

**Department of State Health Services
Council Agenda Memo for State Health Services Council
August 14, 2014**

Agenda Item Title: Repeal of rules concerning the Children's Outreach Heart Program

Agenda Number: 4.b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Children's Outreach Heart Program was located in the Specialized Health Services Section under the Division for Family and Community Health Services. Health and Safety Code, Chapter 39, established the program in 1989, which gave Department of State Health Services (DSHS) authority for a children's outreach heart program. The purpose of the program was to provide pre-diagnostic cardiac screening and follow-up evaluation services to persons under 21 years of age who were from low-income families and who may have had a heart disease or defect. The program also provided training to local physicians and public health nurses in screening and diagnostic procedures for heart disease or defect.

DSHS provided funding to the Children's Heart and Health Institute of Texas (CHHI) to serve children in a 35-county area in South Texas. CHHI initially provided the services, but then subcontracted with Driscoll Children's Physician's Group. CHHI terminated the contract, effective July 31, 2006. The contract was transferred to Driscoll Children's Physician's Group to allow for continuity of care.

Rider 54, 80th Legislative Session, 2007, established Driscoll Children's Physician's Group in Corpus Christi as the sole recipient of the appropriated funds. The rider language remained in effect through Rider 50, 81st Legislative Session, 2009; however, on August 19, 2009, Driscoll Children's Physician's Group notified DSHS that they were declining the funding but agreed to continue providing outreach for children's heart services and physician education in the Corpus Christi area and the Valley without state funds. During the 82nd Legislative Session, 2011, the rider was eliminated.

Summary:

The purpose of the repeal is to remove unnecessary rules from the DSHS rule base in order to maintain clear, concise rules for the public. The four-year review of rules per Government Code, Section 2001.039, determined that the rules are no longer needed due to the elimination of funds during the 82nd Legislative Session. Since the enactment of the program, changes have occurred in the health care delivery systems that have increased access to care; therefore, the services are no longer required to fill the coverage gap.

Key Health Measures:

Repeal of the rules will not have an effect on the general population, since changes in the health care delivery systems have occurred. These changes include:

- Expansion of Medicaid;
- Creation of the Children's Health Insurance Program that provides coverage for children with family incomes up to 200 percent Federal Poverty Level;
- Development of Texas Health Steps online provider education modules related to critical congenital heart disease (CCHD) and other children's heart diseases or defects;

- Establishment of the medical home in Medicaid managed care for screening and preventative services; and
- Expansion of population-based newborn screening to include CCHD, effective September 1, 2014.

Summary of Input from Stakeholder Groups:

DSHS solicited stakeholder input via the Children with Special Health Care Needs Services Program website. Stakeholders were given from March 24, 2014-April 04, 2014 to provide written comments.

DSHS did not receive any comments from stakeholders.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #4.b.

Approved by Assistant Commissioner /Director: Sam B. Cooper III for Evelyn Delgado **Date:** July 29, 2014

Presenter: Carol Labaj **Program:** Children's Outreach Heart Program **Phone No.:** (512) 776-3104

Approved by CCEA: Carolyn Bivens **Date:** July 24, 2014

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 61. Chronic Diseases
Subchapter E. Children's Outreach Heart Program
Repeal §§61.71 - 61.83

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§61.71 - 61.83, concerning the Children's Outreach Heart Program.

BACKGROUND AND PURPOSE

The program was established in 1989 under Health and Safety Code, Chapter 39, which gave the department authority to establish a children's outreach heart program. The purpose of the program was to provide (1) pre-diagnostic cardiac screening and follow-up evaluation services to persons under 21 years of age who are from low-income families and who may have a heart disease or defect; and (2) training to local physicians and public health nurses in screening and diagnostic procedures for heart disease or defect.

The department provided funding to Children's Heart and Health Institute of Texas (CHHI) to serve children in a 35-county area in South Texas. CHHI initially provided the services, but then subcontracted with Driscoll Children's Physician's Group. CHHI terminated the contract, effective July 31, 2006. The contract was transferred to Driscoll Children's Physician's Group to allow for continuity of care.

