

**Department of State Health Services
Council Agenda Memo for State Health Services Council
April 10, 2008**

Agenda Item Title: Repeals and new rules concerning the Oral Health Improvement Services Program

Agenda Number: 4a

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The Oral Health Improvement Services Program is in the Specialized Health Services Section under the Division of Family and Community Health Services. As stipulated in the enabling legislation, Health and Safety Code, Chapter 43, rules must be adopted to govern the program, including prescribing the type, amount, and duration of oral health services to be provided.

The purpose of the program is to provide comprehensive oral health services to eligible individuals. Based on available funding and priority, oral health services may include dental surveillance, data collection and reporting; provision of preventive oral health services; provision of emergency oral health services; provision of comprehensive oral health services; and oral health promotion and education. Through currently available funding derived from state general revenue and federal grant dollars, central office staff and five regional dental teams consisting of a dentist and dental hygienist conduct dental surveillance, data collection and reporting, and provide preventive oral health services. These services are offered to eligible individuals, which are primarily pre-school and school-age children on the free and reduced lunch program in rural areas of the state who have limited or no access to preventive dental services.

Historically, the funds were allocated for the provision of preventive, emergency and comprehensive dental services as well as oral health promotion and education. However, beginning in State Fiscal Year (SFY) 2004, due to funding constraints, the emergency and comprehensive dental services portion and the health promotion and education portion of the program were not funded. The fee-for-services (emergency) treatment portion of this program was funded at approximately \$350,000 per fiscal year primarily for school-age children who were referred through the network of school nurses to DSHS. DSHS contracted with and paid vouchers submitted by local dentists to provide the treatment services. DSHS requested a Legislative Appropriations Request exceptional item (for the treatment services, excluding orthodontic services) for the 2006/07 and 2008/09 biennia, which was not funded, and it is not funded currently.

Summary: The rules comply with the four-year agency review required by Government Code, §2001.039. The purpose of the rules is to provide programmatic and legal structure to implement all programmatic services including the fee-for-service oral health care program for eligible low-income individuals who have no other source of dental care as funding is available. Although the rules have been rewritten, the primary changes reflect the provision of maximum flexibility allowed under the statute for the program to be implemented as appropriate, depending upon available funding and staff. Otherwise, the rules reflect revisions that primarily are technical changes and clean-up, and are not anticipated to be controversial.

Summary of Input from Stakeholder Groups: The department posted a draft of the Oral Health Program rules on the DSHS Oral Health Program website for stakeholders to access and review.

The department also conducted a conference call on February 21, 2008, in order to receive input and invited the following stakeholders: Medicaid Dental Provider Stakeholder Work Group, DSHS regional dental staff, the Texas Oral Health Coalition and local oral health coalitions, the Texas Dental Association (TDA), the Texas Academy of Pediatric Dentistry, Texas Academy of General Dentistry, and the Texas School Nurses Organization. Four stakeholders participated in the conference call on February 21. The comments received on the conference call were from a dentist member of the Medicaid Dental Provider Stakeholder Work Group (also a member of TDA), a DSHS regional dentist, and two members of the Texas Oral Health Coalition (Children's Oral Health Center, Dallas and Tarrant Counties). Stakeholders who were unable to attend were invited to submit written comments; no written comments were received. Below is feedback and questions from stakeholders who participated:

- Provide clarification regarding whether a contractor dentist could nominate an applicant for treatment services and also be the contractor dentist who provides the needed treatment services.
- How would the third-party nominators be knowledgeable of an applicant's economic condition or whether the planned treatment services would actually provide the oral health care needed?
- Related to recipient eligibility criteria, it was not clear that an applicant could be deemed eligible in one of three categories.
- Are there any age limitations for eligible recipients?
- What are the functions of the DSHS regional dental teams with regard to the oral health treatment services portion of the program?
- Are co-payments required of recipients?

Based on the stakeholder input and questions during the conference call and the responses from DSHS staff, no further changes to the rules were made.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #4a

Approved by Assistant Commissioner/Director: Evelyn Delgado **Date:** 3/18/08

Presenter: Jann Melton-Kissel, RN, **Program:** Specialized Health Services Section **Phone:** (512) 458-7111 ext. 2002
MBA

Approved by CCEA: Rosamaria Murillo **Date:** 3/14/08

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 49. Oral Health Improvement Services Program
New Subchapter A. General Provisions. §§49.1-§49.4
New Subchapter B. Recipient Participation. §§49.5-§49.9
New Subchapter C. Provider Participation. §§49.10-§49.15
New Subchapter D. Appeals Process. §§49.16-§49.18
Repeals, §§49.1-§49.15, §49.17

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department) proposes the repeal of §§49.1-49.15, and 49.17, and new Subchapters A-D, §§49.1-49.18, concerning the dental program authorized under Health and Safety Code, Chapter 43, the Oral Health Improvement Act.

BACKGROUND AND PURPOSE

The Oral Health Improvement Services Program (program) rules are used to administer the State Oral Health Program. When fully funded, the program can provide comprehensive oral health services to eligible individuals. Currently, only the dental surveillance, data collection and reporting, and preventive services are funded. The treatment services, which include emergency and restorative services but not orthodontic services, and oral health promotion and education, currently are not funded.

The purpose of the program is to provide comprehensive oral health services to eligible individuals. Based on available funding and priority, oral health services may include dental surveillance, data collection and reporting; provision of preventive oral health services; provision of emergency oral health services; provision of comprehensive oral health services; and oral health promotion and education. Through currently available funding derived from state general revenue and federal grant dollars, central office staff and five regional dental teams consisting of a dentist and dental hygienist conduct dental surveillance, data collection and reporting, and provide preventive oral health services. These services are offered to eligible individuals, which are primarily pre-school and school-age children on the free and reduced lunch program in rural areas of the state who have limited or no access to preventive dental services. Historically, the funds were allocated for the provision of preventive, emergency and comprehensive dental services as well as oral health promotion and education.

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). Sections 49.1- 49.15 and 49.17 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist, because rules on this subject are needed. Although the treatment, health promotion, and education portions of the program are not currently funded, retaining the rules allows the oral health treatment program to be implemented quickly if adequate funding is made available.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions. Section 49.1 describes the purpose and application of the rules. Section 49.2 sets forth the definitions used in the rules. Section 49.3 addresses the issue of program priorities and the fact that the provision of services is dependent upon funding. Section 49.4 indicates the methods the department may use to deliver services.

