

# TEXAS OPTOMETRY BOARD

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TO: Erin Bennett, Regulatory Compliance Division Director  
Office of the Governor

FR: Kelly Parker, Executive Director  
Texas Optometry Board 

DATE: June 16, 2022

SUBJECT: New Rule - 22 TAC 273.17 Emergency Management.

The Texas Optometry Board (Board) has proposed new rule 22 TAC 273.17 Emergency Management, as published in the May 27, 2022 issue of the *Texas Register* (47 TexReg 3103). The proposed rule may affect market competition and is submitted to the Regulatory Compliance Division for review. The PDF version of the preamble and text of the proposed rule as published in the *Texas Register* are attached to this Memorandum.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Texas Optometry Board respectfully provides answers to the following questions:

## 1. Briefly describe the proposed rule.

The Board proposes new §273.17 Emergency Management. This proposed new rule requires all initial applicants for licensure provide proof of successful completion of a cardiopulmonary resuscitation (CPR) or basic life support (BLS) course prior to receiving a license beginning January 1, 2023. This proposed new rule also requires all active licensees to provide proof of successful completion of a CPR or BLS course prior to the renewal of license each cycle beginning January 1, 2023.

## 2. What is the purpose of the proposed rule?

This new rule will ensure that active licensees are prepared to manage an emergency situation. Optometry students are required to be certified in either CPR or BLS to treat patients in optometry school clinics. It is also estimated that approximately half of the active licensee population currently maintains a CPR or BLS certification. This new rule simply requires all active licensees have and maintain emergency management certification in the best interest of public health and safety.

**3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.**

The Board considered this issue for quite some time before proposing this new rule. Almost each Board Member has experienced an emergency situation in their office. The emergency situation was not directly related to optometric services but did occur in their office (e.g., cardiac event in the waiting room). Emergencies can strike at any time, and it may take several minutes before help arrives. Therefore, CPR or BLS certification gives licensees added safety tools to manage a situation until an emergency response team arrives at a location.

It is also important to point out that as individuals' age, their vision changes which means more frequent trips to the optometrist or therapeutic optometrist due to eye health issues. Optometrists and therapeutic optometrists treat patients of all ages but often see a higher volume of patients that are middle aged or older including patients in their senior years. Optometrists and therapeutic optometrists often see older patients for conditions such as presbyopia, cataracts and glaucoma. Based on these facts alone, it can be surmised that optometrists and therapeutic optometrists may be more likely to encounter an emergency situation because of the age of the population they regularly treat.

Most healthcare professionals are required to have some sort of emergency response training. Other types of professionals that require CPR or BLS certification include police officers, firefighters, coaches, and even flight attendants. Therefore, the notion that optometrists and therapeutic optometrists in a healthcare office be certified in either CPR or BLS is appropriate and in the best interest of public protection.

**4. Describe the legal authority for the proposed rule.**

**(a) Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).**

New rule 22 TAC 273.17 is proposed under §351.151 of the Optometry Act. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

**(b) Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the proposed rule is within the scope, and reference the applicable state statute(s).**

Yes. The Board has specific statutory authority granting this agency the ability to determine qualifications for licensure and renewal of licensure.

**5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.**

As mentioned above, the Board has been very thoughtful about this requirement. The requirement is not meant to burden the licensees but instead is intended to increase protection of the public.

Board staff held a stakeholder meeting on February 1, 2022 to gain feedback regarding this possible new requirement. The overall stakeholder feedback was positive and supportive of the requirement.

Over the past few years, the Board has also collected information through the renewal process. Specifically, licensees were asked to designate whether they are CPR certified during the renewal process. Licensees have also been granted continuing education credit for CPR certification. Based on the 2021 renewal season, almost half of the licensees renewing reported having CPR certification.

The Board's Rules Committee considered all information at its May 5, 2022 meeting and moved the recommendation to the full Board for a vote on May 6, 2022. The Board considered the information at the May 6, 2022 meeting and voted unanimously to propose the new rule. No public comments were made at either meeting.

**6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address Board meeting.**

Generally speaking, the harm the entire rule is intended to address is to ensure that all active licensees, involved in direct patient care, are prepared and competent to handle an emergency situation.

**7. Do any less restrictive alternatives to the proposed rule exist for addressing the same harm? If so, include a comparison of the proposed rule to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.**

The less restrictive alternative would be to recommend that active licensees obtain CPR or BLS certification but not require same for licensure or renewal of licensure. However, a less restrictive approach does not guarantee the same level of protection for patients in an optometric office in an emergency situation. The requirement is not meant to burden the licensees but instead is intended to increase protection of the public.

**8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).**

It creates a barrier to market participation in the state.

It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

It both creates a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

\*Note, the Board does not believe this new rule will create a barrier to market participation. Instead, the Board simply acknowledges that it may be viewed by some as a barrier and answered the question for that reason. The intention of the rule is to protect the public and not affect market participation in the state.

**9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.**

The Texas Optometry Board is charged with licensing, regulating and enforcing the Texas Optometry Act in the best interest of public health and safety. The Board opines that this rule shall not impact market competition and is within their authority to determine the requirements and qualifications for an initial license and renewal of a license.

**10. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?**

No.

**11. Does the proposed rule relate to a matter on which there is pending litigation or a final court order?**

No.

