

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 20-21, 2013**

Agenda Item Title: Amendments to rules, repeal of rules, and a new rule concerning family planning services

Agenda Number: 4.c

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Department of State Health Services (DSHS) Family Planning Program is administered by the Preventive and Primary Care Unit, Community Health Services Section, in the Family and Community Health Services Division. 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. Family planning funds are used to assist women and men in planning their families and to achieve optimal reproductive and general health.

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. Family planning services also include pregnancy testing (if indicated), gathering a health history, physical examinations, lab tests, providing counseling and education, and contraceptive supplies. Additional services may include information and education activities for the public.

DSHS Family Planning supports 18 providers serving 70 clinic sites. Family planning services are provided through contracts with local health departments, medical schools, hospitals, private non-profit agencies, Federally Qualified Health Centers, and community and rural health centers.

The Fiscal Year 2014 Family Planning budget is approximately \$21,582,300.

Summary:

The purpose of the amendments, new rule, and repeals is to align the rules with Texas law as a result of the loss of federal Title X funds and to align abuse reporting and client consent guidelines and requirements with DSHS policy. The amendments replace references to specific funding sources, such as Title V, X, and XX, with general program references (i.e., family planning program or family planning services). Amendments for genetics services will clarify Medicaid requirements.

The repeal of a rule is necessary because the time limit for providing family planning assistance to Medicaid clients in the current rule is not based on a Medicaid requirement. The repeal of an additional rule is because DSHS is no longer a Title X grantee and the need for Title X Informational and Educational Committees no longer exists.

The proposed rules also comply with the four-year review of agency rules required by Government Code, Section 2001.039.

Revisions to Family Planning program requirements are necessitated by changes to program funding and are already known to current providers. Proposed rule changes will not have an adverse impact on state and local governments or small or micro-businesses.

Key Health Measures:

Program staff collects data on services provided and billing data on a continuous basis, as well as monitors birth rates. DSHS will routinely review data to evaluate program effectiveness and efficiency and to ensure that the rule changes do not have any unintended consequences on service delivery.

DSHS Family Planning Program Client Count and Average Cost Per Client, FY 2010-2013				
	FY2010	FY2011	FY2012	FY2013
Number of women and men of reproductive age receiving family planning services	211,980	202,968	75,160	47,322
Average annual cost per family planning client	\$204.58	\$205.93	\$236.54	\$240.10

*FY 2012 includes clients/funds from initial contract extension (9/1/11 through 1/14/12) and contracts resulting from competitive procurements (1/15/12 through 3/31/13).

**FY 2013 includes claims through September 16, 2013, and claims can be filed up to 60 days after the end of the fiscal year ending August 31, 2013.

The rule changes for genetic services do not change current program structure and operations, so no changes to program outcomes are anticipated.

Summary of Input from Stakeholder Groups:

An email was sent to all Family Planning providers on September 3, 2013, explaining all proposed changes to the rules. Stakeholders were asked to send any questions or comments by September 12, 2013, regarding the proposed rules. No questions or comments were received.

The proposed rules were presented to the Medical Care Advisory Committee at its November 8, 2013, meeting.

Proposed Motion:

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

Approved by Assistant Commissioner/Director:	Evelyn Delgado	Date:	10/30/13
Presenter:	David Auzenne	Program:	Family Planning
		Phone No.:	(512) 776-6388
Approved by CCEA:	Carolyn Bivens	Date:	10/23/13

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 56. Family Planning
Amendments §§56.1 - 56.8, 56.10 - 56.14, 56.17 - 56.19
Repeal §56.9 and §56.16
New §56.9

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§56.1 - 56.8, 56.10 - 56.14 and 56.17 - 56.19, the repeal of §56.9 and §56.16, and new §56.9 concerning family planning services.

BACKGROUND AND PURPOSE

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 56.1 - 56.19 have been reviewed, and the department has determined that reasons for adopting §§56.1 - 56.8, 56.10 - 56.15 and 56.17 - 56.19 continue to exist because rules on this subject are needed. The department also has determined that §56.9 and §56.16 are no longer needed and should be repealed. However, the department has determined to replace §56.9 with a new rule titled Abuse Reporting.

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.

The purpose of the amendments, new rule and repeals is to align the rules with Texas law as a result of the loss of Title X funds and to align abuse reporting and client consent guidelines and requirements with department policy. The amendments replace references to specific funding sources, such as Title V, X, and XX, with general program references (i.e., family planning program or family planning services). Amendments for genetics services will clarify Medicaid requirements.

SECTION-BY-SECTION SUMMARY

Amendments to §§56.1, 56.6, 56.11, and 56.12 replace the terms "contractor(s)" with state "provider(s)."

Amendments to §56.1 and §56.4 replace references to the specific funding sources such as "Title V, X, and XX" with references to "family planning program" or "family planning services."

Amendments to §§56.1, 56.5, and 56.6 rename section titles to “Introduction,” “Contraceptive Methods,” and “Prohibition of Abortion” respectively.

