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**Department of State Health Services
Council Agenda Memo for State Health Services Council
June 14, 2012**

Agenda Item Title: New rules concerning the Texas Women’s Health Program

Agenda Number: 4.b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Texas Women’s Health Program (TWHP) will operate under the auspices of the DSHS Preventive and Primary Care Unit’s (PPCU) Primary Health Care Services Program, which has statutory authority to provide to eligible clients primary health care services, including family planning services and health screenings. TWHP will provide clients—women ages 18–44 who are at or below 185% of the federal poverty level—with family planning and related services, including annual contraceptives, testing for breast and cervical cancer, testing for sexually transmitted infections (STIs), and treatment for certain STIs.

TWHP will be wholly administered by the Health and Human Services Commission (HHSC), and services will be provided by those health care providers that currently provide services through the Medicaid Women’s Health Program. TWHP providers will be reimbursed on a fee-for-service basis. Women who currently receive services through the current Medicaid Women’s Health Program are expected to transition into the TWHP. TWHP will be completely state-funded.

Summary:

The proposed rules establish TWHP within the DSHS PPCU Primary Health Care Services Program, in accordance with DSHS’ authority to provide primary health care, including family planning services, to eligible clients, under Health and Safety Code, Chapter 31. The rules are necessary to continue the Medicaid Women’s Health Program, which will no longer be funded by the Centers for Medicare and Medicaid Services, as a totally state-funded program.

The rule primarily will affect existing clients and providers of the Medicaid Women’s Health Program and all women and health care providers that are eligible to participate but do not yet do so.

Key Health Measures:

The rules continue services currently provided through the Medicaid Women’s Health Program. Providing these services will:

- Assist women to space their children, which improves the health of the mother and the health of her children;
- Help women detect breast and cervical cancers, which should lead to more effective treatment (although TWHP will not provide treatment); and
- Aid in the detection and treatment of STIs, which may otherwise be more likely spread to an infected client’s sexual partners.

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Additionally, continuing the Medicaid Women's Health Program as the Texas Women's Health Program is expected to save the state money in the Medicaid program, as likely Medicaid births will be averted. HHSC will continue oversight of the program to ensure that client access and outcomes related to family planning are not affected by the change.

Summary of Input from Stakeholder Groups:

Because these rules are, in effect, transferring an already existing program from the Medicaid program to the DSHS PPCU Primary Health Care Services Program, stakeholder input has, to date, not been sought. Stakeholders will be able to comment during the 30-day *Texas Register* publication comment period.

Proposed Motion:

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

Approved by Assistant Commissioner/Director:	Evelyn Delgado	Date:	6/7/12
Presenter:	Imelda M. Garcia	Program:	Community Health Services Section
		Phone No.:	512-776-2009
Approved by CCEA:	Carolyn Bivens	Date:	6/7/2012

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Title 25. Health Services
Part 1. Department of State Health Services
Chapter 39. Primary Health Care Services Program
Subchapter B . Texas Women's Health Program
New §39.31 - 39.44

Proposed Preamble

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §§39.31 - 39.44 concerning the Texas Women's Health Program.

BACKGROUND AND JUSTIFICATION

In 2005, the Texas Legislature required HHSC to establish a five-year Medicaid demonstration project to expand access to preventive health and family planning services to certain women who were not eligible to receive Medicaid services but who, should they become pregnant, likely will be eligible for the Medicaid prenatal program and whose babies, should those women become pregnant, likely be eligible to receive Medicaid services. In accordance with the statutory directive and with the approval of the federal Centers for Medicare and Medicaid Services (CMS), HHSC established the Medicaid Women's Health Program in accordance with the statutory requirements. CMS approved the original waiver for a five-year period beginning December 21, 2006. The statute adopted in 2005, Human Resources Code, §32.0248, expired by its terms on September 1, 2011.

While the Legislature did not, in 2011, reenact the 2005 legislation, the Legislature adopted a rider to the General Appropriations Act, Rider 62 to Article II, HHSC that authorizes the continuation of the program. The Legislature subsequently amended Human Resources Code, §32.024 to require HHSC to ensure that any funds spent for purposes of the Women's Health Program or a successor program not be used to perform or promote elective abortions or to contract with an entity that performs or promotes elective abortions or that affiliates with entities that perform or promote elective abortions. (Human Resource Code, §32.024(c-1)). Following the legislative reauthorization of the program, HHSC submitted a request to CMS to renew the demonstration project waiver in the fall of 2011.

