

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes amendments to §651.1-3, which specifies the fees charged by the Council, including fees for facility registration applications and renewals, Occupational Therapy Late Renewal Fee and License Restoration Fee, and a new Pre-Licensure Approval Letter administrative fee.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners (Executive Council), has determined that, as a result of the amendments, there will be a fiscal impact to facilities which are registered with the Executive Council; Occupational Therapist and Occupational Therapy Assistant licensees who do not renew timely or must restore their licenses; and potential applicants with a criminal history, who desire a pre-licensure approval letter from the Physical Therapy Board or Occupational Therapy Board.

Mr. Maline has also determined that for the first five-year period this amendment is in effect there will be no additional costs to state or local governments as a result of enforcing or administering this amendment.

The proposed amendment to §651.1(h) and (i), relating to fee changes to Late Fees Renewal (licensees) and License Restoration Fee for all licensees, is necessary to implement HB 1785, 81<sup>st</sup> Legislature, Regular Session, which amends §454.252-253, Occupations Code. Prior to the amendment, a licensee with an expired license paid a late fee tied to an outside variable – the national examination fee. The expired license late fee will now be tied to the license renewal fee, which is set by the agency. The current cost to take the NBCOT national examination is \$420. The two year renewal fee for an Occupational Therapist license is \$217, and it is \$167 for an Occupational Therapy Assistant license. The penalty cost for a late renewal and the license restoration fee will be a significantly reduced fee for all licensees under the new rule.

The proposed amendment to §651.3 (h), relating to the Pre-Licensure Approval Letter, is necessary to implement HB 963, 81<sup>st</sup> Legislature, Regular Session. HB 963 amends Chapter 53, Occupations Code by adding Subchapter D. This directs licensing authorities to evaluate a perspective licensee's criminal background, and issue a criminal history evaluation letter if requested by a perspective licensee. New Section 53.105 states that "A licensing authority may charge a person requesting an evaluation under this subchapter a fee adopted by the authority. Fees adopted by a licensing authority under this subchapter must be in an amount sufficient to cover the cost of administering this subchapter." The Executive Council staff has estimated that \$50 per investigative case is a sufficient amount to cover costs based on similar activities in the agency.

The proposed amendments to §651.1-2, relating to fee changes to facility registration applications and renewals, are necessary for the Executive Council to utilize revenue, as provided in Article VIII and Article IX of the General Appropriations Act (Senate Bill 1, 81<sup>st</sup> Legislature, Regular Session). The revenue is contingent upon the Executive Council assessing fees sufficient to generate \$129,185 in additional revenue during the 2010 - 2011 biennium. Under the current fee structure, the Executive Council will not generate enough revenue during the 2010 - 2011 biennium to meet the amount necessary to access the contingent revenue, and so must increase fees.

The public benefit anticipated as a result of adopting these amendments will be the Executive Council's ability to better protect the health, safety and welfare of the citizens by utilizing additional funding for administration and enforcement of the Physical Therapy and Occupational Therapy Practice Acts and rules. The administration and enforcement of the applicable laws includes the investigation of consumer complaints, on-site compliance checks, and pursuing action against persons who choose to endanger the health, safety and welfare of the citizens by violating the two boards' practice acts and rules.

The 80th Texas Legislature (2007) adopted House Bill 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses by the amendments to §651.1(h) and (i), and §651.3(h), as these fees apply to individuals and not businesses. Further, with one exception, fees are reduced. Therefore an economic impact statement or regulatory flexibility analysis is not required for these amendments. However, the amendments to §651.1(j), (k), (l), and (m), and §651.2(k), (l), (m), and (n) will cause an adverse economic impact on some small businesses (registered facilities) that provide physical and/or occupational therapy services. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis follows.

## ECONOMIC ANALYSIS

The Executive Council registers facilities in which physical therapists and occupational therapists practice. The facilities listed in Subtitle B, Title 4, Health and Safety Code are exempt from registration with the Executive Council. Since the agency does not collect data concerning employee numbers or gross income on its registered facilities, we must make assumptions on the number of small and micro businesses it regulates. A second assumption is that those owners with one or two facilities can be categorized as having micro businesses, and that the majority of the remaining owners regulated by the agency are small businesses. The owners who register the most facilities (approximately 10 – 15) tend to be corporations, some Texas owned and some not.

