

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
September 5 - 6, 2012**

**Agenda Item Title:** Amendments to rules concerning breast and cervical cancer services

**Agenda Number:** 5.c

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

The Preventive and Primary Care Unit under the Community Health Services Section in the Family and Community Health Services Division administers Breast and Cervical Cancer Services (BCCS), which provides statewide breast and cervical cancer screening and diagnostic services to low-income women who do not have other sources of payment for these services. Additional services may include case management, technical assistance and training for contractors, information and education activities for the public and contractors, and surveillance and evaluation of the BCCS program. Reducing mortality from breast and cervical cancer is the primary purpose of the program.

BCCS has 44 contractors, consisting of non-profit agencies, local health departments, hospitals, and local community health centers throughout Texas. During fiscal year 2011, BCCS provided cancer screening and diagnostic services to over 35,000 women. The fiscal year 2012 BCCS contracts are approximately \$10 million, and is funded with federal, state, general revenue, and donation funds.

**Summary:**

The purpose of the amendments is to reflect current program policy and national clinical guidelines. BCCS follows the American Congress of Obstetricians and Gynecologists (ACOG) and United States Preventive Services Task Force (USPSTF) guidelines for cervical cancer screening. In November 2009, ACOG changed the guidelines from including routine cervical cancer screening of women 18 to 64 years old to including only those 21 to 64 years old. Women 18 to 21 continue to receive diagnostic services through BCCS if they present with symptoms. The rule changes reflect this policy change and comply with the four-year review of agency rules in accordance with Government Code, Section 2001.039.

The proposed amendments delete references to “financial eligibility” in outlining eligibility requirements for the program to indicate that women must meet all eligibility requirements and not just those pertaining to income.

In addition, the proposed amendments delete the provisions regarding billing by contractors for administrative and support services costs associated with several required activities. While contractors perform these activities, such as eligibility determination and outreach, they are not reimbursed for these services. The deletions do not affect current program practices, as BCCS is a fee-for-service program in which contractors are reimbursed for allowable services.

**Key Health Measures:**

ACOG and USPSTF guidelines are based on the latest scientific research and are clinical standards of care. These guidelines are in line with BCCS’ goal to provide the most current evidence-based cancer screening services to ensure program participants receive quality services.

BCCS routinely collects and analyzes data for services provided. Data collection includes performance indicators required by the Centers for Disease Control and Prevention (CDC), as follows:

- percentage of high risk women enrolled in the program for cervical screening who have never or rarely been screened;
- total number of women screened;
- number of days from abnormal screening to diagnosis;
- number of days between diagnosis and initiation of treatment; and
- percentage of women with an abnormal screening who had complete follow-up.

BCCS Data Collected and Reported for FY2011 (July 1, 2010-June 30, 2011)	
Total number of women screened	36,524
Total number of screening mammograms	14,538
Total number of screening pap tests	16,382
Percentage of high risk women enrolled for cervical screening rarely or never screened	22.26%
Percentage of women with abnormal breast screening who had complete follow-up	92.89%
Percentage of women with abnormal cervical screening who had complete follow-up	97.23%
Percentage of abnormal breast screenings where time between screening and diagnosis is > 60 days	12.97%
Percentage of abnormal cervical screenings where time between screening and diagnosis is > 90 days	7.84%
Percentage of final diagnosis of breast cancer where treatment has been started	92.73%
Percentage of final diagnosis of invasive cervical cancer where treatment has been started	89.3%

BCCS program staff routinely communicate with contractors regarding their agency’s performance and quality measures and provide technical assistance as needed when goals are not being met to ensure all contractors meet required performance indicators. BCCS has met all CDC required performance indicators during the last two data submissions.

**Summary of Input from Stakeholder Groups:**

A blast email regarding changes to the rules was submitted to BCCS contractors on August 3, 2012, allowing one week for comment. Four responses were received, one in support of proposed rule changes and three requesting clarification if the proposed rule change for Section 61.41(c), administrative and support services, is being added or removed. Clarification was provided that the rule is being removed. No other questions or comments were received. BCCS contractors were provided an opportunity to comment when revisions were made to the BCCS Policy Manual. Daily communications such as emails, verbal communication and website publications will also be submitted to BCCS contractors throughout the process.

