

**Department of State Health Services
Council Agenda Memo for State Health Services Council
February 24-25, 2016**

Agenda Item Title: Repeal of rules concerning the Family Planning Program

Agenda Number: 4.c.

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Family Planning Program is located in the Women's Health Services Division, Office of Women's Health and Women's Preventive Health Services Branch.

The Family Planning Program provides statewide family planning services to low-income women and men who do not have other sources of payment for services. The target population is women and men of reproductive age who are at or below 250 percent of the Federal Poverty Level. Family planning services include preventive health, medical, counseling, and educational services. Additional services may include technical assistance and training for providers, information, and education activities for the public and providers. Services are provided through contracts with local health departments, governmental entities, community-based organizations, federally qualified health centers, hospital and hospital districts, university medical centers and health-related for-profit and nonprofit organizations. The Family Planning Program is funded by general revenue and federal funds. Fiscal year 2016 funding is 21 million.

In response to the Sunset Commission's recommendations, the 84th Texas Legislature passed S.B. 200 to transfer client services functions performed by the Department of State Health Services (DSHS) to the Health and Human Services Commission (HHSC). Women's health services performed in the DSHS Family Planning Program transferred to HHSC September 1, 2015. HHSC's transition plan details the expansion of family planning services to serve more women in a larger array of services. HHSC's updated Family Planning Program will begin operating July 1, 2016.

Summary:

The repeal of the DSHS Family Planning Program rules is necessary as a new program will begin operating at HHSC as of July 1, 2016. Rules for the new program are being proposed by HHSC under Title 1 of the Texas Administrative Code, Part 15, Chapter 382, Subchapter B.

Key Health Measures:

New rules are being developed for the program at HHSC. The repeal will ensure the rules are at the agency that administers the program.

Summary of Input from Stakeholder Groups:

Stakeholder input was requested via e-mail. The repealed rules were sent to all current contractors, local and state government, federally qualified health centers, for profit and non-profit entities, special interest groups, Women's Health Advisory Committee members, and other interested parties. No feedback and/or comments regarding the repeal of the Family Planning rules have been received thus far.

Proposed Motion:

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

Approved by Assistant Commissioner/Director: Evelyn Delgado **Date:** 12/2/2015

Presenter: Lesley French **Program:** Associate Commissioner,
Women's Health Services **Phone No.:** 512-776-2001

Approved by CPEA: Carolyn Bivens **Date:** 12/17/2015

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 56. Family Planning
Repeals §§56.1 - 56.15, and §§56.18 - 56.19

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 §§56.1 -56.15 and §§56.18 - 56.19, concerning the Family Planning Program.

BACKGROUND AND PURPOSE

The Family Planning Program provides statewide family planning services to low-income women and men who do not have other sources of payment for services. The target population is women and men of reproductive age who are at or below 250% of the Federal Poverty Level. Family planning services include preventive health, medical, counseling, and educational services.

The repeal of the rules implements the Sunset Commission's recommendation that the administration of the Family Planning Program be transferred to HHSC from the department. New Family Planning Program rules are proposed under Title 1 of the TAC, Part 15, Chapter 382, Subchapter B, concerning the Family Planning Program. In response to the Sunset Commission's recommendation, the 84th Texas Legislature enacted Texas Government Code, §531.0201(a)(2)(C), to transfer client services functions performed by the department to HHSC. Texas Government Code, §531.0204(a)(1) and (3)(A) were also enacted to require the Executive Commissioner of the HHSC to develop a transition plan which included an outline of the commission's reorganized structure, and a definition of client services functions.

The transition plan developed by HHSC pursuant to Texas Government Code, §531.0204, included the transfer of women's health services performed by the department's Family Planning Program to HHSC as of September 1, 2015. HHSC's transition plan also details the expansion of the Family Planning Program to serve more women with a larger array of services. HHSC's updated Family Planning Program will begin operating on July 1, 2016.

SECTION-BY-SECTION SUMMARY

The repeal of §§56.1 - 56.15 and §§56.18 - 56.19 will remove the Family Planning Program rules from the department rules in its entirety. Proposed new Family Planning Program rules will be placed under HHSC in 1 TAC, Part 15, Chapter 382, Subchapter B, concerning the Family Planning Program.