In addition, to effectuate the legislative restriction on the use of Women's Health Program funds, HHSC adopted new rules barring from participation in the Women's Health Program any provider that performs or promotes elective abortions or that affiliates with another entity that performs or promotes elective abortions. Citing the adoption of these rules, CMS denied extending the demonstration project.

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Rather than completely end the vital services provided by the Medicaid Women's Health Program, Texas has chosen to operate the program using only state funds within the DSHS Preventive and Primary Care Unit's (PPCU) Primary Health Care Services Program, which is operated under Health and Safety Code, Chapter 31. Chapter 31 authorizes DSHS to establish a primary health care services program to provide to eligible individuals primary health care services, including family planning services and health screenings.

These rules are intended to transition the Medicaid Women's Health Program to the Texas Women's Health Program, operated by DSHS or its designee through the DSHS PPCU Primary Health Care Services Program. DSHS has determined that there is a need for the services that this program will provide across the state, as directed by Health and Safety Code, §31.003(d). DSHS further has determined that the classes of women who will be served may be, without the establishment of the Texas Women's Health Program, unable to obtain the preventive health care, contraceptives, and screenings this program provides.

SECTION-BY-SECTION SUMMARY

Section 39.31 introduces the purpose of the rules and describes the statutory authority for adopting the rules.

Section 39.32 states that these rules do not create an entitlement and that the services described in the rules are subject to appropriated funds.

Section 39.33 defines terms used in the rules.

Section 39.34 sets out client eligibility requirements. As proposed, a woman is eligible to receive services through the Texas Women's Health Program if, among other things, she is between the ages of 18 and 44 (inclusive), is not pregnant or sterile, is a United States citizen or qualified alien, is a Texas resident, and has a countable income of 185% or less of the Federal Poverty Level (FPL). The proposed rule also elaborates on the age requirement and permits an applicant with creditable coverage to receive services under the Texas Women's Health Program, despite the creditable coverage, if she affirms that she may be subject to retaliation if she files a claim for services like those the Texas Women's Health Program provides. And the rule specifies that, once approved to receive services, the client is eligible for twelve months, except in certain circumstances, which are set out in the rule. The rule provides for the termination of eligibility for a client who undergoes a sterilization procedure or becomes pregnant while a client. Finally, the rule provides that a woman who is deemed eligible to receive services under the Medicaid Women's Health Program at the time the Texas Women's Health Program (TWHP) begins operations is essentially "grandfathered" in. The provisions of this proposed rule are consistent with the eligibility requirements for the Medicaid Women's Health Program.

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Section 39.35 details the procedure a woman must follow to apply for TWHP services. The procedure, including procedures for the verification of the applicant's identity and status as a citizen or qualified alien, is similar to that currently used to apply for services through the Medicaid Women's Health Program.

Section 39.36 sets out financial eligibility requirements for a TWHP applicant. A woman may be eligible based on her countable income or by virtue of her membership in a budget group that receives benefits under the Women, Infants, and Children (WIC) supplemental nutrition program, SNAP, CHIP, or TANF. The requirements are consistent with those currently used to ascertain the eligibility of applicants for the Medicaid Women's Health Program.

Section 39.37 states that DSHS or its designee may deny, suspend, or terminate TWHP services to a client if DSHS or its designee determines that the client is ineligible. DSHS or its designee must notify the applicant or client and provide her with an opportunity for a fair hearing on the matter. Any appeal by an applicant or client is subject to Title 25, Chapter 1, Subchapter C. These provisions are consistent with an applicant's or client's opportunity to appeal under the Medicaid Women's Health Program.

Section 39.38 requires a health-care provider to follow procedures set out in Title 1, Chapter 354 of the Texas Administrative Code. Provisions governing provider qualifications will be proposed at a later date.

Section 39.39 lists those services that a client may receive through the TWHP. The list of services is generalized; further detail is provided in the Texas Medicaid Provider Procedures Manual. With one exception, the list of services is identical to that provided by the Medicaid Women's Health Program: specifically, the Texas Women's Health Program will cover treatment for certain sexually transmitted infections.