Subchapter B. Recipient Participation. Section 49.5 describes the application process for an individual to be prior authorized for oral health treatment services. Section 49.6 sets forth financial and residency requirements related to eligibility. Section 49.7 addresses the final eligibility determinant to receive oral health treatment services, which involves a dental examination. Section 49.8 addresses the criteria and process for denial, modification, suspension, and termination of oral health treatment services. Section 49.9 addresses a recipient's financial obligations and the potential for recovery of costs by the department.

Subchapter C. Provider Participation. Section 49.10 describes the criteria and requirements for providers to participate in the program. Section 49.11 describes the provider application and contracting process. Section 49.12 addresses the criteria and process for termination of a provider contract. Section 49.13 addresses the payment of a non-provider for emergency care. Section 49.14 describes process and requirements for payment of provider claims. Section 49.15 describes when administrative sanctions may be imposed against a provider.

Subchapter D. Appeals Process. Section 49.16 addresses the administrative review process for an applicant, recipient, or provider to appeal certain program actions and decisions. Section 49.17 sets forth the basis for the right to request a due process hearing by an applicant, recipient, or provider. Section 49.18 describes the due process hearing.

FISCAL NOTE

Ms. Jann Melton-Kissel, the Director of Specialized Health Services Section, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel also has determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. Interpretation of the rules determined that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Jann Melton-Kissel, also has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The anticipated public benefit is a clearly worded and succinct set of rules that will facilitate understanding by providers and recipients about benefits, services, rights and responsibilities associated with the Oral Health Improvement Services Program.

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 the 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 specially 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Dr. Linda M. Altenhoff, DDS, Department of State Health Services, P.O. Box 149347, MC-1938, Austin, Texas 78714-9347, 512/458-7111 (ext. 3001) or by email to Linda.Altenhoff@dshs.state.tx.us. 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 rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeals and new sections are authorized by 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; and Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals. The review of the rules implements Government Code, §2001.039.

The proposed repeal and new sections affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

Sections for repeal.

§49.1 Purpose

§49.2 Definitions

§49.3 Program Priorities

§49.4 Application Process

§49.5 Eligibility Requirements

§49.6 Denial, Modification, Suspension, and Termination of Services

§49.7 Procedures for Providing Services

§49.8 Providers

§49.9 Emergency Selection of Providers

§49.10 Payment for Services

§49.11 Coordination of Benefits and Recovery of Costs

§49.12 Appeals

§49.13 Confidentiality

§49.14 Gifts and Donations

§49.15 Nondiscrimination

§49.17 Income Guidelines

Legend: (Proposed New Rules)
Regular Print = Proposed new language

CHAPTER 49. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS.

§49.1. Purpose and Application.

(a) The rules in this chapter implement the Texas Oral Health Improvement Act, Health and Safety Code, Chapter 43 (Act). The Act authorizes the Department of State Health Services (department) to furnish oral health services to eligible individuals. Oral health services may include oral health promotion and education, preventive oral health services, and oral health treatment services to eligible low-income individuals.

(b) Subchapters B–D of this chapter apply only to the delivery of oral health treatment services under the department’s Fee-for-Service Dental Care Program.

§49.2. Definitions. The following words and terms, where used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--The Texas Oral Health Improvement Act, Health and Safety Code, Chapter 43.
- (2) Action--Denial, modification, suspension or termination of treatment services or participation rights of an applicant or a recipient of the program.
- (3) Administrative review--A secondary level of review available to applicants, recipients, and providers who want to resolve a conflict or appeal an administrative sanction or a denied claim.
- (4) Administrative sanctions--Penalties imposed on a provider who fails to comply with program rules, policies, procedures or standards, which may include recoupment or adjustment of payments, or payment hold.
- (5) Applicant--A person applying to receive oral health treatment services under the program, but for whom eligibility has not been established.
- (6) Business day--Normal department operating hours from 8:00 a.m.–5:00 p.m. Monday through Friday with the exception of state and federal holidays.
- (7) Commissioner--The Commissioner of the Department of State Health Services.
- (8) Conflict--The proposed modification, suspension or termination of a contract with a provider.

(9) Dentist--An individual licensed by the Texas State Board of Dental Examiners to practice dentistry in the State of Texas.

(10) Dentally accepted standards--Operating in accordance with the laws relating to the practice of dentistry and the rules of the Texas State Board of Dental Examiners and standards of practice.

(11) Department--Department of State Health Services.

(12) Eligible individual--An individual who meets the criteria necessary to receive oral health treatment services under the Act and the rules in this chapter.

(13) Emergency care--Oral health treatment services for relief of pain and infection, including extractions and basic restorative services to prevent premature loss of teeth.

(14) Manual--A compilation of policies, procedures, and instructions prepared by the department's Oral Health Program for the Fee-for-Service Dental Care Program to be used by providers of oral health treatment services. Participating providers will receive a copy of the Manual and any updates, changes, and amendments and must comply with its requirements during participation in the program.

(15) Non-provider--A dentist or physician licensed to practice under Texas state law but not currently under contract with the department to participate in the program.

(16) Oral Health Program (OHP)--The Oral Health Program of the department comprised of central office staff and regional dental teams.

(17) Oral health services--Preventive or treatment services affecting the structures of the mouth, including the hard and soft tissues such as teeth, jaws, gums, vestibule, tongue, cheeks, lips, floor and roof of the mouth, and adjacent masticatory structure, and oral health education and promotion activities.

(18) Other benefit--A benefit to which an individual is entitled, other than a benefit provided under the Act, for the payment of costs of oral health treatment services, including benefits available from:

(A) an insurance policy, group oral health plan, or prepaid oral care plan;

(B) Title XVIII or Title XIX of the Social Security Act, as amended (42 U.S.C. §1395 et seq. and 42 U.S.C. §1396 et seq.);

(C) the Veteran's Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) worker's compensation or any other compulsory employer's insurance program;

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state; or

(G) a cause of action for dental or oral health treatment services expenses or a settlement or judgment based upon the cause of action, if the expenses are related to the need for treatment services provided under the Act.