Rider 54, 80th Legislative Session, 2007, established Driscoll Children's Physician's Group in Corpus Christi as the sole recipient of the appropriated funds. The rider language remained in effect through the 81st Legislative Session, 2009, (Rider 50); however, on August 19, 2009, Driscoll Children's Physician's Group notified the department that they were declining the funding but agreed to continue providing outreach for children's heart services and physician education in the Corpus Christi area and the Valley without state funds. During the 82nd Legislative Session, 2011, the rider was eliminated. Additionally, since the enactment of the legislation in 1989, changes have occurred in health care delivery systems, increasing access to care; therefore, these services are no longer required to fill a coverage gap.

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 61.71 - 61.83 have been reviewed, and the department has determined that reasons for adopting the sections no longer exist because rules on this subject are not needed.

SECTION-BY-SECTION SUMMARY

The department is repealing §§61.71-61.83 because the rider that appropriated funding for the program was eliminated.

FISCAL NOTE

Sam Cooper, LMSW-IPR, Director, Specialized Health Services Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to the state or local governments as a result of repealing the sections as proposed.

MICRO-BUSINESS AND SMALL BUSINESS IMPACT ANALYSIS

Mr. Cooper has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the sections as proposed because small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

In addition, Mr. Cooper has also determined that for each year of the first five years that the repeals will be in effect, the public will benefit by eliminating unnecessary rules.

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 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 specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted by mail to Laura Ethridge, Purchased Health Services Unit, Mail Code 1938, Department of State Health Services, P.O. Box 149347, Austin,

Texas 78714-9347; by telephone at (512) 776-3664; or by email to laura.ethridge@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 are authorized by Government Code, §531.0055(e), and the Health and Safety Code, 39.003, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to define the scope of the children's outreach heart program; and the Health and Safety Code, §1001.075, which authorizes 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. Review of the sections implements Government Code, §2001.039.

The proposed repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapters 39 and 1001.

Sections for repeal.

- §61.71. General Information.
- §61.72. Definitions.
- §61.73. Eligibility for Client Services.
- §61.74. Funding of the COHP Contractor.
- §61.75. Program Income and Client Co-payment.
- §61.76. Contractor Staff.
- §61.77. Clinic Facilities and Equipment.
- §61.78. Services.
- §61.79. Coordination of Community Services.
- §61.80. Client Rights.
- §61.81. Tracking and Follow-up.
- §61.82. Records Management.
- §61.83. Evaluation.

Repealed Language
Strikethrough—Repealed Text

~~§61.71. General Information.~~

~~(a) Purpose. The purpose of this subchapter is to establish rules for the Children's Heart Outreach Program (COHP). By authority granted in Health and Safety Code, Chapter 39, COHP provides:~~

~~(1) prediagnostic cardiac screening and follow-up evaluation services to persons less than 21 years of age who are from low-income families and who may have heart disease and/or defects; and~~

~~(2) training to local physicians and public health nurses in screening and diagnostic procedures for heart disease and/or defects.~~

~~(b) Confidentiality of Information.~~

~~(1) All information submitted, as required by this chapter, may be verified at the discretion of the Department of State Health Services (department) with or without notice to the applicant, client, or contractor staff of COHP services. Information required by this chapter and received by the department is kept confidential to the extent authorized by law.~~

~~(2) Information may be disclosed in summary, statistical, or other forms that do not identify particular individuals.~~

~~§61.72. Definitions. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.~~

~~(1) Applicant—A person making an initial application for Children's Outreach Heart Program (COHP) services.~~

~~(2) Bona fide resident—A person who:~~

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

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

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

~~(3) Cardiac—Of, relating to, situated near, or acting on the heart.~~

~~(4) Cardiac outreach clinic (clinic)—A primary or secondary level health care facility staffed by local and secondary or tertiary level outreach personnel and equipped to perform the following functions:~~

~~(A) screening and assessment of children for cardiac disease;~~

~~(B) identification and referral of children with cardiac disease to the closest appropriate tertiary center for definitive diagnostic procedures and, if needed, surgery; and~~

~~(C) management of children with heart disease to include development of an individual care plan, tracking, and periodic follow-up and coordination with local case management services providers, if available.~~

~~(5) CHIP—The Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, *et seq.*)~~

~~(6) Client—A person who has applied for program services and who meets all COHP eligibility requirements and has been determined to be eligible for program services.~~

~~(7) Contractor—One or more individuals or entities selected by the department to provide Children's Outreach Heart Program services, including departments, agencies, boards, educational institutions, county governments, municipal governments, states, or the United States.~~

~~(8) Co-pay/co-payment—A cost-sharing arrangement in which a client pays a specified charge for a specified health care service, usually at the time the service is provided.~~

