

**Department of State Health Services
Council Agenda Memo for State Health Services Council
May 18 - 19, 2016**

Agenda Item Title: An amendment to a rule concerning health authorities.

Agenda Number: 3.d.

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Office of Public Health, within the Division for Regional and Local Health Services, provides support to DSHS Health Service Regions and in jurisdictions where local health entities have an appointed local health authority (LHA) to carry out public health law on behalf of DSHS. The Office of Public Health provides the following services to LHAs:

- Coordination and recruitment through DSHS Health Service Regional offices
- Education and training
- Public health law guidance and support
- Technical public health medical support where requested, through DSHS Regional Medical Directors

General revenue funds support activities when available. There is no federal funding for Division activities.

Summary:

The purpose of the amendment is to replace references to the "Board of Health" with references to the "department" and to correct references to subsections in a previous rule revision.

The rule also complies with the four-year review of agency rules required by Government Code, §2001.039.

Key Health Measures:

The expected outcome associated with the rule changes would be to clarify the expectations to the public and local government on the duties required of LHAs charged with implementing or enforcing public health law.

No data is routinely collected by the agency, but ongoing interaction with LHAs exists in the Health Service Regions, and through an annual conference for LHAs. The Office of Public Health will monitor these interactions to ensure that there are no unintended consequences due to the rule amendment and to determine if further clarification of the rule is needed.

Summary of Input from Stakeholder Groups:

The Office of Public Health, Division for Regional and Local Health Services, was contacted by the Office of General Counsel regarding the inconsistencies within this rule and was consulted on recommended changes to bring the rule into compliance.

DSHS plans to send the draft rules to the Regional Medical Directors and the LHAs for feedback. The recommended changes are non-substantive with respect to roles and responsibilities of LHAs in carrying out their duties, so negative comments are not expected. Stakeholders will have additional opportunity to comment on the rules during the 30-day public comment period when the rules are published in the *Texas Register*.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item # 3.d.

Approved by Assistant Commissioner/Director: Dave Gruber **Date:** April 21, 2016

Presenter: David Gruber **Program:** Division for Regional and Local Health Services **Phone No.:** 512-776-6209

Approved by CPEA: Carolyn Bivens **Date:** April 21, 2016

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 85. Health Authorities
Subchapter A. Local Public Health
Amendments §85.1

Proposed Preamble

The Executive Commissioner of Health and Human Services, on behalf of the Department of state Health Services (department), proposes an amendment to §85.1, concerning health authorities.

BACKGROUND AND PURPOSE

The Local Public Health Reorganization Act, Health and Safety Code, Chapter 121, governs health authorities. A health authority performs duties necessary to implement and enforce laws to protect the public health and as prescribed by the department. The purpose of the amendments is to replace references to the Board of Health with references to the department and to clarify the rule by correcting references to subsections in a previous rule revision.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 85.1 has been reviewed, and the department has determined that reasons for adopting the section continues to exist because a rule on this subject is needed to administer health authorities effectively.

SECTION-BY-SECTION SUMMARY

The amendments to §85.1 are nonsubstantive changes needed to clarify the rule. The amendments to §85.1(b)(2) and (f) replace references to the "Board of Health" with the "department." The proposed change in reference to the department is in compliance with Senate Bill 219, 84th Legislature, 2015, which revised Health and Safety Code, Chapter 121.

The amendment to §85.1(c) deletes an unnecessary reference to subsection (d) from a previous rule revision. The amendment to §85.1(i) replaces a reference to subsection (i) with a reference to subsection (h) to clarify that when a new health authority has been appointed, the person must take the official oath and file a copy of the oath and appointment with the appropriate regional office as required by subsection (h).

FISCAL NOTE

Ms. Beverly Pritchett, Director for the Office of Public Health, has determined that for each year the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Pritchett has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with this rule. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Pritchett has also determined that for each year of the first five years the rule is in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the rule will be a decreased risk of illness through effective statewide local monitoring and reporting of reportable conditions and enforcement of public health law.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department 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

Comments on the proposal may be submitted to Dan Smith, Office of Public Health, Division for Regional and Local Health Services, Department of State Health Services, Mail Code 1908, P.O. Box 149347, Austin, Texas 78714-9347 or by email to dan.smith@dshs.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §121.024, which requires local health authorities to perform each duty that is necessary to implement and enforce a law to protect the public health or as prescribed by the department; and Government Code, §531.0055, and 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 the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment implements Health and Safety Code, Chapters 121 and 1001; and Government Code, Chapters 531 and 2001.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

SUBCHAPTER A. LOCAL PUBLIC HEALTH.

§85.1. Health Authorities.

(a) A health authority is a physician appointed under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121, by the governing body of a city, county, or public health district to administer the state and local laws relating to public health.

(b) A health authority must be appointed in a municipality or county that has established a local health department or public health district.

(1) (No change.)

(2) If a non-physician serves as the director of a local health department or public health district, the director shall appoint a physician to serve as the health authority within the jurisdiction of such local health department or district subject to the approval of the governing body of the local health department or public health district. No action is required by the department **[Board of Health (board)]** to further approve the appointment.

(c) A health authority may be appointed, but is not required to be appointed, in a municipality or county that has not established a local health department or public health district **[unless it falls under subsection (d) of this section]**. The governing body of the municipality or the commissioners court of the county may appoint the health authority within its jurisdiction.

(d) - (e) (No change.)

(f) A regional director of the department may perform some or all of the duties of a health authority if an appointed health authority fails to perform duties prescribed by the board in this section. At the request of the appointing authority, a regional director may serve as a health authority because of the absence or incapacity of the appointed health authority. No action by the department **[board]** is necessary to further approve a regional director's performance or service.

(g) - (h) (No change.)

(i) If a health authority ceases to hold office for any reason, the appointing authority shall immediately notify the department and appropriate regional director. When a new health authority has been appointed, the person will take the action outlined in subsection (h) **[(i)]** of this section and notify the appropriate regional office of the change.