

DSHS RIDER 69 REPORT

Family Planning Affiliate Requirement

September 1, 2009 - June 30, 2010

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1. Reviews of Two Family Planning Contractors’ Compliance with Legislative Rider 69 – DSHS Office of Internal Audit (June 28, 2010)
 - Clifton Gunderson Report on the Rider 69 Audit of Family Planning Associates of San Antonio, Inc.
 - Clifton Gunderson Report on the Rider 69 Audit of Planned Parenthood of Austin Family Planning, Inc.

INTRODUCTION

DSHS Rider 69 (General Appropriations Act, 81st Texas Legislature) establishes the provisions under which a DSHS contractor that is affiliated with an abortion services provider can receive family-planning funds under Strategy B.1.3. The rider requires an audit, at least once every two years, to ensure compliance with the provisions. The provisions for the affiliations include the following:

- **Legal separation** - The family-planning and abortion-services affiliates must be legally separate corporations, with separate articles of incorporation and separate bylaws. State or local governmental entities that are family-planning and abortion-services affiliates must be legally separate organizations and must have separate governing structures.
- **Easily distinguishable names** - The family-planning and abortion-services affiliates must have easily distinguishable names.
- **Separate boards of directors and governing bodies** - The family-planning and abortion-services affiliates must have separate boards of directors or governing bodies which meet separately and maintain separate records.
- **No direct or indirect subsidy** - The family-planning affiliate may not transfer any funds distributed under Strategy B.1.3 to its abortion-services affiliate. The affiliated entities must apportion fair value for any shared expenses or costs (including overhead, rent, phones, equipment, and utilities) in accordance with generally accepted accounting principles.
- **Detailed employee timekeeping** - Any person employed part-time by the family planning affiliate or part-time by the abortion-service affiliate must maintain detailed time records clearly reflecting the work performed for each affiliate.
- **Clear signage** - If the family-planning and abortion-services affiliates are located at the same physical location, the existence and separate nature of the affiliate relationship must be clearly reflected by appropriate signage in areas accessible to the public.
- **Separate books** - The family-planning and abortion-services affiliates must each maintain records adequate to show compliance with these requirements.

The rider further directs the HHSC Executive Commissioner to submit a report on the audits, not later than June 30 of each year, to the chairs of the Senate Finance Committee and the House Appropriations Committee.

RIDER 69 IMPLEMENTATION

DSHS Rider 69 (General Appropriations Act, 81st Texas Legislature) is a continuation of the same requirements as DSHS Rider 77 (General Appropriations Act, 80th Texas Legislature). Based on recommendations from prior audits of these contractor types under Rider 77, DSHS developed internal protocols and contractor guidelines to address compliance for family planning contractors disclosing an affiliation. In 2007, DSHS monitoring teams began assessing compliance with family planning affiliate requirements during on-site reviews, including the evaluation of board minutes, quality management minutes, medical records, billing records, and signage. In June 2008, DSHS updated its monitoring tools to specifically address compliance with these requirements. Additionally, DSHS contracts include requirements specific to the rider

regarding affiliations. All of the DSHS internal processes previously established under Rider 77 to ensure compliance continue into the 2010-11 biennium under Rider 69.

In March 2010, the HHSC Executive Commissioner assigned the responsibility for the Rider 69 audits of both the family-planning contractors and the related DSHS functions to the DSHS Office of Internal Audit. DSHS, with approval of the State Auditor's Office, employed a private audit firm (Clifton Gunderson, LLP) to conduct agreed upon procedures audits of the family-planning contractors.

Through its Division for Family and Community Health Services, DSHS funded 78 contractors providing family-planning services, as of September 1, 2009. As part of the contracting process for FY 2010, DSHS asked family planning affiliates receiving funds to disclose through affidavit any affiliation with abortion-related activities. Seven of the 78 contractors for FY 2010 indicated an affiliation with an abortion provider. Based on additional correspondence with one of the entities to determine the nature of the affiliation, the auditors determined that the contractor did not have an affiliation subject to Rider 69. This determination left six contractors needing review for the 2010-11 biennium.

The contract auditors conducted reviews and reported on two entities during the reporting period ending June 30, 2010. DSHS Internal Audit reviewed and summarized the results of the two engagements and each contractor's management response. In fiscal year 2011, DSHS will complete reviews of the remaining four family planning contractors affiliated with an abortion provider. The organizations for the next reporting period include: Planned Parenthood of Central Texas, Inc., Planned Parenthood of North Texas, Inc., Planned Parenthood of West Texas, Inc. and Planned Parenthood of Houston and Southeast Texas, Inc.