~~(9) CSHCN Services Program—The Children with Special Health Care Needs Services Program; Health and Safety Code, Chapter 35.~~

~~(10) Department—The Department of State Health Services.~~

~~(11) Federal Poverty Level (FPL)—The minimum income needed by a family for food, clothing, transportation, shelter, and other necessities in the United States, according to the United States Department of Health and Human Services, or its successor. The FPLs vary according to family size, and after adjustment for inflation, are published annually in the *Federal Register*.~~

~~(12) Heart disease or defect—An abnormality or disease of the heart or major blood vessel(s) near the heart.~~

~~(13) HIPAA—The Health Insurance Portability and Accountability Act of 1996; 42 U.S.C. §1320d-2 *et seq.*~~

~~(14) Individual care plan—A comprehensive plan for the provision of needed care, support and services to an individual client by designated service providers and by members of the client's family and personal support system.~~

~~(15) Medical home—A respectful partnership between a client, the client's family as appropriate, and the client's primary health care setting. A medical home is family-centered~~

~~health care that is accessible, continuous, comprehensive, coordinated, compassionate, and culturally competent. A medical home includes a licensed medical professional who accepts responsibility for the provision and/or coordination of primary, preventive, and/or specialty care for a client, and coordination of care with other community services providers.~~

~~(16) Outreach physician—A board-certified pediatric cardiologist responsible for supervising the clinic(s).~~

~~(17) Physician—A person licensed by the Texas Medical Board to practice medicine in the State of Texas.~~

~~(18) Program—The Children's Outreach Heart Program (COHP).~~

~~(19) Program income—All revenues received by a contractor as a result of providing services under this subchapter, including third party payments, such as Medicaid, CHIP, CSHCN Services Program, and private insurance; and client co-payments.~~

~~(20) Registered nurse (RN)—A person currently licensed by the Texas Board of Nursing to practice professional nursing in the State of Texas.~~

~~§61.73. Eligibility for Client Services.~~

~~(a) An applicant shall meet all of the following requirements to be eligible for benefits from the COHP:~~

- ~~(1) have a heart disease and/or defect;~~
- ~~(2) be under 21 years of age; and~~
- ~~(3) be a bona fide resident of the State of Texas.~~

~~(b) An applicant's family income shall meet one of the following financial requirements to be eligible for benefits from the COHP:~~

- ~~(1) the family's income level is at or below 200% of the FPL; or~~
- ~~(2) the family's income level exceeds 200% of the FPL, but the applicant is not eligible for public assistance with medical expenses.~~

~~(c) An applicant whose family income exceeds 200% of the FPL may be required to pay a co-payment based on family income and household size.~~

~~§61.74. Funding of the COHP Contractor.~~

~~(a) The department will provide COHP services through a contractor selected in compliance with the department's contracting and procurement procedures.~~

~~(b) An entity seeking funding as a contractor must demonstrate in its proposal that:~~

~~(1) provision of program services in the designated community(ies) and surrounding geographic area would meet a recognized need;~~

~~(2) services to be provided are not available to the identified population due to distance or a lack of access, resulting in a barrier to quality health care for the community(ies);~~

~~(3) the local community(ies), including the local or county medical society(ies), support(s) the need for the clinic(s); and~~

~~(4) proposed services can be integrated into the local health care system.~~

~~(c) The contractor may receive cost based or fee for service reimbursement for the following:~~

~~(1) travel to the clinic(s) by the outreach physician and team members;~~

~~(2) the salaries of local and/or outreach staff necessary for administration of the clinic(s) or provision of clinic services;~~

~~(3) physician services;~~

~~(4) facility use fees; and~~

~~(5) laboratory, radiology, electrocardiography, and other procedures necessary for assessment and screening of clients.~~

~~§61.75. Program Income and Client Co-payment.~~

~~(a) The contractor shall maximize program income by billing third-party payers for the clients served, including CSHCN Services Program, Medicaid, CHIP, and private insurance. The contractor shall ensure that clients who may be eligible for Medicaid, CHIP, and/or CSHCN Services Program are referred for eligibility determination.~~

~~(b) The contractor shall develop a co-payment policy concerning program services provided to clients whose family incomes exceed 200% of the FPL, but who are not eligible for public assistance with medical expenses, including the following:~~