Section 39.40 lists services that TWHP will not cover. With the exception of allowing treatment for certain sexually transmitted infections, the list is the same as those services that were not covered by the Medicaid Women's Health Program.

Section 39.41 pertains to reimbursement for services covered by TWHP. Subsection (a) cross-references Title 1, Chapter 355, which sets out specific reimbursement rules. Subsection (b) cross-references rules to which a provider must refer for procedural guidance on filing claims. And subsection (c) bars a TWHP provider from using any funds received for providing TWHP services to pay any direct or indirect costs associated with elective abortions, consistently with article II, rider 17 of DSHS' portion of the current appropriations act. See General Appropriations Act, 82nd Legislature., Regular Session, Chapter 1355, Art. II, II-57 (HHSC, DSHS).

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Section 39.42 pertains to a TWHP provider's request to DSHS or its designee to review a denied claim. The appeal will be subject to procedures set out in Title 1, §354.2217 of the Texas Administrative Code.

Section 39.43 requires a TWHP provider to maintain the confidentiality of family planning information as required by law. Section 39.43 further bars a provider from releasing information that may identify a client unless the client authorizes the release in writing.

Finally, §39.44 provides for audits to verify compliance with applicable statutes and rules.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has projected the fiscal impact of this rule for three years, assuming that all clients will be eligible for Medicaid following the expansion of the Medicaid program in January 2014.

Ms. Rymal determined that during the three fiscal years this rule is to be in effect, there will be a fiscal impact to state government as a result of enforcing or administering the sections as proposed. The effect on state government is an estimated cost to general revenue of \$936,199 for state fiscal year (SFY) 2012, \$39,132,223 for SFY 2013, and \$15,861,313 for SFY 2014. The proposed new rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Greta Rymal has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering these new rules. Providers will not be required to alter their business practices as a result of these rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with these rules. There is no anticipated negative effect on local employment in geographic areas affected by these new rules.

PUBLIC BENEFIT

The public benefit, similar to the fiscal impact, has been projected for three years, assuming that all clients will be eligible for Medicaid beginning in January 2014.

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HHSC has determined that for each of the three years these new rules are in effect, the public will benefit from the adoption of these rules. The anticipated public benefit of adopting the proposed new rules will be continued access to essential Women’s Health Services. In addition maintaining a state-funded Women’s Health Program would generate cost avoidance in the Medicaid program, resulting in a net projected savings of \$4.4 million general revenue over the 14 months the program would operate.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225 of the . A “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 the 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

DSHS has determined that his proposal does not restrict or limit an owner’s right to his or her private real property that would otherwise exist in the absence of the government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Imelda M. Garcia, Department of State Health Services, Division of Family and Community Health Services, Community Health Services Section, Mail Code 1923, P.O. Box 149347, Austin, Texas 78714-9347, by phone at 1 (800) 322-1305 or by email to CHSS@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

No public hearing is currently scheduled.

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

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The new sections are authorized generally by Health and Safety Code, §12.001 and §1001.071, and more specifically by Health and Safety Code §§31.002(a)(4)(C) and (H), 31.003, and 31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and to adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program. In addition, Government Code, §531.0055, authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules for the operation and provision of health and human services by the health and human services agencies.

No other statutes, articles, or codes are affected by this proposal.

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Legend: (Proposed New Rules)
Regular Print = Proposed New Language

§39.31. Introduction.

(a) Governing rules. Notwithstanding any contrary provision in subchapter A of this chapter, this subchapter sets out rules governing the administration of the Texas Women's Health Program (TWHP) within the department's Primary Health Care Services program.

(b) Authority. This subchapter is authorized generally by Health and Safety Code §12.001 and §1001.071, and more specifically by Health and Safety Code §31.002(a)(4)(C) and (H), §31.003, and §31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and to adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program.

(c) Objectives. As reflected in several enactments of the Texas Legislature (including, but not limited to, section 32.024(c-1), Human Resources Code), the TWHP is established to achieve the following overarching objectives:

(1) To implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(2) To ensure the efficient and effective use of state funds in support of these objectives and to avoid the direct or indirect use of state funds to promote or support elective abortion;

(3) To reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(4) To the extent permitted by the Constitution of the United States and in addition to the restrictions imposed by this subchapter, to enforce 32.024(c-1), Human Resources Code, and any other state law that regulates delivery of non-federally funded family planning services.