(19) Physician--An individual licensed by the Texas Medical Board to practice medicine in the State of Texas.

(20) Program--The department's Fee-for-Service Dental Care Program administered by the department's OHP, which provides oral health treatment services to eligible individuals.

(21) Provider--A person with whom the department contracts to provide oral health treatment services under the Act.

(22) Recipient--A person approved as eligible to receive oral health treatment services.

(23) State dental director--A Texas licensed dentist who serves as the manager of the OHP, or that person's designee.

(24) State fiscal year--The period from September 1 through August 31 of the following year.

(25) Support--The contribution of money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

(26) Third-party nominator--A person aware of an applicant's economic condition who refers the applicant to the program for services. Third-party nominators include school administrators, school nurses, social workers, city or county officials, public health clinics, community health centers, dentists, physicians, or hospitals or any other source acceptable to the Executive Commissioner of the Health and Human Services Commission.

§49.3. Program Priorities.

(a) The provision of any and all oral health services is subject to the availability of funds.

(b) The department determines at the beginning of each biennium the categories of persons that will have priority for oral health services under the program, based upon the funding that is available. The department may change program priorities at any time.

(c) Providers must comply with all policies, procedures, and requirements for participation, including program priorities, and the program Manual.

(1) The department adopts by reference the program Manual, including all related policies, procedures, and any updates, changes, and amendments.

(2) A copy of the Manual is given to each provider participating in the program and is available for public inspection during regular business hours at the department's headquarters at Department of State Health Services, Texas Health Steps Branch, Mail Code 1938, 1100 West 49th Street, Austin, Texas 78756.

(d) Based upon the availability of funds, program services may be made available in every health service region of the state. The department determines the amount of funds to allocate to a health service region, and may modify the allocation at any time. Program administration is carried out through the department's central office and health service regions.

§49.4. Methods of Delivering Services. Delivery of oral health services may be accomplished by any of the following methods.

(1) The department may provide or contract for oral health services, which may be limited to preventive services or oral health education and promotion activities.

(2) The department may contract with providers to participate in the program and provide oral health treatment services for eligible individuals. Requirements for provider participation and reimbursement are set forth in the program guidelines, instructions, and fee schedules in the Manual and related program policies and procedures.

SUBCHAPTER B. RECIPIENT PARTICIPATION.

§49.5. Application Process.

(a) An applicant for oral health treatment services must be referred to the program by a third-party nominator who knows the individual's economic condition.

(b) Each applicant for oral health treatment services must complete or cause to be completed an application form, which shall include the following information for the individual needing services:

(1) personal information, including name, address, birthdate, gender and ethnicity;

(2) a statement from the referring third-party nominator that the oral health treatment services are necessary to prevent or reduce the probability of pain, infection, or disease; and

(3) a statement by the applicant or the person responsible for the applicant's support that:

(A) services are requested;

(B) the applicant is a bona fide resident of Texas and the family income does not exceed the financial guidelines as required in §49.6 of this title (relating to Eligibility Requirements for Referral);

(C) the applicant is not eligible for another program or other benefit providing dental care; and

(D) the applicant or the person responsible for the applicant's support is financially unable to pay for all or part of the cost of the necessary oral health treatment services.

(c) Each applicant who will be referred for oral health treatment services, as described in §49.7 of this title (relating to Eligibility Requirements to Receive Oral Health Treatment Services), must have his/her application prior authorized in accordance with program policies and procedures, as defined in the Manual and any updates, changes, and amendments.

(d) The denial of any application must be in writing and must include the reason(s) for such denial. Unless the application is denied because program funds are reduced, curtailed, or unavailable, the individual applying for oral health treatment services has the right to an administrative review and a due process hearing in accordance with Subchapter D of this chapter (relating to Appeals Process).

(e) An individual has the right to reapply for program coverage at any time when there is a change of situation or condition.

§49.6. Eligibility Requirements for Referral.

(a) In order for a person to be eligible for referral for oral health treatment services, the applicant must meet the following criteria:

(1) the person must be a bona fide resident of Texas, which is a person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains a physical residence with an address within the state; and

(D) does not claim residency in any other state or country; or

(2) the person is:

(A) residing in Texas and his/her parent(s), conservator, guardian, or caretaker, with whom the person consistently resides, is a bona fide resident of Texas; or

(B) residing in Texas and is the legal dependent spouse of a bona fide resident.

(b) The person must establish a financial need for oral health treatment services, which is based on family income, in accordance with program policies, procedures, and the Manual.

(1) The family income used to determine eligibility is the gross annual income of the applicant and his/her spouse, if applicable, or the gross annual income of person(s) legally obligated to support the applicant;

(2) Gross annual income includes earned wages, pensions or retirement benefits, child support payments received, alimony, unemployment compensation, worker's compensation, income from rental properties, or any monies received on a regular basis for family support purposes; and

(3) Income guidelines are based on current United States Department of Agriculture (USDA) poverty guidelines for determining eligibility for free meals (e.g. school free lunch program guidelines), which are incorporated by reference.

§49.7. Eligibility Requirements to Receive Oral Health Treatment Services.

(a) Following prior authorization of an application in accordance with §49.5 of this title (relating to Application Process), an applicant will be referred for a dental examination to determine whether the applicant is eligible to receive oral health treatment services. With the exception described in §49.13 of this title (relating to Treatment Services by Non-providers), a prior authorized applicant will be referred to a provider for this examination.

(1) The examining provider must certify to the department that he/she has examined the applicant and that the applicant is eligible to receive oral health treatment services in accordance with program policies and procedures, program priorities, and the Manual.

(A) If the applicant meets the eligibility requirements to receive oral health treatment services, the provider will perform the services in accordance with program policies, procedures, and the Manual.

(B) If the applicant does not meet the eligibility requirements to receive oral health treatment services, the provider will be paid only for the examination services provided, in accordance with program policies, procedures, and the Manual.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the final determination concerning an applicant's eligibility to receive oral health treatment services is made by the state dental director, in accordance with program policies, procedures, and the Manual.

(b) The applicant's initial eligibility date shall be the date upon which the application was prior authorized, as described in §49.5 of this title and will be effective for the remainder of the

state fiscal year. Eligibility must be re-established for any subsequent state fiscal year in which oral health treatment services are sought, in accordance with the policies, procedures, and program priorities in effect at that time. To maintain eligibility for oral health treatment services throughout a state fiscal year, the individual must continue to meet the eligibility requirements set forth in §49.6 of this title (relating to Eligibility Requirements for Referral).

