

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

Agenda Item Title: New rules concerning the review and revision process for the Woman’s Right to Know informational materials (booklet)

Agenda Number: 4.d

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Office of Title V and Family Health (OTVFH) in the Division of Family and Community Health Services is responsible for coordinating review of and any revision to the “A Woman’s Right to Know (WRTK)” informational materials. OTVFH administers Title V Maternal and Child Health (MCH) Block Grant funds and provides preventive and primary health care services for women, infants, children, and adolescents, including preventive well-child visits, prenatal care, dental, genetics, and dysplasia treatment. OTVFH also coordinates enabling, population-based, and infrastructure building services for MCH populations. Additionally, subject matter expertise is provided on topics related to maternal and child health (women’s and perinatal health, child health, adolescent health, and child fatality review) to improve DSHS programs and initiatives.

OTVFH is funded by federal and state general revenue funds. Total fiscal year 2012 budget is \$13,791,794. No funds are specifically appropriated to OTVFH for activities related to WRTK.

Summary:

The purpose of the new rules is to comply with Health and Safety Code, Section 171.014, which requires adoption by rule of a process for annual review and possible revision of the “WRTK Information Material” (booklet) and “WRTK Resource Directory.” The materials provide information to women considering an abortion as outlined in Health and Safety Code, Chapter 171.

The new rules provide definitions and information about the process for review and revision of the materials, including the time period for annual review and the solicitation of stakeholder input for the booklet content. The rules do not address the material content of the booklet, but pertain only to the process for reviewing the content and making any changes to the informational materials.

Key Health Measures:

Since the new rules will establish a process for review and revision of the WRTK informational materials, including stakeholder input for the booklet content, the effectiveness of the rules will be evaluated through process measures.

- The process established by DSHS rules will facilitate regular review and updates to the WRTK materials, including input from stakeholders for the booklet content.
- DSHS will be able to measure successful compliance with the process for review and revision described in the rules as documented in DSHS files and records.

The expected outcome is a booklet that provides Texans with up-to-date and scientifically accurate information to support the voluntary and informed consent of women who choose to have abortions as well as up-to-date programs and services available to pregnant women.

Summary of Input from Stakeholder Groups:

Stakeholders informed of the proposed rules included medical and health professional organizations, such as Texas Association of Obstetricians and Gynecologists, Texas Cancer Council, American Cancer Society, National Cancer Institute, Texas Association of Family Physicians, Texas Medical Association, and Texas Hospital Association; family planning and women’s health providers/contractors; abortion providers; anti-abortion organizations and advocacy groups; reproductive health organizations and advocacy groups; and the Women’s Health and Family Planning Association of Texas.

Representatives of medical associations/facilities and anti-abortion groups provided most of the feedback received. Approximately one-third of the comments indicated support for the new rules, one-third of the comments included procedural or general questions not related to the proposed rules being discussed, and one-third of the comments constituted recommendations. The changes that were incorporated into the proposed rules in response to stakeholder comments addressed DSHS’ responsibility to create and maintain a list of scholarly articles and publications used in the booklet review process, removing time restrictions for comments by stakeholders’ involvement in the review process, and allowing input to be provided at all stages of the review process.

Comments related to the material content were not addressed, because the proposed rules pertain only to the process for reviewing the content and making any changes in the booklet.

Proposed Motion:

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

Approved by Assistant Commissioner/Director:	Evelyn Delgado	Date:	6/5/12
Presenter: Sam B. Cooper III, Director	Program: Office of Title V and Family Health	Phone No.:	512-776-2184
Approved by CCEA:	Carolyn Bivens	Date:	6/6/12

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 1. Miscellaneous Provisions
Subchapter E. A Woman's Right to Know
New §§1.71-1.73

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§1.71 - 1.73, concerning the review and revision process for the "A Woman's Right to Know" informational materials.

BACKGROUND AND PURPOSE

In 2003, the 78th Texas Legislature passed the Woman's Right to Know Act, Health and Safety Code, Chapter 171, which provides that no person may perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed, and specifies the content of informational materials that must be offered to a woman to support her informed consent. The department created the "A Woman's Right to Know Information Material" (booklet) and the "A Woman's Right to Know Resource Directory" to provide the required informational materials. The new sections comply with Health and Safety Code, §171.014(d), which requires the department to adopt rules necessary for considering and making changes to the informational materials.

SECTION-BY-SECTION SUMMARY

New §1.71 outlines the purpose of the rules. New §1.72 provides definitions pertaining to the review and revision of the materials. New §1.73 provides information about the process for review and revision of the materials, including the time period for annual review, and solicitation of stakeholder input for the booklet content.

FISCAL NOTE

Kim Wilson, Child Health Coordinator, Office of Title V and Family Health, 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

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

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, Mrs. Wilson 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 public benefit anticipated as a result of enforcing or administering the sections is access to the most accurate and up-to-date information.

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 new sections 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 to Kim Wilson, Office of Title V and Family Health, Division of Family and Community Health Services, Department of State Health Services, Mail Code 1922, P.O. Box 149347, Austin, Texas 78717-9347; by email to wrtk@dshs.state.tx.us, or by leaving a message at (512) 776-2021. Unless otherwise noted, 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 new sections are authorized by Health and Safety Code, §171.014(d), which requires the department to adopt rules necessary for considering and making changes to the "A Woman's

Right to Know” informational materials; and 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.

The new sections affect Health and Safety Code, Chapters 171 and 1001; and Government Code, Chapter 531.

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

§1.71. Purpose.

The Woman’s Right to Know Act, Health and Safety Code, Chapter 171, states that no person may perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed, and specifies the content of informational materials that must be offered to a woman to support her informed consent. Health and Safety Code, §171.014(d), requires the Department of State Health Services to adopt rules necessary for considering and making changes to the informational materials.

§1.72. Definitions.

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

- (1) Booklet--“A Woman’s Right to Know Information Material” that includes certain information specified in Health and Safety Code, Chapter 171.
- (2) Resource Directory—“A Woman’s Right to Know Resource Directory” that includes a listing of programs and services specified in Health and Safety Code, Chapter 171.
- (3) Department--Department of State Health Services.

§1.73. Review Process.

- (a) As required by Health and Safety Code, §171.014(d), the department will review the materials annually to determine if changes to the content of the booklet are necessary.
- (b) The department shall update programs and services listed in the resource directory as needed and post on the WRTK website in English and Spanish.
- (c) If changes are necessary to the booklet, the department will propose revisions in accordance with the following methods and procedures.
 - (1) The department shall propose revisions to the booklet based on current and relevant science and evidence-based literature, medical professional resources, and government health and medical resources.
 - (2) The department shall make current and relevant science and evidence-based literature reviewed available upon request.
 - (3) The department shall also review the booklet to ensure that information on available assistance and services is current and that it is consistent with state and federal law.

(4) The department will notify stakeholders of the annual review process through a public posting on the department's Woman's Right To Know website and the email distribution list. The department notification will include instructions on how to be added to the email distribution list.

(5) The department will accept and review stakeholder input, including any suggested changes to the booklet, throughout the year.

(6) The proposed revisions to the booklet will be posted on the department's Woman's Right To Know website and will be available for stakeholder comment for 30 days. The department will consider comments provided by stakeholders that pertain to the revisions being proposed by the department.

(7) Revisions to the booklet will be guided by peer-reviewed scientific and medical literature, resources from professional medical organizations, and government health sources.

(d) Upon annual review of the booklet, the department will announce the release of the booklet as revised, and shall post the revised edition on the department's Woman's Right To Know website. The department will make the document available in print in English and in Spanish.