

The Department of State Health Services (DSHS) has announced a moratorium on the issuance of sanctions relating to violations of current rules that regulate who can administer anesthesia in licensed ambulatory surgical centers.

DSHS currently is revising the administrative rules that govern services provided by hospitals, codified at Title 25, Texas Administrative Code (T.A.C.), Chapter 133. The revision will include an amendment of the rule that regulates the delivery of anesthesia services in hospitals, currently codified at 25 T.A.C. §133.41(a)(1). The rule currently limits the types of licensed health care professionals who can provide anesthesia services in hospitals. Similar provisions exist in the rules governing anesthesia services provided in licensed ambulatory surgical centers (ASC) codified at 25 TAC 135.11. The current rules have generated confusion over the authority of TDSHS and other state agencies to regulate the administration of anesthesia by licensed health professionals. DSHS intends to propose a revision to the ASC rules to delete the list of authorized health practitioners and replace it with a requirement that each ASC establish policies and procedures to ensure only qualified personnel administer that anesthesia. The rule also will have documentation requirements regarding delegation of anesthesia service.

The revision to the rule will be subject to public comment prior to final adoption. In the interim, DSHS will investigate alleged violations of the rule, but will not sanction an ASC that permits anesthesia services to be provided by a person other than the practitioners listed in the current rule, provided the anesthesia services are provided in compliance with all other laws, including the laws and administrative rules that regulate medical practices. DSHS reserves the right to take appropriate action if the health, safety or welfare of a patient or the public is adversely impacted by a violation of the current rule. All other rule violations are subject to sanctions, as determined by DSHS.

As part of the consolidation of the functions of four former health and human services agencies into a single state health agency, the Texas Health and Human Services Commission assumed statutory responsibility for rulemaking for DSHS. As part of that rulemaking authority and as rules are reviewed, reconsideration of their content and scope of agency authority may take place to ensure the rules align with the mission, policies and statutory authority of the new agency and the HHS enterprise.

Questions concerning this announcement should be directed to Nance Stearman in the Health Care Quality Section of TDSHS at 512/834-6752.