The amendment to §56.2 removes statutory definitions for specific title funding sources, including Title V, X, and Title XX, and the definition for "contractor."

The amendment to §56.3 provides increased clarity concerning the purpose of the family planning program.

The amendment to §56.5 allows providers flexibility to provide contraceptive services.

An amendment to §56.6 clarifies the section's sentence structure to emphasize that 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 of abortion procedures provided by providers.

The amendment to §56.7 improves syntax and increases rule clarity.

An amendment to §56.8 adds the word "department" to "providers" to increase rule accuracy.

Section 56.9 will be repealed because the time limit for providing family planning assistance to Medicaid clients in the current rule is not based on a Medicaid requirement.

New §56.9 addresses changes in policy and reporting requirements concerning child abuse, human trafficking, and intimate partner violence.

The amendments to §56.10 clarify the intent and the wording of the section to emphasize that clients have the right to choose family planning methods and sources of services without coercion to accept services.

Amendments to §56.12 define eligibility for family planning services in terms of the department's requirements, and re-emphasize that providers may not deny family planning services to eligible clients because of inability to pay.

Amendments to §56.13 increase clarity concerning consent by minors for family planning services and adds reference information concerning the department’s Family Planning Policy Manual.

Section 56.14 clarifies that adolescents should be offered services as soon as possible, rather than within a specific time period. Additionally, the amendment includes language concerning parental consent and confidentiality for adolescents and removes redundant language concerning consent.

Section 56.16 is repealed because the department is no longer a Title X grantee and the need for Title X Informational and Educational Committees no longer exists.

The amendments to §56.17 no longer requires that the genetic services agency provider's records comply with the department's records requirements, and that the genetic services agency provider must arrange for full medical referral services. Additionally, the amendment deletes approval to conduct selected laboratory tests at regular clinical laboratories even for those laboratories that demonstrate the ability to perform the tests.

The amendment to §56.18 replaces "amniocentesis" as a genetic service with "prenatal genetic diagnostic services" to meet Medicaid requirements.

An amendment to §56.19 requires that for the Title XIX Family Planning Genetics Program, genetic services for conditions that do not have serious psychosocial or medical implications for the client are not allowed.

FISCAL NOTE

David Auzenne, MPH, Unit Manager, Preventive and Primary Care Unit, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of administering the sections as proposed.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Mr. Auzenne has determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses that are providers of family planning and family planning genetic services will be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is no anticipated economic cost to persons required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Auzenne 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 administering the sections will be continued access to quality reproductive health care to women and men to promote positive birth outcomes and healthy families.

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 as 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 amendments, repeals, and new rule 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 Imelda Garcia, Community Health Services Section, Department of State Health Services, Mail Code 1923, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 776-2009, or email ImeldaM.Garcia@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 amendments, repeals, and new rule are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The proposed amendments, repeals, and new rule affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001.

Sections for Repeal.

§56.9. Prompt Service.

§56.16. Title X Informational and Educational Committees.

Legend: (Proposed Amendments)

Single Underline = Proposed new Language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§56.1. Introduction **[Applicability of Family Planning Requirements]**. The requirements in this chapter **[each section]** apply to the department's Family Planning Program **[Titles V, X, XIX (Medicaid), and XX family planning programs]** unless otherwise specified within the section. Department Family Planning providers **[planning contractors]** 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 **[Chapter 56]**, 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 **[subchapter]**, shall have the following meanings.

(1) - (3) (No change.)

[(4) Contractor--Any entity that contracts with the Department of State Health Services to provide Title V, X, and/or XX family planning services.]

(4) **[(5)]** Department--The Department of State Health Services.

(5) **[(6)]** 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) **[(7)]** Intended pregnancy--Pregnancy a woman reports as desired at the time of conception.

(7) **[(8)]** Medicaid--Title XIX of the Social Security Act.

(8) **[(9)]** Provider--Any entity that receives department or Title XIX **[Titles V, X, XIX, or XX]** funding to provide family planning services.

(9) [(10)] Region--Any of the public health service regions established by the Department of State Health Services.

[(11) Title V family planning program--Family planning services funded by grants under the Maternal and Child Health Act, 42 United States Code §701 *et seq.*]

[(12) Title X family planning program--Family planning services funded by grants under the Public Health Service Act, 42 United States Code §300 *et seq.*]

(10) [(13)] 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.*

[(14) Title XX family planning program--Family planning services funded by grants under the Social Services Block Grant, 42 United States Code §1397 *et seq.*]

§56.3. Purposes. The purposes of family planning services are:

(1) (No change.)

(2) to positively affect [**positively**] the outcome of future pregnancies;

(3) - (4) (No change.)

§56.4. Maximum Rates and Specific Codes. For payment of purchased counseling, educational, medical, and sterilization department family planning services [**funded by grants under Titles V, X, and XX,**] maximum rates are established by the department according to specific diagnosis and procedure codes. The commission [**Texas Health and Human Services Commission**] sets fees, charges, and rates for family planning services provided under Title XIX (Medicaid).

§56.5. Contraceptive [**Range of**] 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, [**but**] each major contraceptive category must be made available.