§49.8. Denial, Modification, Suspension, and Termination of Oral Health Treatment Services.

(a) Any person requesting or receiving oral health treatment services from the program may be notified that such services may be denied, modified, suspended, or terminated if:

- (1) information in the application is erroneous or falsified;
- (2) the person is not eligible;
- (3) required personal information is not provided;
- (4) obligated reimbursement to the program is not provided;
- (5) program funds are reduced or curtailed; or
- (6) program priorities are modified.

(b) The program will notify in writing the applicant or recipient or the person legally obligated to support the applicant or recipient of the action proposed to be taken and the reasons for such proposed action. The applicant or recipient shall have the right to an administrative review and/or a due process hearing in accordance with Subchapter D of this chapter (relating to Appeals Process) unless the action resulted from the reduction or cessation of program funds.

§49.9. Financial Obligations and Recovery of Costs.

(a) An individual is not eligible to receive oral health treatment services furnished by the Act to the extent that the individual or any person who has the legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) An individual who applies for or receives oral health treatment services furnished under the Act must inform the department at the time of application and at any time during a period of eligibility to receive oral health treatment services of any other benefit to which the individual or any person who has the legal obligation to support the individual may be entitled.

(c) An individual who has received oral health treatment services covered by some other benefit, or any person who has a legal obligation to support that individual, must reimburse the department to the extent of the oral health treatment services furnished when the other benefit is received.

(d) The eligibility requirement in subsection (a) of this section may be waived by the commissioner in certain individually considered cases where its enforcement will deny oral health treatment services to a class of otherwise eligible individuals because of conflicting state, local, or federal laws or regulations.

(e) The department may recover the cost of oral health treatment services provided under the Act from:

(A) a person who does not pay or reimburse the department as required by the Act and the rules in this chapter; or

(B) from any third party who has a legal obligation to pay other benefits and to whom notice of the obligation has been given.

(f) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County, Texas, on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date the department is reimbursed pursuant to a judgment in favor of the department.

SUBCHAPTER C. PROVIDER PARTICIPATION.

§49.10. Provider Participation Requirements. Providers must meet the following criteria in order to participate in the program:

(1) agree to comply with all program policies, procedures, rules and requirements, and the Manual;

(2) agree to accept program fees as payment in full;

(3) treat all applicants and recipients without discrimination;

(4) ensure that program recipients or persons legally responsible to support program recipients are not billed for the difference between the provider's regular fees and those paid by the program; and

(5) be licensed to practice dentistry in Texas and in good standing with the Texas State Board of Dental Examiners. Prospective providers under suspension by the licensing board will not be approved to participate in the program.

§49.11. Provider Application and Contract. A prospective provider who meets the criteria for participation in the program, as described in §49.10 of this title (relating to Provider Participation Requirements), is eligible to contract with the department to provide oral health treatment services. To apply for program participation, a prospective provider must, after receiving information on the program including the schedule of current fees, sign a letter of agreement (contract) with the department. After the contract is properly executed, the prospective provider

will be provided written notice of approval to participate in the program and a copy of the program Manual.

§49.12. Provider Termination.

(a) The contract between the provider and the department may be terminated without cause by either party with 30 days written notice. The department may modify, suspend, or terminate the contract of any provider from the program for due cause. Due cause includes but is not limited to:

(1) breach of contract;

(2) suspension or revocation of the provider's license by the Texas State Board of Dental Examiners;

(3) disciplinary action(s) taken by the Texas State Board of Dental Examiners;

(4) submission of false or fraudulent claims;

(5) amendment or judicial interpretation of federal or state laws or other requirements in a way that would make it infeasible or impossible for either party to fulfill the agreement, or if either party is unable to agree on changes necessary for continuation of the agreement;

(6) any violation of program policies, procedures, rules, or requirements; or

(7) any other reason authorized by rule, regulation, statute, or contract.

(b) An administrative review and due process hearing is available to any provider for the resolution of conflict between the department and the provider in accordance with Subchapter D of this chapter (relating to Appeals Process).

(c) The department may not terminate a contract during the pendency of a hearing. The department may withhold payments during the pendency of a hearing, but the department must pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(d) Subsections (b) and (c) of this section do not apply if a contract is canceled by the department because of exhaustion of funds, if the contract expires according to its terms, or if the contract is canceled because program services are restricted or eliminated due to limited or unavailable funds.

§49.13. Treatment Services by Non-Providers. The department may pay a non-provider for emergency care, in accordance with program policies, procedures, and the Manual, in cases where program providers are not available or able to provide the emergency care and when delay in providing care would be detrimental to the recipient's health.

§49.14. Payment of Claims.

(a) Payment will not be made to providers or non-providers for services not authorized in accordance with program policies, procedures, the Manual, and the rules in this chapter. Payment for any service may be made only after the service has been delivered.

(b) Provider claims will be processed and considered for payment in accordance with program policies, procedures, and the Manual. Claims will be denied if the claim:

(1) contains incomplete or inaccurate information; or

(2) is not submitted in accordance with program policies, procedures, and the Manual.

(c) A provider claim that has been denied may be reconsidered for payment if the provider requests an administrative review, as described in §49.16 of this title (relating to Administrative Review). In order to receive an administrative review of the denied claim, the provider must request the administrative review in writing and return the claim, with the alleged error identified, to the OHP no later than 20 business days after the date of the notice of denial, accompanied by appropriate documentation for review.

§49.15. Administrative Sanctions. Any provider who fails to provide and maintain quality services or dentally accepted standards, or who violates program policies, procedures, the Manual, or the rules in this chapter, may be subject to administrative sanctions, as determined appropriate by the state dental director, in accordance with program policies and procedures. A provider may request an administrative review, as described in §49.16 of this title (relating to Administrative Review), if a written request is received by the OHP no later than 20 business days after the date of the notice of administrative sanction.

SUBCHAPTER D. APPEALS PROCESS.

§49.16. Administrative Review

(a) An administrative review is available under the following circumstances:

(1) an applicant or recipient receives notice of a proposed action; or

(2) a provider receives notice of an administrative sanction, conflict, or denied claim.