SUMMARY OF AUDIT SCOPE AND FINDINGS

The language in Rider 69 states that an entity otherwise eligible to receive funds distributed under Strategy B.1.3 (the "family-planning affiliate") will not be disqualified from receipt of such funds because of its affiliation with an entity that performs elective abortions (the "abortion-services affiliate") provided that such affiliation satisfies the following requirements: (a) legal separation, (b) easily distinguishable names, (c) separate boards of directors and governing bodies, (d) no direct or indirect subsidy, (e) detailed employee timekeeping, (f) clear signage, and (g) separate books. The contract auditor, Clifton Gunderson, conducted agreed-upon procedures audits of each contractor to test compliance with these seven specific requirements.

Rider 69 calls for a reporting of audits filed or conducted pursuant to this section, including (1) the number and findings of such audits, (2) the adequacy of the documentation submitted and (3) recommendation to revise the verification process.

- (1) The number and findings of such audits:
 - The auditors conducted two audits pursuant to the rider for the period September 1, 2009 through June 30, 2010. These include audits of:

- Family Planning Associates of San Antonio, Inc.
- Planned Parenthood of Austin Family Planning, Inc.

- Findings Overall
 - The auditors found that both contractors fully complied with Rider 69 requirements.

- Corrective Actions
 - DSHS required no corrective actions because both entities complied with Rider 69 requirements.

(2) Documentation submitted pursuant to each audit is considered adequate.

(3) Clarification of the following requirements of Rider 69 may improve contractor compliance:

- Consider whether the audit requirement of Rider 69 applies to all family planning contractors or only those contractors reporting an affiliation with an entity that provides elective abortions. For this report, the audit provision was applied only to those contractors currently or historically reporting an affiliation with an entity that provides elective abortions.
- Consider clarification of the signage requirement. For this report, the audits assumed that Rider 69 signage requirements applied to all areas accessible to the public, including web sites.

FINDINGS BY CONTRACTOR

Family Planning Associates of San Antonio, Inc. (FPASA)

As indicated in the summary, this contractor fully complied with Rider 69 requirements.

(a) Legal Separation

- There are three legally separate entities. The sole member of FPASA is a Trust, Planned Parenthood Trust of San Antonio & South Central Texas, Inc. This Trust is also the sole member of an elective abortion services provider. This Trust contracts to provide administrative and staffing support to both entities.
- No Rider 69 legal separation finding identified.

(b) Easily Distinguishable Names

- No Rider 69 easily distinguishable names finding identified.

(c) Separate Board of Directors and Governing Bodies

- No Rider 69 board/governing body findings identified.

(d) No Direct or Indirect Subsidy

- No Rider 69 direct or indirect subsidy finding identified.

(e) Detailed Employee Timekeeping

- No Rider 69 detailed employee timekeeping finding identified.

(f) Clear Signage

- This requirement did not apply; the family planning and abortion services affiliates are not located at the same physical location.

(g) Separate Books

- No Rider 69 bookkeeping finding identified.

Planned Parenthood of Austin Family Planning, Inc. (PPAFP)

As indicated in the summary, this contractor fully complied with Rider 69 requirements.

(a) Legal Separation

- There are three legally separate entities. The sole member of PPAFP is Planned Parenthood of the Texas Capital Region, Inc. (TCR). TCR is also the sole member of an elective abortion services provider. TCR contracts to act as the management company to both entities.
- No Rider 69 legal separation finding identified.

(b) Easily Distinguishable Names

- No Rider 69 easily distinguishable name finding identified.

(c) Separate Board of Directors and Governing Bodies

- No Rider 69 separate board/governing body finding identified.

(d) No Direct or Indirect Subsidy

- No Rider 69 direct or indirect subsidy finding identified.

(e) Detailed Employee Timekeeping

- No Rider 69 detailed employee timekeeping finding identified.

(f) Clear Signage

- This requirement did not apply; the family planning and abortion services affiliates are not located at the same physical location.

(g) Separate Books

- No Rider 69 bookkeeping findings identified.

CONCLUSION

This report completes the auditing and reporting requirements of DSHS Rider 69, General Appropriations Act, 81st Texas Legislature (2009) for two of the six contractors to be audited for the 2010-11 biennium. The auditors found that both contractors fully complied with Rider 69 requirements.

For FY 2011, DSHS will conduct an internal audit of oversight and monitoring functions for the family planning contractors as they relate to Rider 69. Additionally, DSHS will complete audit requirements for this biennium by reviewing the four remaining family planning contractors who asserted an affiliation with an abortion provider. These contractors include:

- Planned Parenthood of Central Texas, Inc.
- Planned Parenthood of North Texas, Inc.
- Planned Parenthood of West Texas, Inc.
- Planned Parenthood of Houston and Southeast Texas, Inc.

A report of findings from these audits will be submitted to the Senate Finance Committee and House Appropriations Chairs by June 30, 2011.