§56.6. Prohibition of Abortion [**Statement**]. 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 [**contractors**].

§56.7. Requirements for Reimbursement of Family Planning Services. The commission and the department shall reimburse providers for services [**provided**] in compliance with program standards, policies and procedures, and contract requirements unless payment is prohibited by law.

§56.8. Records Retention. Department providers [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 **[freely]** family planning methods and sources of services. Clients shall not be coerced to accept services **[subjected to coercion 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 **[contractors]** that show good faith efforts to comply with all child abuse reporting guidelines and requirements as interpreted by department policy.

(1) - (5) (No change.)

§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. **[Contractors shall not deny family planning services to eligible clients because of their inability to pay for services.]**

§56.13. Consent. Department Family Planning services must be provided with consent from **[Providers may provide family planning services, including prescription drugs, without the consent of]** 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 [**within two weeks of request**].

(b) The provider shall ensure that:

(1) counseling for adolescents seeking family planning services have parental consent [**includes encouraging participation of families, parents, and/or legal guardians in their decision to seek family planning services**];

(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.[:;]

[(4) full participation in family planning medical services is encouraged but may be deferred for the adolescent electing a non-prescriptive contraceptive method; and]

[(5) the adolescent is assured that all services are confidential and that any necessary follow-up contact will also protect the client's privacy.]

§56.17. Contract Requirements for the Title XIX (Medicaid) Family Planning Genetics Program.

(a) A genetic service agency provider may contract with the commission for Title XIX reimbursement for family planning genetic diagnostic and counseling services under the following conditions.

(1) The medical director of the genetic services agency provider is a clinical geneticist (MD or DO). The clinical geneticist must be an active candidate [**board eligible**] or board certified in clinical genetics by the American Board of Medical Genetics (ABMG) and licensed by the Texas Medical Board.

(2) (No change.)

[(3) The agency provider's records must contain multiple indexing for easy retrieval of information (by client name, by client number, and by syndrome, according to the International Classification of Diseases (current edition) with Clinical Modifications), and must comply with the department's records requirements.]

[(4) The agency provider must arrange for full medical referral services since genetic disorders often encompass several health problems. Independent consultant, laboratory, and radiology services must be billed through the genetic services agency provider under contract with the commission.]

(3) [(5)] Genetic counseling must be provided face-to-face by a clinical geneticist (MD or DO) or a genetic counselor under the direct supervision of a clinical geneticist.

(4) [(6)] Services provided by a specialized genetics agency provider must be under a written subcontractual agreement with the prime contractor. The commission has the right to approve all subcontractual agreements.

(5) [(7)] Any applicable state licensure or certification requirements must be met.

(b) Clinical laboratories that are part of the genetic services agency provider and external clinical laboratories used by genetic services agency providers must be directed by a clinical laboratory geneticist as defined by the ABMG. **[In some cases, the department may approve selected laboratory tests to be conducted by regular clinical laboratories if these laboratories demonstrate the ability to perform these tests. All clinical laboratories must be certified by Title XVIII for services provided and further approved for participation in the Title XIX program.]**

§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) - (6) (No change.)

(7) prenatal genetic diagnostic services **[amniocentesis]**; and

(8) (No change.)

§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 **[usually]** do not have serious psychosocial or medical implications for the client; and

(2) (No change.)

Proposed Repealed Language
~~Strikethrough—Repealed Text~~

~~§56.9. Prompt Service. Medicaid clients requesting family planning assistance shall be offered services within 30 days of request.~~

~~§56.16. Title X Informational and Educational Committees. Title X contractors that distribute informational and educational materials to clients and/or the community shall establish Informational and Educational (I&E) committees to review the materials. Contractors should include all target populations in the development of educational materials.~~

~~(1) Each Title X contractor must maintain an I&E committee of no fewer than five but not more than nine members who are broadly representative of the population of the community for which the materials are intended in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age.~~

~~(2) Each I&E committee must review and approve all informational and educational materials developed or made available by the contractor prior to their distribution to assure that the materials are suitable for the population and community for which they are intended and to assure their consistency with the purposes of Title X.~~

~~(3) Each I&E committee must review the content of the materials to assure that the information is factually correct. The committee may delegate responsibility for the review of the factual, technical, and clinical accuracy to appropriate contractor staff. However, final approval of the informational and educational material rests with the I&E committee.~~

~~(4) Each I&E committee shall keep minutes of its meetings and maintain a written record of its determinations.~~

~~(5) Materials provided by contractors must be reviewed and approved by each Title X contractor's I&E committee, since community cultures and standards vary across the state.~~

~~(6) Each contractor's I&E committee may meet as a group at a specific time and location, or the members may discuss the materials and make their determinations by telephone conference call.~~

~~(7) Each I&E committee shall review and approve informational and educational materials before distribution by the contractor, and meetings shall be scheduled whenever new materials come under consideration, or on a regular basis according to an individual contractor's policy. Contractors' I&E committees are not bound to conduct a minimum number of meetings per year.~~