FISCAL NOTE

Lesley French, Women's Health Program, Director, 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 state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Lesley French has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in

order to comply with the sections. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

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, Lesley French has also 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 public benefit anticipated as a result of enforcing or administering the sections will be continued access to family planning services for eligible, low-income men and women in Texas.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Texas 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 proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Claudia Himes-Crayton, Health and Human Services Commission, P.O. Box 149347, Mail Code 0224, Austin, Texas, 78714-9347, or by email to famplan@hhsc.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 repeals have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The repeals affect Texas Government Code, Chapter 531; and Texas Health and Safety Code, Chapter 1001.

Sections for repeal:

§56.1. Introduction.

§56.2. Definitions.

§56.3. Purposes.

§56.4. Maximum Rates and Specific Codes.

§56.5. Contraceptive Methods.

§56.6. Prohibition of Abortion.

§56.7. Requirements for Reimbursement of Family Planning Services.

§56.8. Records Retention.

§56.9. Abuse Reporting.

§56.10. Freedom of Choice.

§56.11. Confidentiality.

§56.12. Eligibility for Family Planning Services.

§56.13. Consent.

§56.14. Family Planning for Adolescents.

§56.15. Civil Rights.

§56.18. Family Planning Genetics Services Provided.

§56.19. Limitations of Family Planning Genetics Services.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 56 FAMILY PLANNING
~~Repeal Rule Text~~

~~§56.1 Introduction~~

~~The requirements in this chapter apply to the department's Family Planning Program unless otherwise specified within the section. Department Family Planning providers are also required to observe all guidelines and operating procedures outlined in the most recent Family Planning Policy Manual, as required by their contracts. In addition to the requirements set out in this chapter, Title XIX (Medicaid) providers must comply with the terms and conditions of the Provider Agreement signed by all providers as a condition of participation in the Texas Medical Assistance Program.~~

~~§56.2 Definitions~~

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

~~(1) Client—Any individuals seeking assistance from a Department of State Health Services contractor or provider to meet their family planning goals.~~

~~(2) Commission—The Texas Health and Human Services Commission.~~

~~(3) Contraception—Any United States Food and Drug Administration (FDA) approved means of pregnancy prevention. Methods include permanent methods and temporary methods.~~

~~(4) Department—The Department of State Health Services.~~

~~(5) Family planning services may include:~~

~~(A) health history and physical;~~

~~(B) counseling and education;~~

~~(C) laboratory testing;~~

~~(D) provision of a contraceptive method; and~~

~~(E) referrals for additional services as needed.~~

~~(6) Intended pregnancy—Pregnancy a woman reports as desired at the time of conception.~~

~~(7) Medicaid—Title XIX of the Social Security Act.~~

~~(8) Provider—Any entity that receives department or Title XIX funding to provide family planning services.~~

~~(9) Region—Any of the public health service regions established by the Department of State Health Services.~~

~~(10) Title XIX family planning program—Family planning services provided under Title XIX (Medicaid) of the Social Security Act, 42 United States Code §1396 et seq.~~

~~§56.3 Purposes~~

~~The purposes of family planning services are:~~

- ~~(1) to enable women and men to determine the preferred number and spacing of their children;~~
- ~~(2) to positively affect the outcome of future pregnancies;~~
- ~~(3) to increase the proportion of intended pregnancies; and~~
- ~~(4) to improve the health status of Texas communities.~~

~~§56.4 Maximum Rates and Specific Codes~~

~~For payment of purchased counseling, educational, medical, and sterilization department family planning services maximum rates are established by the department according to specific diagnosis and procedure codes. The commission sets fees, charges, and rates for family planning services provided under Title XIX (Medicaid).~~

~~§56.5 Contraceptive Methods~~

~~A broad range of FDA approved methods of contraception must be made available to the client, either directly or by referral to another provider of contraceptive services. All brands of the different contraceptive methods need not be made available; however, each major contraceptive category must be made available.~~

~~§56.6 Prohibition of Abortion~~

~~Abortion is not considered a method of family planning, and no state funds appropriated to the department shall be used to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of abortion procedures provided by department providers.~~

~~§56.7 Requirements for Reimbursement of Family Planning Services~~

~~The commission and the department shall reimburse providers for services in compliance with program standards, policies and procedures, and contract requirements unless payment is prohibited by law.~~

§56.8 Records Retention

Department providers shall maintain for the time period specified by the department all records pertaining to client services, contracts, and payments. Title XIX (Medicaid) record retention requirements are found in 1 Texas Administrative Code §354.1004 (relating to Retention of Records). All records relating to services must be accessible for examination at any reasonable time to representatives of the commission and/or the department and as required by law.

