

## Texas Regulatory Developments: Hospital Licensing and Pain Management Rules

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### Hospital Licensing

The Texas Department of State Health Services (TxDSHS) proposed new hospital licensing rules on December 15, 2006. The public hearing for the proposed rules will be held in Austin on January 10 from 10am until 11am, and written comments may be submitted to TxDSHS until February 15. The proposed rules implement the following laws from the 79th Legislative Session:

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| S.B. 872—niche hospital ownership reporting;          | H.B. 677—sexual assault emergency services.         |
| S.B. 316—information provided to parents of newborns; | H.B. 1718—nurse duties in an operating room.        |
| S.B. 1330—immunization of elderly persons.            | H.B. 2471—single license for multiple hospitals.    |
| S.B. 1525—nurse safe patient handling practices.      | H.B. 3357—hospital license application information. |

Niche Hospitals. The proposed rules would require separate license applications for niche hospitals. Any physician owners of niche hospitals would be required to report their names and medical license numbers on an initial or renewal license application. A niche hospital is defined as a hospital that classifies at least two-thirds of the hospital's Medicare patients in two major diagnosis related groups (DRGs) or in surgical DRGs; or specializes in cardiac, orthopedics, surgery, or women's health.

Multiple Hospitals Under One License. The proposed rules would allow multiple hospital locations to operate under one hospital license. In order to obtain a multiple hospital license, all inpatient services must be under control of the same governing body, all hospitals must report to a chief executive officer, a single chief medical officer must exist for all hospital locations, and all hospitals must be within 30 miles of the primary hospital location. All hospital locations must also provide emergency services and meet the operating requirements of an individual hospital. If the main hospital is accredited by a CMS-approved organization, the accreditation must extend to all additional hospitals under the license. A registered nurse would be required to be on duty in each licensed hospital location at all times. Separate licenses will not be issued for ambulatory surgery centers on the same premises as a hospital.

Anesthesia Services. The proposed rules would allow anesthesia services to be provided under the direction of a physician by anyone approved by the facility and authorized by law, as defined by the Medical Practice and Nursing Practice Acts. All approvals or delegations of anesthesia services must be documented along with the training, experience, and qualifications of the person providing anesthesia services. Hospitals would be responsible for and must document all anesthesia services administered.

Emergency Services Staffing and Supplies. The proposed rules would require emergency services in general hospitals to be physically staffed with qualified personnel 24 hours a day if the emergency treatment area is not contiguous with hospital areas staffed by qualified personnel on a 24-hour basis. New emergency physician availability and on-call requirements vary by the location and type of hospital. Age-appropriate emergency supplies

and equipment must be available. Other newly required emergency equipment includes stabilization devices for cervical injuries, blood pressure monitoring equipment, pulse oximeter or a similar device measuring blood oxygenation. Hospitals must have policies in place which ensure better coordination with local authorities for the hospital's emergency preparedness plans.

Sexual Assault Survivors. The proposed rules would require hospitals to develop policies and provide required services for the treatment and care of sexual assault survivors.

Medical Records. The proposed rules would require medical record entries to be legible, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided. All orders must be dated, timed, and authenticated as soon as possible (promptly for verbal orders) by the prescriber or another practitioner who is responsible for the care of the patient and who has been credentialed by the medical staff and granted privileges which are consistent with the written orders. H&P examinations completed within the 30 days before admission require a documented, updated examination with within 24 hours of admission.

Quality Assessment and Performance Improvement. The proposed rules would require hospitals to adopt changes to their quality of care assessment programs to include data collection and performance tracking to ensure continued improvement and a reduction in medical errors.

Renal Dialysis Services. The proposed rules would significantly increase requirements for furnishing renal dialysis services, including requirements for equipment, water treatment, and dialysis-related procedures.

Prenatal and Postpartum Care. The proposed rules would require hospitals providing prenatal care to have written policies to ensure that proper information is provided to parents. Hospitals would be required to provide parents of newborn children with information concerning postpartum depression and other emotional trauma associated with pregnancy and parenting, including immunizations, screenings, and shaken baby syndrome.