§39.32. Non-entitlement and Availability.

(a) No entitlement. This subchapter does not establish an entitlement to the services described in this subchapter.

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(b) Fund availability. The services described in this subchapter are subject to the availability of appropriated funds.

§39.33. Definitions. The following terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) Affiliate—

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this paragraph may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license.

(2) Applicant--A woman applying to receive services under TWHP, including a current recipient who is applying to renew.

(3) Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

(4) Client--A woman who receives services through TWHP.

(5) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, and a sole proprietorship.

(6) Covered service--A medical procedure for which TWHP will reimburse an enrolled health-care provider, as listed in section 39.39 of this subchapter (referring to Covered Services).

(7) DSHS--The Department of State Health Services.

(8) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:

(A) to terminate a pregnancy that resulted from an act of rape or incest; or

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(B) in a case in which a woman suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(9) Family planning services—Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(10) Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.

(11) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.

(12) TWHP--Texas Women's Health Program.

(13) TWHP provider--A health-care provider that performs covered services.

§39.34. Client Eligibility.

(a) Criteria. A woman is eligible to receive services through TWHP if she:

(1) is 18 through 44 years of age, inclusive;

(2) is not pregnant;

(3) is not sterile, infertile, or unable to get pregnant because of medical reasons;

(4) has countable income (as calculated under §39.36 of this subchapter (relating to Financial Eligibility Requirements)) that does not exceed 185 percent of the Federal Poverty Level, as published annually in the Federal Register by the United States Department of Health and Human Services;

(5) is a United States citizen, a United States national, or an alien who qualifies under §39.35(h) of this subchapter (relating to Application Procedures);

(6) resides in Texas;

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(7) does not currently receive benefits through a Medicaid program, Children's Health Insurance Program, or Medicare Part A or B; and

(8) does not have creditable health coverage that covers the services TWHP provides, except as specified in subsection (d) of this section.

(b) Age. For purposes of subsection (a)(1) of this section, an applicant is considered 18 years of age the month of her 18th birthday and 44 years of age through the month of her 45th birthday. A woman is ineligible for TWHP if her application is received the month before her 18th birthday or the month after she turns 45 years of age.

(c) Resources. DSHS or its designee does not request or verify resources for TWHP.

(d) Third-party resources. An applicant with creditable health coverage that would pay for all or part of the costs of covered services may be eligible to receive covered services if she affirms, in a manner satisfactory to DSHS or its designee, her belief that a liable third party may retaliate against her or cause physical or emotional harm if she assists DSHS or its designee (by providing information or by any other means) in pursuing claims against that third party. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive TWHP benefits.

(e) Period of eligibility. A client is deemed eligible to receive covered services for 12 continuous months after her application is approved, unless:

- (1) the client dies;
- (2) the client voluntarily withdraws;
- (3) the client no longer satisfies criteria set out in subsection (a) of this section;
- (4) state law no longer allows the woman to be covered; or

(5) DSHS or its designee determines the client provided information affecting her eligibility that was false at the time of application.

(f) Transfer of eligibility. A woman who, when these rules become effective, receives services through the Medicaid Women's Health Program is automatically enrolled as a TWHP client and is eligible to receive covered services for as long as she would have been eligible for the Medicaid Women's Health Program.

§39.35. Application Procedures.

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(a) Application. A woman, or an individual acting on the woman's behalf, may apply for TWHP services by completing an application form and providing documentation as required by DSHS or its designee.

(1) An applicant may obtain a paper application in the following ways:

(A) from a local benefits office of the Health and Human Services Commission, a TWHP provider's office, or any other location that makes TWHP applications available;

(B) from the TWHP website; or

(C) by calling 2-1-1.

(2) DSHS or its designee accepts and processes every application received through the following means:

(A) in person at a local benefits office of the Health and Human Services Commission;

(B) by fax; or

(C) through the mail.

(b) Processing timeline. DSHS or its designee processes a TWHP application by the 45th day after the date DSHS or its designee receives the application.

(c) Start of coverage. Program coverage begins on the first day of the month in which DSHS or its designee receives a valid application. A valid application has, at a minimum, the applicant's name, address, and signature.

(d) Exclusive application. The TWHP application form may not be used to apply for any other programs.