**12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule?**

No

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 22. EXAMINING BOARDS

### PART 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 273. GENERAL RULES

##### 22 TAC §273.17

The Texas Optometry Board (TOB) proposes new §273.17 Emergency Management. This proposed new rule requires all initial applicants for licensure provide proof of successful completion of a cardiopulmonary resuscitation (CPR) or basic life support (BLS) course prior to receiving a license beginning in January 1, 2023. This proposed new rule also requires all active licensees to provide proof of successful completion of a CPR or BLS course prior to the renewal of license each cycle beginning in January 1, 2023. This new rule will ensure that active licensees are prepared to manage an emergency situation. Optometry students are already required to be certified in either CPR or BLS and approximately half of the current active licensee population is already CPR or BLS certified.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state and local governments as a result of proposing this new rule.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is enhanced patient safety during optometric appointments and assurance that a patient is properly taken care of in an emergency situation.

Legal counsel for the Board has reviewed the new rule and has found it to be within the Board's authority to propose.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities because of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory and Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the

proposed rule 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 Texas Government Code §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of a new employee position or the elimination of an existing employee position.

#### PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Proposed §273.17 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151.

No other sections are affected by this proposal.

#### §273.17. Emergency Management.

##### (a) Definitions.

(1) Cardiopulmonary resuscitation (CPR) is an emergency lifesaving procedure performed when the heart stops beating. A certification in CPR includes training and successful course completion in cardiopulmonary resuscitation, AED and obstructed airway procedures for all age groups according to recognized national standards.

(2) Basic Life Services (BLS) is a basic level of pre-hospital and inter-hospital emergency care and non-emergency medical services care. A certification in BLS includes training and successful course completion in airway management, cardiopulmonary resuscitation (CPR), control of shock and bleeding and splinting of fractures, according to recognized national standards.

(b) Requirement for Initial License. Commencing effective January 1, 2023, all applicants for initial licensure shall provide proof of successful completion of a CPR or BLS certification prior to receiving a license.

(c) Requirement for Renewal of License. Effective January 1, 2023, all active licensees shall provide proof of successful completion of a CPR or BLS certification for renewal of a license each renewal cycle. Licensees may be credited two general hours of continuing education for CPR certification and four general hours of continuing education for BLS certification.

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 May 16, 2022.

TRD-202201879

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 26, 2022

For further information, please call: (512) 305-8502



## TITLE 28. INSURANCE

### PART 4. STATE OFFICE OF RISK MANAGEMENT

#### CHAPTER 251. STATE EMPLOYEES--WORKERS' COMPENSATION

##### SUBCHAPTER E. RISK ALLOCATION PROGRAM

###### 28 TAC §251.503

The State Office of Risk Management (Office) proposes an amendment to 28 TAC §251.503. The change concerns updating the reference to the Office's risk management guidelines, published by the Office for implementation and use by covered state agencies. The name referenced currently is the Risk Management for Texas State Agencies (RMTSA). The Office has renamed the guidelines to the Texas Enterprise Risk Management (TERM) Guidelines.

The Office proposes this name change to ensure consistency with current policy and the published rules.

**FISCAL NOTE.** Deea Western, Chief of Legal Services and General Counsel, has determined that for each of the first five years the proposed rule is in effect, there will not be a fiscal impact on state or local government as a result of the amendment, as proposed.

**PUBLIC BENEFIT/COST NOTE.** General Counsel has also determined that for the first five-year period the amendment is in effect, the public benefit will be more user-friendly and thus more readily accessible Office 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 amendment, as proposed. There is no effect on local economy for the first five years that the proposed rule amendment is in effect; therefore, no local employment impact statement is required under Government Code, §§2001.022 and 2001.024(a)(6).

**ENVIRONMENTAL IMPACT STATEMENT.** The Office has determined that the proposed amendment does not require an environmental impact analysis because the proposed rule amendment is not a major environmental rule under the Government Code, §2001.0225.

**COSTS TO REGULATED PERSONS.** The proposed amendment does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSI-**

**NESSES, AND RURAL COMMUNITIES.** General Counsel has also determined that there will be no impact on rural communities, small businesses, or microbusinesses as a result of implementing the amendment and, therefore, no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Office staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2001.0221. During the first five years that the amendment would be in effect, the proposed amendment: will not eliminate or create a government program, the proposed amendment will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amended rule would be in effect, the proposed amendment will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** The Office has determined that no private real property interests are affected by this proposal and 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.

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed rule amendment may be directed to Deea Western, General Counsel, via email at [Deea.Western@sorm.texas.gov](mailto:Deea.Western@sorm.texas.gov), or mail, P.O. Box 13777, Austin, Texas 78711-3777. Comments will be accepted for 30 days after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendment is proposed under: Texas Labor Code §412.031 which requires the Office board to "adopt rules as necessary to implement this chapter and Chapter 501, including rules relating to reporting requirements for a state agency," §412.041(c)(3) requiring the SORM director to prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501; and under Texas Labor Code §412.0125(b)(3) which requires the Office to adopt, as part of return-to-work coordination services, rules that set standards and provide guidance to a state agency interacting with an injured employee.

**CROSS REFERENCE TO STATUTES AFFECTED.** Texas Labor Code §§412.031 and 412.0125(b)(3).

§251.503. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) [(3)] **Claims Cost**--The net amount of payments made on claims, minus subrogation and restitution costs, as reported by the Office.

(2) [(4)] **Covered Agency**--A department, board, commission, or institution of this state with workers' compensation coverage under Chapter 501 of the Texas Labor Code (Labor Code).

(3) [(5)] **Covered FTE**--An FTE covered under workers' compensation coverage under Chapter 501 of the Labor Code.