(b) No later than 20 business days after the date of notice of the action, conflict, sanction, or claim denial, the aggrieved person may request an administrative review. The request must be made in writing and received by the OHP within the required timeframe. Additional information bearing on the decision to be reviewed may be submitted at this time. Failure to make a timely

request for an administrative review is deemed to be a waiver of the right to administrative review.

(c) Upon timely receipt of a request for an administrative review, an administrative review team will review and consider all relevant materials submitted by the program and the aggrieved person. The administrative review team will affirm or reverse the decision being appealed and respond in writing to the aggrieved person, giving the reason(s) for the decision.

§49.17. Due Process Hearing

(a) A due process hearing is available under the following circumstances:

(1) an applicant or recipient receives notice of a proposed action or an administrative review team decision that supports the department; or

(2) a provider receives notice of a conflict with the department or an administrative review team decision that supports the department regarding a conflict.

(b) A request for a due process hearing is not contingent upon initially requesting an administrative review. If a request for a hearing is made without first requesting an administrative review, the right to an administrative review is deemed to be waived.

(c) A request for a due process hearing must be made in writing and received by the OHP no later than 20 business days after the date of the notice or decision that the aggrieved person wants to appeal, as described in subsection (a) of this section. Failure to make a timely request for a due process hearing is deemed to be a waiver of the right to a due process hearing and the department's decision is upheld and implemented.

§49.18. Hearing Process

(a) Upon receiving a written request for a due process hearing, the department will assign a hearing examiner who will set a date, time, and place for the hearing. The hearing will not be conducted under the contested case provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, but will include the following:

(1) a written notice to the aggrieved person of the matters asserted and the basis for the proposed action or conflict;

(2) an opportunity for the aggrieved person to receive a fair hearing by a hearing examiner, either by telephone conference call or in person, under §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(3) an opportunity for the aggrieved person to be represented by counsel or other representative;

(4) an opportunity for the aggrieved person or his/her representative to be heard in person, to call witnesses, and to present documentary evidence;

(5) an opportunity for the aggrieved person to cross-examine witnesses;

(6) a written recommendation by the hearing examiner to the commissioner, setting forth the reasons for the recommendation and the evidence upon which the recommendation is based; and

(7) the final written decision to be made by the commissioner.

(b) The department's administrative decision is final in a due process hearing and is not subject to further appeal.

~~CHAPTER 49. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM~~

~~§49.1. Purpose. These rules implement the Texas Oral Health Improvement Act authorized by the Texas Health and Safety Code, Chapter 43. This Act authorizes the Texas Department of Health to furnish oral health services to eligible individuals. Oral health services may include oral health promotion and education and the delivery of oral treatment services to eligible low-income individuals.~~

~~§49.2. Definitions.~~

~~The following words and terms, where used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.~~

~~_____ (1) Act—The Texas Oral Health Improvement Act, Texas Health and Safety Code, Chapter 43.~~

~~_____ (2) Action—Denial, modification, suspension or termination of program benefits or participation rights of an applicant or a recipient of the program.~~

~~_____ (3) Administrative review—A secondary level of review available to a provider appealing a denied claim.~~

~~_____ (4) Administrative sanctions—Penalties imposed on a provider who fails to comply with program rules, procedures and standards. Administrative sanctions include, but are not limited to, recoupment of payments, modification, suspension or exclusion of a provider from the program.~~

~~_____ (5) Applicant—A person applying for the program services, but for whom eligibility has not been established.~~

~~_____ (6) Approval date—The date a submitted program voucher is approved for payment.~~

~~_____ (7) Approved provider—An active, participating provider in the program.~~

~~_____ (8) Board—The Texas Board of Health.~~

~~_____ (9) Commissioner—The commissioner of health of the Texas Department of Health.~~

~~_____ (10) Conflict—The proposed modification, suspension or termination of a contract with an approved provider.~~

~~_____ (11) Dentist—An individual licensed by the Texas State Board of Dental Examiners to practice dentistry in the State of Texas.~~

~~_____ (12) Dentally accepted standards—Operating in accordance with the laws relating to the practice of dentistry and the rules of the State Board of Dental Examiners and normal standards of practice.~~

~~_____ (13) Department—The Texas Department of Health.~~

~~_____ (14) Division—The Division of Oral Health of the Texas Department of Health.~~

~~_____ (15) Eligible individual—An individual who meets the criteria necessary to receive oral health services under the Act.~~

~~_____ (16) Emergency care—Treatment for relief of pain and infection, including extractions and basic restorative services to prevent premature loss of teeth.~~

~~_____ (17) Nonapproved provider—A medical or dental provider authorized to practice under state law but not currently participating in the program.~~

~~_____ (18) Oral health services—Preventive or treatment services affecting the structures of the mouth, including the hard and soft tissues such as teeth and jaws, gums, vestibule, tongue, cheeks, lips, floor, roof of the mouth, and adjacent masticatory structures, and oral health education and promotion activities.~~

~~_____ (19) Other benefit—A benefit to which an individual is entitled, other than a benefit provided under the Act, for the payment of the costs of oral health treatment services, including:~~

~~(A) benefits available from:~~

~~_____ (i) an insurance policy, group oral health plan, or prepaid oral care plan;~~

~~_____ (ii) Title XVIII or Title XIX of the Social Security Act, as amended (42 U.S.C. §1395 et seq. and 42 U.S.C. §1396 et seq.);~~

~~_____ (iii) the Veteran's Administration;~~

~~_____ (iv) the Civilian Health and Medical Program of the Uniformed Services; or~~

~~_____ (v) worker's compensation or any other compulsory employer's insurance program;~~

~~_____ (B) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state; or~~

~~_____ (C) benefits available to an individual applying for or receiving treatment services from the department arising out of a cause of action for dental or oral health treatment services expenses or a settlement or judgment based upon the cause of action, if the expenses are related to the need for treatment services provided under the Act.~~

~~_____ (20) Physician—An individual licensed by the Texas State Board of Medical Examiners to practice medicine in the State of Texas.~~

~~_____ (21) Program—The State Fee for Service Dental Care Program administered by the Division of Oral Health which provides oral health services to eligible individuals.~~

~~_____ (22) Provider—A person who, through a contract with the department, furnishes oral health treatment services which are purchased by the department for the purpose of the Act.~~