(e) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), DSHS or its designee requires an applicant to provide or apply for a social security number. DSHS or its designee requests, but does not require, budget group members who are not applying for TWHP to provide or apply for an SSN.

(f) Face-to-face interviews. In general, DSHS or its designee does not require an applicant to attend a face-to-face interview unless DSHS or its designee has received conflicting information related to the household membership or income that affects eligibility. An applicant

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may, however, request a face-to-face or telephone interview for an initial or a renewal application.

(g) Identity. An applicant must verify her identity the first time she applies to receive covered services.

(h) Citizenship. If an applicant is a citizen, she must provide proof of citizenship. If the applicant, who is otherwise eligible to receive TWHP services, is not a citizen, DSHS or its designee determines her eligibility in accordance with Title 1, §366.513 of this Code, relating to Citizenship.

§39.36. Financial Eligibility Requirements.

(a) Calculating countable income. Unless an applicant is adjunctively eligible as described in subsection (b) of this section, DSHS or its designee determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, DSHS or its designee adds the incomes listed in paragraph (1) of this subsection, less any deductions listed in paragraph (2) of this subsection, and exempting any amounts listed in paragraph (3) of this subsection.

(1) DSHS or its designee determines countable income in accordance with Title 1, §366.531(a) of this Code.

(2) In determining countable income, DSHS or its designee deducts the items set forth in Title 1, §366.533 of this Code.

(3) DSHS or its designee exempts from the determination of countable income the items set out in Title 1, §366.535 of this Code.

(b) Adjunctive eligibility. An applicant or client is considered adjunctively eligible at an initial or renewal application, and therefore financially eligible, if:

(1) a member in her budget group receives benefits under the Women, Infants, and Children (WIC) supplemental nutrition program;

(2) she is a member of a certified SNAP household;

(3) she is in a Children's Medicaid budget group for someone receiving Medicaid;

or

(4) she is receiving TANF cash or is in a TANF budget group for someone receiving TANF cash.

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§39.37. Denial, Suspension, or Termination of Services; Client appeals.

(a) Notice and opportunity for hearing. DSHS or its designee may deny, suspend, or terminate services to an applicant or client if it determines that the applicant or client is ineligible to participate.

(b) Notice and opportunity for a fair hearing. Before DSHS or its designee finalizes the denial, suspension, or termination under subsection (a) of this section, the applicant or client will be notified and provided an opportunity for a fair hearing.

(c) Appeal procedures. An applicant or client who is aggrieved by the denial, suspension, or termination of services under subsection (a) of this section may appeal the decision in accordance with Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures). An applicant or client may not appeal a decision to deny, suspend, or terminate services if the decision is the result of a decision by the State to reduce or stop funding the program.

§39.38. Health-Care Providers.

(a) Procedures. A TWHP provider must comply with the requirements set out in Title 1, Texas Administrative Code, Chapter 354, Subchapter A, Division 1 (relating to Medicaid Procedures for Providers).

(b) Qualifications. A TWHP provider must ensure that:

(1) The provider does not perform or promote elective abortions outside the scope of the TWHP and is not an affiliate of an entity that performs or promotes elective abortions; or

(2) In offering or performing a TWHP service, the provider

(A) does not promote elective abortion within the scope of the TWHP;

(B) maintains physical separation between its TWHP activities and any abortion-performing or abortion-promoting activity by, for example, providing TWHP services at the same physical address in which elective abortions are performed, even if those abortions are performed by a different corporate entity, or sharing employees or volunteer personnel with an entity that performs elective abortions; or

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" includes, but is not necessarily limited to:

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(1) Providing to a TWHP client counseling concerning the use of abortion as a method of family planning or within the continuum of family planning services;

(2) Providing to a TWHP client a referral for an elective abortion as a method of family planning or within the continuum of family planning services;

(3) Furnishing or displaying to a TWHP client information that publicizes or advertises an abortion service or provider; or

(4) Using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, a TWHP provider must provide DSHS or its designee with all information DSHS or its designee requires to determine the provider's compliance with this section.

(e) Provider disqualification. If, after the effective date of this section, DSHS or its designee determines that a TWHP provider fails to comply with subsection (b) of this section, DSHS or its designee will disqualify the provider from TWHP.