Abuse of Employees. The proposed rules would require hospitals to establish written policies regarding verbal or physical abuse of hospital employees or contractors.

Vaccines for the Elderly. The proposed rules would require hospitals to establish policies on influenza vaccines for elderly persons to ensure they are informed of the availability and appropriateness of the vaccine.

Hospital Patient Transfer Policy. The proposed rules would prohibit rural referral center hospitals or hospitals with other special capabilities such as burn units, neonatal intensive care units, and shock-trauma units from refusing to accept an appropriate transfer of a patient from a transferring hospital if the receiving hospital has the ability to treat the patient.

The complete text of the proposed rules published in the *Texas Register* is available at <http://www.sos.state.tx.us/texreg/archive/December152006/PROPOSED/25.HEALTH%20SERVICES.html#106>.

## Pain Management

The Texas Medical Board adopted revised pain management rules on December 29, 2006. The rules became effective January 4, 2007. The revised rules emphasize that a physician does not violate the Medical

Practice Act by prescribing narcotics or other medications for the treatment of pain, provided the physician has taken a medical history, performed a proper physical examination, and created adequate medical record documentation. For chronic pain patients, the physician must document additional information, such as: scope and effect of current pain; pain and substance abuse history; and rationale for the patient's treatment plan and the prescription of drugs.

The revised rules also set forth standards for good medical practice in the treatment of pain with respect to:

- Informed consent;
- Written agreements for patient compliance;
- Periodic reviews of treatment plans; and
- When to seek outside consultations or referrals.

The Board's evaluation of physician conduct in not adhering strictly to its guidelines will consider:

- Treatment objectives, including any improvement in functioning;
- Pharmacological recognition of drugs used as appropriate to the diagnosis;
- The patient's individual needs; and
- Some types of pain cannot be relieved.

The complete text of the proposed rules on September 22, 2006 and final adoption of the rules without changes on December 29, 2006 in the *Texas Register* is available at <http://www.sos.state.tx.us/texreg/archive/September222006/PROPOSED/22.EXAMINING%20BOARDS.html#42> and <http://www.sos.state.tx.us/texreg/archive/December292006/adopted/22.EXAMINING%20BOARDS.html#722>.

If you would like more information about implementing the new pain management rules or assistance in submitting comments to TxDSHS regarding the proposed hospital rules, please contact one of the attorneys listed below in the Haynes and Boone Health Care Practice Group.

Stephen P. Allison  
(210) 978-7416  
[stephen.allison@haynesboone.com](mailto:stephen.allison@haynesboone.com)

Stacy L. Brainin  
(214) 651-5584  
[stacy.brainin@haynesboone.com](mailto:stacy.brainin@haynesboone.com)

Felicity A. Fowler  
(713) 547-2072  
[felicity.fowler@haynesboone.com](mailto:felicity.fowler@haynesboone.com)

Earl Harcrow  
(817) 347-6646  
[earl.harcrow@haynesboone.com](mailto:earl.harcrow@haynesboone.com)

David N. Heard  
(214) 651-5563  
[david.heard@haynesboone.com](mailto:david.heard@haynesboone.com)

Michael L. Hood  
(214) 651-5673  
[michael.hood@haynesboone.com](mailto:michael.hood@haynesboone.com)

Jeffrey P. King  
(512) 867-8413  
[jeff.king@haynesboone.com](mailto:jeff.king@haynesboone.com)

Lewis A. Lefko  
(214) 651-5608  
[lew.lefko@haynesboone.com](mailto:lew.lefko@haynesboone.com)

Thomas W. Mayo  
(214) 651-5768  
[thomas.mayo@haynesboone.com](mailto:thomas.mayo@haynesboone.com)

Bill Morrison  
(214) 651-5018  
[bill.morrison@haynesboone.com](mailto:bill.morrison@haynesboone.com)