~~(1) co-payments shall be based on family income and household size; and~~

~~(2) any schedule of sliding scale co-payments shall be approved by the department prior to implementation.~~

~~(c) No client who meets age and medical eligibility criteria will be denied services on the basis of inability to pay.~~

~~§61.76. Contractor Staff.~~

~~(a) The contractor shall assure that clients have access to:~~

~~(1) a coordinator who communicates with clinic staff as frequently as necessary to:~~

~~(A) process referrals;~~

~~(B) schedule appointments;~~

~~(C) coordinate the activities of the clinics, if more than one exists; and~~

~~(D) track clients, if follow-up is necessary;~~

~~(2) an outreach physician who is a board-certified pediatric cardiologist responsible for:~~

~~(A) supervising the clinic(s);~~

~~(B) coordinating the screening and assessment process;~~

~~(C) developing an individual care plan for each client identified with heart disease and/or defect who is referred by the clinic to a secondary or tertiary center;~~

~~(D) making appropriate recommendations for referral, when necessary;~~

~~(E) sending follow-up letters to referral sources;~~

~~(F) maintaining appropriate medical records for clients; and~~

~~(G) assuming responsibility for provision of all services that would otherwise have been provided by an RN if no RN is on site.~~

~~(3) an RN with at least one year of clinical pediatric experience, preferably with pediatric cardiology experience, who shall be on site during clinic hours; and~~

~~(4) a social worker licensed by the department, or other clinic staff member, who identifies the need for and makes referrals to case management services as documented in clients' medical records.~~

~~§61.77. Clinic Facilities and Equipment.~~

~~(a) The clinic(s) shall assure that adequate supplies, space, and equipment are available to:~~

- ~~(1) measure vital signs for children of all ages;~~
- ~~(2) perform age-appropriate anthropometric testing on all clients; and~~
- ~~(3) obtain electrocardiograms and chest x-rays on all clients.~~

~~(b) All equipment and supplies used shall be appropriate for the client's age and level of development.~~

~~(c) The contractor shall obtain routine lab work. If unable to provide echocardiography or x-rays directly, the contractor will obtain these services through sub-contractual or other arrangements.~~

~~(d) The clinic(s) shall be conducted in compliance with the document "Department of State Health Services Standards for Public Health Clinic Services" dated August 2004, or its successor, specifically including the following requirements:~~

- ~~(1) the clinic(s) shall be accessible to the target population;~~
- ~~(2) clinic facilities shall be appropriate for pediatric care;~~
- ~~(3) clinic services shall be provided in settings designed to ensure client comfort, safety, and privacy, and to expedite the work of the staff; and~~
- ~~(4) the contractor or clinic site(s) shall meet any licensure or certifications required for clinic operations in the State of Texas.~~

~~§61.78. Services.~~

~~(a) Routine clinic services must include a comprehensive history and physical exam.~~

~~(b) Additional services, as determined necessary by the physician, may include:~~

- ~~(1) laboratory studies;~~
- ~~(2) electrocardiograms;~~
- ~~(3) chest x-rays; and~~

~~(4) echocardiography may be performed if the results are of acceptable quality for pediatric clients and reviewed and interpreted by the outreach physician responsible for the clinic.~~

~~(c) The outreach physician shall develop an individual care plan for each client identified with heart disease and/or defect who is referred by the clinic to a secondary or tertiary center.~~

~~(d) The clinic staff shall work as a team in conjunction with the client, family, the referral source, and the secondary or tertiary center to develop the individual care plan.~~

~~(e) Clinic staff shall track clients if the individual care plan requires follow-up.~~

~~(f) Clinic services shall be integrated into the overall service needs of each client through clinic staff cooperation and sharing of information with local case management services providers, if available.~~

~~(g) The clinic(s) shall ensure that translation and interpreter services are available to all clients who are unable to communicate effectively in English, and shall provide services in a culturally sensitive manner.~~

~~(h) The following clinical services shall not be approved or reimbursed by the program at cardiac outreach clinics:~~

~~(1) echocardiography for routine screening purposes;~~

~~(2) exercise testing;~~

~~(3) catheterization; and~~

~~(4) surgery.~~

~~§61.79. Coordination of Community Services.~~

~~(a) The contractor shall inform the local communities, including local physicians, community service groups, and the general public, of the clinic and its services within three months of a funding award.~~

~~(b) The contractor shall provide a report addressing the number of clients served, services provided, and diagnoses to the local or county medical society annually.~~