(f) Client assistance and recoupment. If a TWHP provider is disqualified, DSHS or its designee will take appropriate action to:

(1) assist a TWHP client to find an alternate provider; and

(2) recoup any funds paid to a disqualified provider for TWHP services performed during the period of disqualification.

(g) Certification. Upon initial application for enrollment in the TWHP, a provider must certify its compliance with subsection (b) of this section and any other requirement specified by DSHS or its designee. Each provider enrolled in TWHP must annually certify that the provider complies with subsection (b) of this section.

(h) Exemption from initial certification. The initial application requirement of subsection (g) does not apply to a provider that certified and was determined to be in compliance with the requirements of the Women's Health Program administered by the Health and Human Services Commission pursuant to section 32.024(c-1), Human Resources Code.

§39.39. Covered Services.

A client may receive the following services through TWHP:

(1) annual family planning exam and Pap test;

(2) follow-up visits related to the chosen contraceptive method;

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(3) counseling on specific methods and use of contraception (as part of evaluation and management services), including natural family planning and excluding emergency contraception;

(4) female sterilization;

(5) follow-up visits related to sterilization, including procedures to confirm sterilization;

(6) family-planning services as listed in the *Texas Medicaid Provider Procedures Manual*, including:

(A) pregnancy tests;

(B) sexually transmitted infection (STI) screenings;

(C) treatment of certain STIs;

(D) contraceptive methods; and

(7) lab services related to a service listed in subsections (1) - (6) of this section.

§39.40. Non-covered Services.

TWHP does not cover:

(1) counseling on and provision of abortion services;

(2) mammography and diagnostic services for breast cancer;

(3) treatment for any condition diagnosed during a TWHP visit, other than a sexually transmitted infection for which treatment is a covered service;

(4) a visit for a pregnancy test only;

(5) a visit for a sexually transmitted infection test only;

(6) a follow-up after an abnormal Pap test;

(7) counseling on and provision of emergency contraceptives; or

(8) other visits that cannot be appropriately billed with a permissible procedure code.

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§39.41. Reimbursement.

(a) Fee for service reimbursement. Services provided through TWHP will be reimbursed on a fee-for-service basis in accordance with Title 1, Texas Administrative Code (TAC), chapter 355 (relating to Reimbursement Rates).

(b) Claims procedures. A TWHP provider must comply with 1 TAC Chapter 354, Subchapter A, Division 1 (relating to Medicaid Procedures for Providers) and 1 TAC Chapter 354, Subchapter A, Division 5 (relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. A TWHP provider may not use any funds received for providing a covered service to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

§39.42. Provider's Request for Review of Claim Denial.

(a) Review of denied claim. A TWHP provider may request a review of a denied claim. The request must be submitted as an administrative appeal under Title 1, Texas Administrative Code (TAC), §354.2217 (relating to Provider Appeals and Reviews).

(b) Appeal procedures. The administrative appeal will be subject to the timelines and procedures set out in 1 TAC §354.2217 and all other procedures and timelines applicable to a provider's appeal of a Medicaid claim denial.

§39.43. Confidentiality.

(a) Confidentiality required. A TWHP provider must maintain all family planning information as confidential to the extent required by law.

(b) Written release authorization. Before a TWHP provider may release any information that might identify a client, the client must authorize the release in writing.

(c) Confidentiality training. A TWHP provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.

(d) Records monitoring. A TWHP provider must monitor client records to ensure that only appropriate staff and DSHS or its designee may access the records.

(e) Assurance of confidentiality. A TWHP provider verbally must assure each client that her records are confidential and must explain the meaning of confidentiality.

§39.44. Audits; Reports.

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(a) Compliance audits. DSHS or the Health and Human Services Commission's Office of Inspector General may audit any TWHP provider to verify compliance with any applicable law or regulation.

(b) Reporting duties. A TWHP provider must submit information to DSHS or its designee as DSHS or its designee requires.

§39.45. Severability.

To the extent any part of this subchapter is determined by a court of competent jurisdiction to be unconstitutional or unenforceable, or to the degree an official or employee of the department, the Health and Human Services Commission, or the State of Texas is enjoined from enforcing any part of this subchapter, DSHS or its designee shall enforce the parts of this subchapter not affected by such injunctive relief to the extent DSHS or its designee determines it can do so consistently with legislative intent and the objectives of this subchapter, and to this end the provisions and application of this subchapter are severable.