~~_____ (23) Recipient—Any person currently eligible to receive program benefits.~~

~~_____ (24) Regional dental director—The dental program director for a public health region of the department.~~

~~_____ (25) Regional director—The chief authority and medical director for a public health region of the department.~~

~~_____ (26) State Fee for Service Dental Care Program Manual for Providers of Services—A manual prepared by the Division of Oral Health that sets out the program's policies and procedures and includes program rules. Participating providers will receive a copy of this manual and are expected to abide by its provisions during participation in the program.~~

~~_____ (27) State dental director—The dental program director for the State of Texas.~~

~~_____ (28) State fiscal year—The period from September 1 to August 31 of the following year.~~

~~_____ (29) Third-party nominator—A person aware of an applicant's economic condition who refers the applicant to the program for services. Third-party nominators include school administrators, school nurses, social workers, city or county officials, public health clinics, community health centers, dentists, physicians, or hospitals or any other source acceptable to the board.~~

~~_____ (30) Workday—Normal department operating hours from 8:00 a.m. — 5:00 p.m. Monday through Friday with the exception of state holidays.~~

~~§49.3. Program Priorities.~~

~~_____ (a) The provision of all services is subject to the availability of funds.~~

~~———— (b) In order to conform to budgetary limitations, priority for services will be given to persons under the age of 19 years requiring emergency care. Providers are bound by the guidelines for participation as set forth in the State Fee For Service Dental Care Program Manual for Providers of Services. Providers may deliver more comprehensive oral health services to eligible recipients only with prior written approval of the regional dental director, or in his/her absence, the state dental director.~~

~~———— (1) The department adopts by reference the department's document entitled State Fee For Service Dental Care Program Manual for Providers of Services.~~

~~———— (2) A copy of the State Fee for Service Dental Care Program Manual for Providers of Services is indexed and filed in the Division of Oral Health, Texas Department of Health, 1100 West 49th Street, Austin, and is available for public inspection during regular business hours.~~

~~———— (c) Occasionally, an individual cannot be treated in a dental office or will require special treatment for aesthetic reasons or to restore mastication. Examples include very young persons with rampant dental caries who must be treated under general anesthesia or children whose front teeth must be extracted and who need partials to prevent serious problems that could be caused by their edentulous appearance. The program allows for such services, subject to budgetary limitations. Approval of such services shall be determined on a case by case basis by the state dental director. The attending dentist or physician shall submit a special handling request form to the regional dental director, or in his/her absence, the regional director. This special handling request form includes a treatment plan, cost estimate of treatment, and a recommendation as to the special dental needs necessitating the request. The regional dental director, or in his/her absence, the regional director, will add a recommendation in the appropriate space before forwarding the request to the department for consideration. Payment will not be made for services provided prior to the state dental director's approval, subject to the exceptions in §49.9 of this title (relating to Emergency Selection of Providers).~~

~~———— (d) Program services are available in every public health region of the state. Program administration is carried out through the department's public health regions.~~

~~§49.4. Application Process.~~

~~———— (a) An applicant for oral health services must be referred to the program by a third party nominator who knows the individual's economic condition.~~

~~———— (b) Each applicant for oral health services must complete or cause to be completed an application form which shall include the following:~~

~~———— (1) personal information, including name, address, birthdate, gender and ethnicity;~~

~~———— (2) a statement from the referring third party nominator that the treatment services are necessary to prevent or reduce the probability of pain, infection, or disease; and~~

~~_____ (3) a statement by the applicant or the person responsible for the applicant's support that: services are requested; the individual is a bona fide resident of Texas as set out in §49.5 of this title (relating to Eligibility Requirements); the family income does not exceed the financial guidelines; the applicant is not eligible for another program providing dental care, and the applicant or the person responsible for the applicant's support is financially unable to pay for all or part of the cost of the necessary treatment services.~~

~~_____ (c) Each applicant who will be referred for oral health services or who will be served directly by the department must obtain preapproval from the regional dental director, or in his/her absence, the regional director, or his/her designee.~~

~~_____ (d) The denial of any application will be in writing and will include the reason(s) for such denial. Unless the application is denied because program funds are reduced or curtailed, the individual applying for services has the right to an administrative review and a due process hearing as set out in § 49.12 of this title (relating to Appeals).~~

~~_____ (e) An individual has the right to reapply for program coverage at any time when there is a change of situation or condition.~~

~~§49.5. Eligibility Requirements.~~

~~_____ (a) In order for a person to receive oral health services, he/she must meet the following criteria:~~

~~_____ (1) The person must be a bona fide resident of Texas.~~

~~_____ (2) A bona fide resident is a person who:~~

~~_____ (A) is physically present within the geographic boundaries of the state;~~

~~_____ (B) has an intent to remain within the state, whether permanently or for an indefinite period;~~

~~_____ (C) actually maintains an abode within the state (i.e., house or apartment, not merely a post office box);~~

~~_____ (D) does not claim residency in any other state or country;~~

~~_____ (E) is a minor child residing in Texas and his/her parent(s) or managing conservator or the court-appointed guardian is a bona fide resident of Texas;~~

~~_____ (F) is a person residing in Texas who is the legal dependent spouse of a bona fide resident; or~~

~~_____ (G) is an adult residing in Texas and his/her legal guardian is a bona fide resident.~~

~~_____ (b) The person must establish a financial need for program services. Financial need is established on the basis of family income, as follows:~~

~~_____ (1) the family income used to determine eligibility is the gross annual income of the applicant and his/her spouse, if applicable, or the gross annual income of person(s) legally obligated to support the applicant;~~

~~_____ (2) gross annual income includes earned wages, pensions or retirement benefits, child support payments received, alimony, unemployment compensation, worker's compensation, income from rental properties, or any monies received on a regular basis for family support purposes;~~

~~_____ (3) income guidelines are based on and may not exceed current United States Department of Agriculture (USDA) poverty guidelines for determining eligibility for free meals (school full free lunch program guidelines); and~~

~~_____ (4) the guidelines are adopted by reference in §49.17 of this title (relating to Income Guidelines).~~

~~_____ (c) Following preapproval of an application in accordance with §49.4(c)(1) (2) of this title (relating to Application Process), an applicant will be referred to a provider for a dental examination. The following criteria apply.~~