The Executive Council has 34 different facility fee codes and amounts, and there are six different categories of facilities – PT Primary, PT Additional, OT Primary, OT Additional, OT Linked, and OT Additional Linked. There is a different fee amount associated with each of these categories, and the application fee and renewal fees for each category are also different. As the fee structure has evolved and grown more complex over the past 15 years, the attendant confusion by facility owners has also grown. The Executive Council, with the PT and OT boards' concurrence, is taking this opportunity to simplify the fee structure, by making all application fees and renewal fees the same, and merging the different facility categories. Twelve existing categories are being reduced to one, and twelve different application and annual renewal fees ranging from \$30 to \$314 are being changed to just one fee - \$215. See Chart 1 below.

Since the agency does not collect data concerning employee numbers or gross income on its registered facilities, this analysis is based on several assumptions about the small and micro businesses it regulates. One assumption is that the majority of the owners of the 3,463 facilities registered by the agency are self-employed therapists, and their businesses are defined as 621340 on the North American Industrial Classification System (NAICS). The classification of 621340 covers "Offices of Physical, Occupational and Speech Therapists, and Audiologists."

Of the total number of facilities registered as of 9/3/09, owners with one or two facilities comprise 1,416 (87%) of the total 1,621 owner population. Generally, the economic impact of the facility fee change on 974 of the owners with either one or two facilities (60% of the total number of owners) will be a net savings. 503 owners with either two or three facilities (30% of the total number of owners) will have a total fee increase of approximately \$85 per year. The remaining 10% of owners – most of which we assume would be in the small business category - will see a greater increase in the registration fees; the new amount depending on the number and type of facilities

owned. Those owners who have more than two facilities will pay higher registration fees due to the leveling of the fees and higher number of facilities owned. Micro-businesses should be affected minimally if at all, and when they are, should not have a disparate effect compared to the regulated facility population. We used a worse case scenario in our computations, as they are based on using the renewal fee vs. application fee. The current application fees are larger than the renewal fees. We see no other impacts on small businesses other than the fee change. See Chart 2 below.

The proposed leveling of the fees achieves two goals: First, the overall fee increase will affect the least number of small business owners. Secondly, it will allow the consolidation and simplification of the facility registration fees by removing all categories of facilities but one. Consolidation eliminates the categories of additional, linked primary, and additional linked primary. There are also over 30 facility fee codes for facilities, and the proposed fee amendment will consolidate them into just two. During the past year, over 14% of the facility applications were sent to the agency with an incorrect fee amount. This resulted in an overpayment or underpayment that required refunds to owners of \$14,568 – an inconvenience and expense to both the facility owner and the agency. Fee leveling and facility category consolidation will streamline facility registration and prevent confusion over the correct amount owed.

## REGULATORY FLEXIBILITY ANALYSIS

All fee increases made by the Executive Council are in response to the special provisions written into every Appropriations Act, which states that designated regulatory agencies must collect sufficient fees, fines and other revenue to cover appropriations made to the agencies. If an agency fails to comply, its appropriations will be reduced to the amount collected. When provided additional revenue during a legislative session to maintain the protection and services required by its mission, the only way the Executive Council can comply with the Appropriations Act is to raise fees, or if given the option, demonstrate that the additional appropriations are covered by an overall increase of revenue; e.g., an expected increase in the licensee population or increase in number of annual renewals and applications.

The first alternative is to not increase fees at all, but instead to perform an analysis of potential revenue growth. The agency did this during the last biennium and was successful. However, there were different circumstances at the time that allowed that alternative; the agency required less revenue, unlike the current biennium.

The second option is to not raise fees at all. The consequences to the Executive Council under this option are as follows: The funds appropriated to the Executive Council for operations in the FY2010/2011 biennium will be reduced by \$129,185, or 6% of the General Revenue appropriated funds. This reduction will have a negative impact on agency operations and ability to perform its mission of licensing and regulating the professions of Physical Therapy and Occupational Therapy in Texas. Specific areas affected will be employee retention and efficiency, travel by board members and investigators, and information technology upgrades. The Executive Council did not want to take this option.