**Proposed Motion:**

Motion to recommend HHSC approval for publication of rules contained in agenda item #5.c.

**Approved by Assistant Commissioner/Director:** Evelyn Delgado **Date:** 08/14/12

**Presenter:** Imelda Garcia, MPH **Program:** Community Health Services **Phone No.:** 512-776-2009  
 Section

**Approved by CCEA:** Carolyn Bivens **Date:** 08/14/12

Title 25. Health Services  
Part 1. Department of State Health Services  
Chapter 61. Chronic Diseases  
Subchapter C. Breast and Cervical Cancer Services  
Amendments §61.34 and §61.41

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 §61.34 and §61.41 concerning the breast and cervical cancer services.

BACKGROUND AND PURPOSE

The amendments and consideration by the department of the sections for re-adoption without change implement the federal Breast and Cervical Cancer Mortality Prevention Act of 1990, Public Law 101-534, and its reauthorization, the Women's Health Research and Prevention Amendments of 1998, Public Law 105-340, establish a program of grants to states, territories, and tribal organizations for early detection and prevention of mortality from breast and cervical cancer. The department, through a cooperative agreement with the Centers for Disease Control and Prevention, provides statewide access to high-quality breast and cervical cancer screening and diagnostic services for financially eligible Texas women who are unable to access the same care through other funding sources or programs. The primary purpose of the Breast and Cervical Cancer Service is to reduce mortality from breast and cervical cancer. Amendments to the rules are necessary to reflect current program policy due to updates in clinical guidelines and to increase flexibility in allowable billing for administrative and support services according to program policy.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 61.31-61.34, 61.36 - 61.37, 61.39, and 61.41 - 61.42 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, §§61.31 - 61.33, 61.36 - 61.37, 61.39, and 61.42 are being adopted without changes.

SECTION-BY-SECTION SUMMARY

Amendments to §61.34 revise language to clarify client age eligibility requirements for breast and cervical cancer screening and diagnostic services.

Amendments to §61.41 remove allowable billing for administrative and support services to reflect current program policy.

FISCAL NOTE

David Auzenne, Manager, Preventive Care Branch, 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. The proposed rules do not change current program structure and implementation. These amendments are intended to clarify, update, and streamline the rules, and are not anticipated to be controversial.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Auzenne has also 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 participate in, or are affected by, the Breast and Cervical Cancer Services.

#### 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

Mr. Auzenne has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be continued access to breast and cervical cancer screening and diagnostic services for eligible, low-income Texas women.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed 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 David Auzenne, Mail Code 1923, Community Health Services Section, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 or by email to david.auzenne@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The proposed amendments 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.

The proposed amendments affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

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

§61.34. Client Eligibility Requirements.

(a) In order for a woman to be **[financially]** eligible for Breast and Cervical Cancer Services, the woman must:

(1) - (2) (No change.)

(b) A woman age 40 or older that meets **[financial]** eligibility criteria is eligible for breast cancer screening and diagnostic services. A woman under age 40 that meets **[financial]** eligibility criteria is eligible for breast cancer diagnostic services only.

(c) A woman age 21-64 **[18 or older]** that meets **[financial]** eligibility criteria is eligible for cervical cancer screening **[and/or diagnostic]** services. A woman age 18-64 that meets eligibility criteria is eligible for cervical cancer diagnostic services only.

§61.41. Payment for Services.

(a) - (b) (No change.)

**[(c) In accordance with department policy, providers may be allowed to bill for administrative and support services costs associated with the following activities:]**

**[(1) eligibility determination;]**

**[(2) public education and outreach;]**

**[(3) professional education;]**

**[(4) program management;]**

**[(5) coalition and partnership development;]**

**[(6) data collection and reporting; and]**

**[(7) other activities authorized in advance.]**

**[(d) In order to bill for administrative and support services costs, a provider must request such funding in its annual proposed budget. Administrative and support services costs shall not exceed 10% of a provider's actual expenditures for clinical services.]**