HB 2174, if the standard of care permits, and allow for an appropriate period for such treatment without the requirements related to chronic pain applying. Paragraphs (11) - (14) are re-numbered accordingly.

Section 170.3 amendments are proposed pursuant to §481.0764 of the Texas Controlled Substances Act, which mandates a review of the PMP prior to the issuance of a prescription for opioids, benzodiazepines, barbiturates, and carisoprodol.

The proposed amendments to §170.3 are as follows:

Section 170.3(1)(C) is amended so that a review of the PMP is mandatory rather than optional. Remaining proposed amendments are changes made for readability and represent other non-substantive re-wording necessitated by the primary changes in text.

Section 170.3(5)(E)(v) is amended so that language indicating an option of checking the PMP when conducting a periodic review of a patient's compliance is deleted. A physician must continue to review the PMP prior to issuing each and every prescription for opioids, benzodiazepines, barbiturates, and carisoprodol. The proposed deletion is not intended to change a physician's duty to review the PMP and represents a non-substantive re-wording of the section.

Section 170.3(7) is amended to clarify that documentation of the PMP check must be maintained in the patient's medical record.

Chapter 170, New Subchapter C, §170.9, Prescription Monitoring Program Check

The Texas Medical Board (Board) proposes adding to 22 TAC §170. et. seq., a new Subchapter C, Prescription Monitoring Program Check, in accordance with Sections 481.076, 481.0764, and 481.0765 of the Texas Controlled Substances Act. The purpose of the rule is to clarify when and under what circumstances a physician is required to check the PMP before issuing certain controlled substances.

The new Subchapter C adds one new section, §170.9, which contains five interrelated parts. The proposed language reflects the input and consensus of stakeholders.

New §170.9(1) provides a description of the types of physician-patient interaction and medical settings that require a PMP check. This portion of the rule also specifies that the check is required prior to and each time a prescription is issued for opioids, benzodiazepines, barbiturates, or carisoprodol to the ultimate user.

New §170.9(2) clarifies the types of physician-patient interaction and medical settings that do not require a PMP check.

New §170.9(3) clarifies that documentation of the PMP check is required. The language also clarifies that it is permissible to place a copy of the patient's PMP history in the patient's medical record to demonstrate the check was conducted as required when a prescription is issued for opioids, benzodiazepines, barbiturates, or carisoprodol to the ultimate user. This portion of the rule is the result of physician and stakeholder inquiry concerning the permissibility of using a copy of the PMP as an acceptable method to comply with the statute. This documentation method is proposed as acceptable, in addition to other appropriate forms and methods of documentation.

New §170.9(4) clarifies that physicians must perform the PMP check. This portion of the rule also specifies that physicians may allow certain other qualified individuals to check the PMP under Section 481.076(a)(5)(B) of the Health and Safety Code.

New §170.9(5) provides exceptions to the required PMP check in accordance with Section 481.0765 of the Texas Controlled Substances Act.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to clarify the requirements for treatment of pain with opioids, with due regard for potential complications, and to clarify requirements related to mandatory PMP checks, increasing public safety, health, and welfare. Providing such clarification while recognizing that some patients may experience pain that extends beyond an acute period, but resolves without the need for further treatment with opioids and within 90 days from the date of the initial prescription for opioids for the condition or injury, will increase the public's safety, health, and welfare, while minimizing certain costs to the patients and providers.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed. Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments 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 the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years the proposed rules are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule and there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

SUBCHAPTER A. PAIN MANAGEMENT 22 TAC §170.2, §170.3

The amendments 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 amendments are further proposed under the authority of Sections 481.07636, 481.076, 481.0764, and 481.0765 of the Texas Health and Safety Code.

No other statutes, articles or codes are affected by this proposal.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 18, 2020.

TRD-202001180

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: May 3, 2020

For further information, please call: (512) 305-7016

SUBCHAPTER C. PRESCRIPTION MONITORING PROGRAM CHECK

22 TAC §170.9

STATUTORY AUTHORITY

The new rule 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 amendments are further proposed under the authority of Sections 481.07636, 481.076, 481.0764, and 481.0765 of the Texas Health and Safety Code.

No other statutes, articles or codes are affected by this proposal.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 18, 2020.

TRD-202001183

Scott Freshour

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Texas Medical Board

Earliest possible date of adoption: May 3, 2020

For further information, please call: (512) 305-7016

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