~~_____ (1) An applicant must have a demonstrable need for emergency care, confirmed by a licensed dentist or physician to whom the applicant has been referred.~~

~~_____ (2) The licensed dentist or physician shall certify to the department that he/she has examined the individual and he/she has reason to expect that the treatment services provided will prevent or reduce the probability of the individual's experiencing pain, infection, or disease.~~

~~_____ (3) If the applicant meets the dental criteria, the provider will perform the necessary treatment services as authorized by the State Fee for Service Dental Care Program Manual for Providers of Services.~~

~~_____ (4) If the applicant does not meet the dental criteria, the provider will be paid only for the examination services provided, according to the fees authorized by the State Fee for Service Dental Care Program Manual for Providers of Services.~~

~~_____ (d) Notwithstanding the provisions of subsection (c) of this section, the final determination concerning an applicant's eligibility and authorized services shall be made by the regional dental director or, in his/her absence, the state dental director.~~

~~_____ (e) If the regional dental director or, in his/her absence, the state dental director, determines that an applicant meets the dental criteria and the program services delivered were authorized, the applicant's eligibility date shall be the date upon which the application was~~

~~preapproved as stated in §49.4(c)(1) (2) of this title (relating to Application Process). Eligibility will be effective for the remainder of the state fiscal year in which eligibility is established. Eligibility must be reestablished for each subsequent state fiscal year in which program services are sought. To maintain eligibility for program services, the individual must continue to be a bona fide resident of the state and be in financial need in accordance with this section.~~

~~§49.6. Denial, Modification, Suspension, and Termination of Services.~~

~~— (a) Any person requesting or receiving benefits from the program may be notified that such benefits may be denied, modified, suspended, or terminated if:~~

~~— (1) information in the application is erroneous or falsified;~~

~~— (2) the person is not eligible;~~

~~— (3) required personal information is not provided;~~

~~— (4) obligated reimbursement to the program is not provided; or~~

~~— (5) program funds are reduced or curtailed.~~

~~— (b) The program will notify in writing the applicant or recipient or the person legally obligated to support the applicant or recipient of the action proposed to be taken and the reasons for such proposed action. The applicant or recipient shall have the right to an administrative review and/or a due process hearing in accordance with §49.12 of this title (relating to Appeals) unless the action resulted from the reduction or cessation of program funds.~~

~~§49.7. Procedure for Providing Services.~~

~~Delivery of oral health services is accomplished by a combination of the following delivery methods:~~

~~— (1) The department provides direct oral health services utilizing mobile dental units in remote areas of the state unserved or underserved by clinics or dental manpower.~~

~~— (2) The department contracts with providers for treatment of eligible individuals. Requirements for provider participation and reimbursement are according to the program guidelines and fee schedules set forth in the State Fee for Service Dental Care Program Manual for Providers of Services which is adopted by reference in §49.3 of this title (relating to Program Priorities).~~

~~§49.8. Providers.~~

~~— (a) To apply for program participation, a prospective provider shall, after receiving information on the program including the schedule of current fees, sign a letter of agreement (contract) and submit such information to the Division of Oral Health or to a Texas Department~~

of Health regional office. The agreement must include the prospective provider's dental license number and social security number.

~~———— (b) A prospective provider that meets the criteria for participation as set forth in subsection (c) of this section is eligible to contract with the program. After the contract is properly executed, the prospective provider shall be notified of approval in writing and an accompanying State Fee for Service Dental Care Program Manual for Providers of Services will be sent as a referral guide.~~

~~———— (c) Providers must meet the following criteria in order to participate in the program.~~

~~———— (1) Agree to abide by program rules and regulations.~~

~~———— (2) Agree to accept program fees as payment in full.~~

~~———— (3) Treat all patients without discrimination.~~

~~———— (4) Ensure that program recipients or persons legally responsible for program recipients are not billed for the difference between the provider's regular fees and those paid by the program.~~

~~———— (5) Be licensed to practice dentistry or medicine in Texas and in good standing with the Texas boards of dental or medical examiners. Prospective providers under suspension by their respective licensing boards will not be approved to participate in the program.~~

~~———— (d) The contract between the provider and the program may be terminated without cause by either party with 30 days written notice.~~

~~———— (e) The program may modify, suspend or terminate the contract of any provider from the program for due cause. Due cause includes but is not limited to:~~

~~———— (1) breach of contract;~~

~~———— (2) suspension or revocation of the provider's license by the State Board of Dental Examiners or the State Board of Medical Examiners;~~

~~———— (3) disciplinary action(s) taken by the State Board of Dental Examiners or the State Board of Medical Examiners;~~

~~———— (4) submission of false or fraudulent claims;~~

~~———— (5) amendment or judicial interpretation of federal or state laws or other requirements in a way that would make it unfeasible or impossible for either party to fulfill the agreement, or if either party is unable to agree on changes necessary for the substantial continuation of the agreement;~~

~~_____ (6) any violations of program rules; or~~

~~_____ (7) any other reason authorized by rule, regulation, statute, or contract.~~

~~_____ (f) Any provider who submits false or fraudulent claims, fails to provide and maintain quality services or dentally acceptable standards, has his/her Texas medical or dental license suspended, by either the Texas State Board of Dental Examiners, or the Texas State Board of Medical Examiners is subject to the state dental director's review and/or administrative sanctions.~~

~~_____ (g) A due process hearing is available to any provider for the resolution of conflict between the department and the provider in accordance with §49.12 of this title (relating to Appeals).~~

~~_____ (h) The department may not terminate a contract during the pendency of a hearing. The department may withhold payments during the pendency of a hearing, but the department shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.~~

~~_____ (i) Subsections (g) and (h) of this section do not apply if a contract is canceled by the department because of exhaustion of funds, if the contract expires according to its terms, or if the contract is canceled because program services are restricted to conform to budgetary limitations.~~

~~§49.9. Emergency Selection of Providers.~~

~~_____ (a) The department may only pay nonapproved providers for emergency care delivered in cases where approved providers are not available or able to provide the emergency care and when delay in providing care would be detrimental to the patient's health.~~