~~(c) The outreach physician shall communicate with the client's local or primary physician, medical home, or referral source concerning the client's history, physical exam, and diagnosis and must involve the local physician in the development of the client's individual care plan.~~

~~(d) The contractor shall encourage local physicians to participate in the clinic(s).~~

~~(e) The outreach physician and clinic staff should provide local physicians, and other community professionals involved with the clinic population, with continuing education in the~~

~~areas of diagnosis, evaluation, and treatment of children with suspected and confirmed cardiovascular disease.~~

~~(f) The clinic(s) shall coordinate services with other community activities in an effort to facilitate the public's access to the clinic(s) and other community services, and to prevent duplication of services.~~

~~(g) If local pediatric cardiology expertise becomes available that meets the needs expressed in the clinic proposal and is community supported, the contractor shall phase out services in coordination with the local providers.~~

~~§61.80. Client Rights.~~

~~(a) The clinic(s) shall provide services in a timely manner.~~

~~(b) The clinic(s) shall assure confidentiality of client information and provide information to clients and their families regarding its policies.~~

~~(c) Facilities within the clinic(s) shall be arranged or designed so that services are provided in a manner that protects the dignity and privacy of clients and their families.~~

~~(d) The clinic(s) shall provide services in a nondiscriminatory manner, complying with civil rights statutes, regulations, and the department's policies.~~

~~(e) The contractor or clinic staff shall not coerce individuals into services, nor may participation in one service or program be a requirement for eligibility for another service.~~

~~(f) The clinic(s) shall provide services in ways that can be understood by clients and their families including, but not limited to, addressing the needs of clients with limited English proficiency, as required by Title VI of the Civil Rights Act of 1964.~~

~~(g) The contractor shall either post or provide information in writing to clients and their families concerning procedures available to address concerns about care received or alleged violation of clients' and their families' rights.~~

~~§61.81. Tracking and Follow-up.~~

~~(a) The clinic(s) shall utilize a tracking system to monitor each client's health status and use of health care services. The tracking system shall:~~

~~(1) schedule contacts with the client and their family at regular intervals according to program guidelines and protocols, and coordinate with other services and opportunities as needed;~~

~~(2) monitor the status of the individual care plan, including compliance and the need for revisions;~~

~~(3) monitor broken appointments and establish a system for rescheduling appointments;~~

~~(4) alert staff for follow up concerning conditions identified as priorities for care;~~

~~(5) track referrals made to other providers or agencies; and~~

~~(6) follow up with the client and the client's family, as appropriate, to ensure that services were accessed.~~

~~(b) If a client moves out of the identified service area, clinic(s) shall attempt to maintain continuity of care by providing the client and the client's family with information on available services, including case management, in the area to which they are relocating.~~

~~(c) The clinic(s) shall evaluate the effectiveness of services provided on an ongoing basis and shall adjust the individual care plan when needed to maximize the client's health.~~

~~§61.82. Records Management.~~

~~(a) The clinic(s) shall utilize an organized client record system.~~

~~(b) The clinic(s) shall comply with laws and regulations regarding confidentiality of client records, including HIPAA. In addition:~~

~~(1) records shall be confidential and secure;~~

~~(2) records shall be available to the client, family, or guardian upon request with a signed release of information; and~~

~~(3) the clinic(s) shall implement a policy that delineates guidelines for the release of confidential information.~~

~~(c) The clinic(s) shall maintain a complete and accurate record for each client.~~

~~(d) The clinic(s) shall implement a written policy regarding retention and proper disposal of client records.~~

~~(e) The clinic(s) shall comply with records management requirements in the document "Department of State Health Services Standards for Public Health Clinic Services," dated August 2004, or its successor.~~

~~§61.83. Evaluation.~~

~~(a) The contractor shall have a plan for internal review and evaluation of program services to assure the provision of quality services in compliance with "Department of State~~

~~Health Services Standards for Public Health Clinic Services," dated August 2004, or its successor and other department policies.~~

~~(b) The contractor shall submit reports to the department in a format and include content specified by the department. The reports will be used as a paper audit to assure that the contractor is performing in accordance with the contract. The department shall also conduct on-site visits when deemed necessary to evaluate the contractor's adherence to the department's guidelines and requirements. The contractor typically will receive a two-week notice and will be consulted for scheduling purposes.~~