The third option is to increase fees on licensees instead. The last time fees were increased by the agency, a large number of "other" fees were increased, such as administrative fees. The long range plan for fee increases by the Executive Council is to avoid exclusively raising fees on a given sub-population (licensees, applicants, or facilities) of those regulated, and to balance the fee increases for each sub-population. When it must raise fees, the Executive Council tries to alternate between raising fees on licensee renewals and/or applications, other administrative fees, and then facility fees. Besides the benefit of multi-years between fee increases for each sub-population, this simplifies the fee increases and keeps changes to licensees, owners, and staff to a

minimum. One option considered to address the need for increased agency funding was to increase fees on Physical Therapy and Occupational Therapy individual license renewals. This would result in an average fee increase of \$5 - \$8 per license renewal, dependent upon the type of license. The Executive Council did not take this course of action, due to the reasons given above.

Comments on the proposed amendments may be submitted to John Maline, Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: john.maline@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date this proposed amendment is published in the Texas Register.

The amendments are proposed under the Executive Council of Physical Therapy and Occupational Therapy Examiners Practice Act, Title 3, Subtitle H, Chapter 452, Texas Occupations Code, which provides the Executive Council with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Chart 1			
Facility Fee Codes	Number of Facilities	Current Fee	Proposed Fee
Registration of Main PT Facility	370	\$ 314.00	\$ 215.00
Registration of Additional PT Facility	183	\$ 124.00	\$ 215.00
Renewal of Main PT Facility	1121	\$ 306.00	\$ 215.00
Renewal of Additional PT Facility	671	\$ 126.00	\$ 215.00
Linked Additional Facility Application	122	\$ 30.00	\$ 215.00
Linked Facility Application	256	\$ 40.00	\$ 215.00
Linked Renewal Additional	272	\$ 30.00	\$ 215.00
Linked Renewal Primary	368	\$ 40.00	\$ 215.00
Registration of Main OT Facility	50	\$ 314.00	\$ 215.00
Registration of Additional OT Facility	23	\$ 124.00	\$ 215.00
Renewal of Main OT Facility	173	\$ 306.00	\$ 215.00
Renewal of Additional OT Facility	52	\$ 126.00	\$ 215.00

Chart 2				
Samples of Possible Owner Configurations	Total # owners	Fees Before	Fees After	Difference per Year
PT or OT facility (1 facility)	864	\$306	\$215	(\$91)
PT or OT w/ 1 addl. facility (2)	110	\$432	\$430	(\$02)
PT or OT w/ 2 addl. facilities (3)	61	\$558	\$645	\$87
PT and linked OT (2)	442	\$346	\$430	\$84
PT and linked OT w/ PT addl. (>3)	33	varies	varies	Varies
PT and linked OT w/ PT addl. & OT linked – 4 facilities *	53	\$502	\$860	\$358
PT and linked OT w/ PT addl. & OT linked – 6 facilities *	20	\$658	\$1,290	\$632
PT and linked OT w/ PT addl. & OT linked – other	38	varies	varies	Varies
* Examples of 2 largest populations within category				