~~_____ (b) Nonapproved providers must request authorization to provide immediate emergency services prior to the delivery of services. Such request may be by phone to the regional dental director, or in his/her absence, the regional director, who will, after consulting with the state dental director or his/her designee, approve or disapprove services by phone, followed by written confirmation of approval/disapproval. In the event immediate emergency treatment is needed on a non-workday, a nonapproved provider may provide treatment, with verbal approval to be obtained on the first state workday after services are provided. No payment will be made for services provided before the date verbal approval is given, except in situations when treatment is provided on a non-workday workday and the regional dental director, the regional director, or the state dental director cannot be contacted for prior approval.~~

~~§49.10. Payment for Services.~~

~~_____ (a) Payment will not be made to providers for services not authorized by the program. Payment for any service may be made only after the service has been delivered and the state dental director has made a final determination that the program dental criteria were met and the services were authorized. Providers must agree to accept program fees as payment in full for the service provided, although such fees may be below usual and customary charges.~~

~~_____ (b) Claims from providers will be paid if submitted on the program voucher (Form N-18), services are provided within 60 days of the voucher's approval date, and an affirmative final determination has been made by the regional dental director or, in his or her absence, the state dental director. The program voucher must be submitted to the regional dental director within 75 days of the voucher's approval date.~~

~~_____ (c) Claims will be denied if they contain incomplete or inaccurate information, are submitted on the wrong form, are for unauthorized services, are not submitted within the stated timeframe, or are for services provided to persons ineligible for the program.~~

~~_____ (d) A claim that has been denied by the program may be reconsidered for payment if the provider requests an administrative review. In order to receive an administrative review of the denied claim, the provider must request the administrative review in writing and return the claim, with the alleged error identified, to the program within 30 days from receipt of the notice of denial, accompanied by appropriate documentation for review.~~

~~_____ (e) The program may pay claims which are submitted beyond the stated time limit on the program voucher if there are special or extenuating circumstances which make it impossible or impractical for the provider to complete services within that time period. Such claims will be evaluated by the department on an individual basis, with due consideration given to the circumstances and the regional dental director's recommendation for disposition for the claim.~~

~~§49.11. Coordination of Benefits and Recovery of Costs.~~

~~_____ (a) An individual is not eligible to receive treatment services furnished by the Act to the extent that the individual or any person who has the legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.~~

~~_____ (b) An individual who applies for or receives treatment services furnished under the Act shall inform the department at the time of application and at any time during eligibility and the receipt of treatment services of any other benefit to which the individual or any person who has the legal obligation to support the individual may be entitled.~~

~~_____ (c) The individual or any person who has a legal obligation to support the individual who has received treatment services covered by some other benefit shall reimburse the department to the extent of the treatment services furnished when the other benefit is received.~~

~~_____ (d) The eligibility requirement in subsection (a) of this section may be waived by the commissioner in certain individually considered cases where its enforcement will deny treatment services to a class of otherwise eligible individuals because of conflicting state, local, or federal laws or regulations.~~

~~_____ (e) The department may recover the cost of treatment services provided under the Act from a person who does not pay or reimburse the department as required by the Act or from any~~

~~third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.~~

~~——— (f) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County, Texas, on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date the department is reimbursed in a judgment in favor of the department.~~

~~§49.12. Appeals.~~

~~Any applicant or recipient aggrieved by a program action may appeal the action in the following manner:~~

~~——— (1) Within 10 working days of receiving notice of the action, any grievant who desires an administrative review shall notify the program by mail of his/her request for an administrative review of the program's action. Additional information bearing on the decision may be submitted at this time. Failure to request an administrative review within the 10-day period is deemed to be a waiver of the administrative review.~~

~~——— (2) Upon timely receipt of a request for an administrative review, a program administrative review team will affirm or reverse the proposed action and respond in writing to the person, giving the reason(s) for the decision.~~

~~——— (3) If the action is upheld in whole or in part by the administrative review team, the aggrieved may request a due process hearing from the program within 10 days of receiving written notice of the administrative review team's decision. The aggrieved must request a due process hearing by mail. Failure to request the hearing within the 10-day period is deemed to be a waiver of the due process hearing and the proposed action shall be taken.~~

~~——— (4) Even if an aggrieved person does not request an administrative review, the aggrieved person may request a due process hearing from the program within 10 days of receiving notice of denial, modification, suspension, or termination of benefits or participation rights. The aggrieved person's request for a hearing shall be sent to the department by mail. Failure to request a hearing within the 10-day period is deemed to be a waiver of the hearing and the proposed action shall be taken.~~

~~——— (5) The department will set a date, time, and place for each due process hearing. The hearing will not be conducted under the contested case provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, but shall include the following:~~

~~——— (A) a timely written notice to the aggrieved person of the matters asserted;~~

~~——— (B) an opportunity for the aggrieved person to receive a fair hearing by a hearing examiner, either by telephone conference call or in person, under §§1.51–1.55 of this title (relating to Fair Hearing Procedures).~~

~~_____ (C) an opportunity for the aggrieved person to be represented by counsel or other representative;~~

~~_____ (D) an opportunity for the aggrieved person or representative(s) to be heard in person, to call witnesses, and to present documentary evidence;~~

~~_____ (E) an opportunity for the aggrieved person to cross-examine witnesses;~~

~~_____ (F) a written recommendation by the hearing examiner to the commissioner, setting forth the reasons for the recommendation and the evidence upon which the recommendation is based; and~~

~~_____ (G) the final written decision to be made by the commissioner.~~

~~_____ (6) The department shall render the final administrative decision in a due process hearing to modify, suspend or terminate the approval of a provider.~~

~~§49.13. Confidentiality.~~

~~All dental and medical records and other information maintained by the department that are confidential by law shall not be disclosed to the public.~~

~~§49.14. Gifts and Donations.~~

~~Subject to the limitations contained in the Act and any limitations or conditions prescribed by the legislature, the board may seek, receive, and expend any funds received from any public or private source to further the purposes of the Act.~~

~~§49.15. Nondiscrimination.~~

~~The Texas Department of Health operates in compliance with Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and 45 Code of Federal Regulations Part 80.~~

~~§49.17. Income Guidelines.~~

~~The department adopts by reference the United States Department of Agriculture (USDA) poverty guidelines for determining eligibility for free meals set out in 7 CFR, Part 245. A copy of the guidelines is filed in the Division of Oral Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas, and is available for public inspection during regular working hours.~~