§56.9 Abuse Reporting

Texas Family Code, Chapter 261, requires child abuse reporting.

(1) Providers are required to have an internal policy and procedure concerning determination, documentation, and reporting instances of sexual and non-sexual abuse in accordance with the department's Child Abuse Screening Documenting and Reporting Policy.

(2) Additionally, providers must develop an agency specific policy for Human Anti-Trafficking and Intimate Partner Violence to comply with abuse reporting guidelines and requirements as interpreted by department policy.

§56.10 Freedom of Choice

Clients have the right to freely choose family planning methods and sources of services. Clients shall not be coerced to accept services.

§56.11 Confidentiality

Providers shall safeguard client family planning information. Clients must provide written authorization prior to the release of any personally identifying information except reports of child abuse required by Texas Family Code, Chapter 261, and as required or authorized by other law. The department may distribute appropriated funds only to providers that show good faith efforts to comply with all child abuse reporting guidelines and requirements as interpreted by department policy.

(1) Providers shall ensure client confidentiality and provide safeguards for clients against the invasion of personal privacy.

(2) All personnel (both paid and volunteer) must be informed during orientation of the importance of keeping information about a client confidential.

(3) Clients' records must be monitored to ensure access is limited to appropriate staff and to department and/or commission staff or their authorized representatives.

(4) The client's preference of methods of follow-up contact shall be documented in the client's record.

~~(5) Each client shall receive verbal assurance of confidentiality and an explanation of what confidentiality means.~~

~~§56.12 Eligibility for Family Planning Services~~

~~Eligibility shall be determined according to the requirements of the most recent department Family Planning Policy Manual. Department providers shall not deny family planning services to eligible clients because of their inability to pay for services. Title XIX (Medicaid) eligibility is determined by the guidelines set by the commission. Individuals who receive Medicaid are eligible for family planning medical, counseling, and educational services.~~

~~§56.13 Consent~~

~~Department Family Planning services must be provided with consent from the minor's parent, managing conservator, or guardian only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations. Providers may reference the current Family Planning Policy Manual. A provider may not require consent for family planning services from the spouse of a married client.~~

~~§56.14 Family Planning for Adolescents~~

~~(a) Adolescents age 17 and younger shall be provided individualized family planning counseling and family planning medical services that meet their specific needs as soon as possible.~~

~~(b) The provider shall ensure that:~~

~~(1) counseling for adolescents seeking family planning services have parental consent;~~

~~(2) counseling for adolescents includes information on use of all medically approved birth control methods, including abstinence; and~~

~~(3) appointment schedules are flexible enough to accommodate access for adolescents requesting services.~~

~~§56.15 Civil Rights~~

~~Providers shall make family planning and genetic services available without regard to marital status, parenthood, handicap, age, color, religion, sex, ethnicity, or national origin. The provider must comply with Title VI of the Civil Rights Act of 1964 (Public Law 88—352); §504 of the Rehabilitation Act of 1973 (Public Law 93—112); The Americans with Disabilities Act of 1990 (Public Law 101—336), including all amendments to each; and all regulations issued pursuant to these Acts.~~

~~§56.18 Family Planning Genetics Services Provided~~

~~Family planning genetics services must be prescribed by a physician (MD or DO) and have implications for reproductive decisions. Services may include the following, based on the client's needs:~~

- ~~(1) health history and detailed family genetic health history;~~
- ~~(2) medical genetics physical examination;~~
- ~~(3) psychosocial genetic assessment;~~
- ~~(4) medical genetic counseling;~~
- ~~(5) psychosocial genetic counseling;~~
- ~~(6) follow up genetic counseling;~~
- ~~(7) prenatal genetic diagnostic services; and~~
- ~~(8) laboratory services.~~

~~§56.19 Limitations of Family Planning Genetics Services~~

~~For the Title XIX Family Planning Genetics Program, the following types of services are not allowed:~~

- ~~(1) genetic services for conditions that do not have serious psychosocial or medical implications for the client; and~~
- ~~(2) prenatal diagnosis for sex determination of the fetus alone without implications for genetic disorders.~~