## CHAPTER 651 FEES

### §651.1 Occupational Therapy Board Fees

- (a) Regular License.
  - (1) Occupational Therapist--\$120.
  - (2) Occupational Therapy Assistant--\$93.
  - (3) Application to retake the certification exam, OT--\$25.
  - (4) Application to retake the certification exam, OTA--\$25.
- (b) Temporary License.
  - (1) Occupational Therapist--\$70.
  - (2) Occupational Therapy Assistant--\$55.
- (c) Provisional License.
  - (1) Occupational Therapist--\$80.
  - (2) Occupational Therapy Assistant--\$75.
- (d) Active to Inactive Status.
  - (1) Occupational Therapist--a fee to equal one-half the renewal fee.
  - (2) Occupational Therapy Assistant--a fee to equal one-half the renewal fee.
- (e) Inactive Status to Active Status.
  - (1) Occupational Therapist--a fee equal to the renewal fee.
  - (2) Occupational Therapy Assistant--a fee equal to the renewal fee.
- (f) Renewal.
  - (1) Active.
    - (A) Occupational Therapist--\$217.
    - (B) Occupational Therapy Assistant--\$167.
  - (2) Inactive.
    - (A) Occupational Therapist--a fee equal to one-half the renewal fee.
    - (B) Occupational Therapy Assistant--a fee equal to one-half the renewal fee.
- (g) Retired Status
  - (1) Application --\$25.
  - (2) Renewal --\$25.
- (h) Late Fees Renewal (all licensees).
  - (1) Late 90 days or less--the renewal fee plus late fee which is equal to one-half of the ~~renewal certification examination~~ fee.
  - (2) Late more than 90 days but less than one year--the renewal fee plus late fee which is equal to the ~~renewal certification examination~~ fee.
- (i) License Restoration Fee for all licensees--a fee equal to the ~~renewal certification examination~~ fee.
- (j) Registration Fees, All Facilities - - \$215
  - (1) ~~Registration of First Facility--\$314.~~
  - (2) ~~Registration of Each Additional Facility--\$124.~~
  - (3) ~~Registration of Linked Primary Facility--\$40.~~
  - (4) ~~Registration of Linked Additional Facility--\$30.~~
- (k) Renewal Fees, All Facilities - - \$215
  - (1) ~~Renewal of Registration of First Facility--\$306.~~
  - (2) ~~Renewal of Registration of Each Additional Site--\$126.~~
  - (3) ~~Renewal of Linked Primary Facility--\$40.~~
  - (4) ~~Renewal of Linked Additional Facility--\$30.~~
- (l) Late Fees--All Facilities
  - (1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.

- (2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.
- (m) Facility Restoration (all facilities)--Late one year or more--renewal fee(s) plus a restoration fee which is double the renewal fee.

**§651.2 Physical Therapy Board Fees**

- (a) Application/Permanent License.
  - (1) PT--\$170.
  - (2) PTA--\$116.
- (b) Application to Retake the Examination.
  - (1) PT--\$25.
  - (2) PTA--\$25.
- (c) Temporary License.
  - (1) PT--\$80.
  - (2) PTA--\$60.
- (d) Provisional License.
  - (1) PT--\$80.
  - (2) PTA--\$75.
- (e) Active to Inactive License.
  - (1) PT--a fee equal to one-half of the renewal fee.
  - (2) PTA--a fee equal to one-half of the renewal fee.
- (f) License Renewal.
  - (1) Active license
    - (A) PT--\$217.
    - (B) PTA--\$167.
  - (2) Inactive license. (Inactive license renewal fees are effective September 1, 2001)
    - (A) PT--a fee equal to one-half of the renewal fee.
    - (B) PTA--a fee equal to one-half of the renewal fee.
- (g) Inactive to Active License (Reactivation).
  - (1) PT--a fee equal to the renewal fee.
  - (2) PTA--a fee equal to the renewal fee.
- (h) Retired Status.
  - (1) Application--\$25
  - (2) Renewal--\$25
- (i) Late Fees--Renewal (all licensees).
  - (1) Late 90 days or less--the renewal fee plus a late fee equal to one-half of the examination fee.
  - (2) Late more than 90 days but less than one year--the renewal fee plus a fee equal to the examination fee.
- (j) License Restoration (all licensees, under the conditions set out in §341.6 of the Physical Therapy Board Rules)--a fee equal to the examination fee.
- (k) Facility Registration, **All Facilities--\$215**
  - ~~(1) First facility--\$314~~
  - ~~(2) Additional site--\$124~~
- (l) Facility Renewal, **All Facilities--\$215**
  - ~~(1) First facility--\$306~~
  - ~~(2) Additional site--\$126~~
- (m) Late Fees--All Facilities.
  - (1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.

(2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.

(n) Facility Restoration (all facilities)--renewal fee(s) plus a restoration fee that is double the renewal fee.

### **§651.3 Administrative Services Fees**

- (a) Verification/Transfer of Licensure--\$50.
- (b) Duplicate/Replacement License--\$30.
- (c) Duplicate Renewal Certificate/Wallet Card--\$30.
- (d) Duplicate of Facility Registration Certificate--\$30.
- (e) Reinstatement of Suspended or Revoked License--\$50.
- (f) Insufficient Funds Check Fee--\$25.
- (g) ACH Return Fee--\$25
- (h) Pre-Licensure Approval Letter--\$50**



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