Review of Texas Administrative Code Rule Revision Process

Texas Childhood Lead Poisoning Prevention Program

Presented by:

Cristina Baker, Program Coordinator

Agenda

1 Introduction to the "Rules Process"

- Outline timeline involved in the DSHS Rule Change Process
- Outline Program & SPC duties & expectations
- Identify additional stakeholders who should participate in rule change process

2 Review of proposed rule changes

- Title 25, Part 1, Chapter 37, Subchapter Q, Rules §37.334 –37.337
- Title 25, Part 1, Chapter 37, Subchapter Q, Rules §37.338-37.339

3 Approval of proposed changes

- Vote to accept/reject proposed rule changes
- Discuss additional rule changes

Introduction

- Definitions:
  - **HHSC** – Health & Human Services Commission
  - **CCEA** – Center for Consumer & External Affairs
  - **MCAC** – Medical Care Advisory Committee
  - **OGC** – Office of General Counsel
  - **RAA** – Rulemaking Authority Approval
  - **SHSC** – State Health Services Council
  - **RNF** – Rule Notification Form

Introduction

- **Timeframe:**

  Rulemaking Process Time Frames

- **Phases:**

  DSHS Rulemaking Process Flow Chart

Introduction – Recommendation Process

Introduction – Recommendation Process

Introduction -- Summary

Are there other stakeholders we should invite to join the SPC?

Proposed Rule Changes – Laws & Rules

- **Child Blood Lead Levels:**
  - Law: Health & Safety Code Chapter 88
  - Rule: Texas Administrative Code Chapter 37
    - Includes rules for Follow-up Care; Coordination of Care
    - Includes rules for Environmental Lead Investigations

- http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac
  - **Select "Title 25"**
  - **Select "Part 1"**
  - **Select "Chapter 37"**
  - **Select "Subchapter Q"**

Texas Administrative Code

TITLE 25	HEALTH SERVICES
PART 1	DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 37	MATERNAL AND INFANT HEALTH SERVICES
SUBCHAPTER Q	REPORTING, TREATMENT AND INVESTIGATION OF CHILD BLOOD LEAD LEVELS

Rules

§37.331	Purpose
§37.332	Definitions
§37.333	Confidentiality of Information Provided to the Department
§37.334	Reportable Health Condition
§37.335	Persons Required to Report
§37.336	Reporting Procedures
§37.337	Department Rules for Follow-Up Care; Coordination of Care
§37.338	Environmental Lead Investigations
§37.339	Environmental Lead Investigations Procedures

Rules with proposed change

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Proposed Rule Changes – Summary

- Texas Administrative Code Chapter 37 (TAC 37)
  - 9 = Total Number of Rules
  - 6 = Number of Rules with Proposed Changes
  - 3 = Number of Rules with no Proposed Changes

Proposed Rule Changes – Summary

- Revisions:
  - Removed the word “elevated”
  - Specified “confirmatory” with “venous”
  - Ensured environmental lead investigation (ELI) procedures agree with current Medicaid Benefit Policy

Proposed Rule Changes – Chapter 37, Rule §37.334

1 (a) All blood lead levels in children 14 years of age or younger shall be reportable to the
2 Department of State Health Services (department). ~~Elevated blood~~ Blood lead levels for
3 individuals over 14 years of age shall be reported in accordance with Chapter 99 of this
4 title (relating to Occupational Condition Reporting).
5
6 (b) The department will maintain a registry of children's blood lead test results.
7
8 (c) Reports shall include all information as required on the Texas Child Blood Lead Level
9 Report Form, Publication #F09-11709, which can be found at
10 http://www.dshs.state.tx.us/lead, or by calling 1-800-588-1248.

Proposed Rule Changes – Chapter 37, Rule §37.334

Rationale: Texas Administrative Code Chapter 99, Rule §99.1

- Reporting requirements.
- (1) It is the duty of every physician or health professional holding a license to practice in the State of Texas to report promptly to the local health authority each patient she or he shall examine and **who has or is suspected of having any** reportable occupational condition. The local health authority may authorize a staff member to transmit reports.
- Reportable conditions and information to be reported.
- (1) The reportable occupational conditions are: asbestosis, silicosis, blood lead levels in persons 15 years of age or older, and acute pesticide poisoning.
- (2) Reports for asbestosis and silicosis shall include all information collected by the reporting person and required to complete the most recent version of the department's Asbestosis and Silicosis Case Report Form F09-11626.
- (3) **Reports for blood lead levels in persons 15 years of age** and older shall include all information collected by the reporting person and required to complete the most recent version of the department's Adult Blood Lead Report Form F09-11624.

Proposed Rule Changes – Chapter 37, Rule §37.335

11 (a) The following persons are required to report all blood lead results:

12 (1) a physician after the first examination of a child;

13 (2) the person in charge of:

14 (A) an independent clinical laboratory;

15 (B) a hospital or clinic laboratory; or

16 (C) any facility in which a laboratory conducts blood lead testing.

17 (D) any facilities using a point of care testing.

Proposed Rule Changes – Chapter 37, Rule §37.335

- **Rationale: Medicaid Bulletin, No. 239**

"Blood lead testing (procedure code 83655) may be reimbursed to THSteps medical providers when it is performed in the provider's office using **point-of-care testing**.
Blood lead testing is part of the encounter rates for FQHCs and RHCs and is not reimbursed separately.
Environmental lead risks may be addressed during other visits using the Risk Assessment for Lead Exposure Questionnaire, Form Pb-110. Use of the form, which is available in the forms section of the DSHS
website at www.dshs.state.tx.us/thsteps/forms.shtm, is optional. Providers may use an equivalent form of
their choice.

The initial lead testing may be performed using a venous or capillary specimen, and the specimens must either be sent to the DSHS lab or the test must be performed in the provider's office using **point-of-care testing**. If the client has a blood lead level of 10mcg/dL or greater, the provider must perform a confirmatory
test using a venous specimen. The confirmatory specimen may be sent to the DSHS lab, or the client or specimen may be sent to a lab of the provider's choice.

Providers who perform **point of care lead testing** must be Clinical Laboratory Improvement Amendments
(CLIA)-certified. Procedure code 83655 is a CLIA-waived test and must be submitted with modifier QW."

Proposed Rule Changes – Chapter 37, Rule §37.336

47 (c) Blood lead levels of 40 micrograms per deciliter or greater shall be reported

48 immediately by ~~fax or~~ telephone to the department at (800) 588-1248 or by fax to (512)

49 ~~458~~776-7699. Reports shall include all information as required on the Texas Child Blood

50 Lead Level Report Form, Publication #F09-11709. The following information shall be

51 reported:

52 (1) the child's name, address, date of birth or age, sex, race and ethnicity;

53 (2) the child's blood lead level concentration, test date, and name and telephone number

54 of the testing laboratory;

55 (3) whether the sample is capillary or venous blood; and

56 (4) the name and city of the attending physician.

Proposed Rule Changes – Chapter 37, Rule §37.337

57 Health care providers should follow the department's Form Pb-109, Physician Reference
58 on Follow-up Testing and Coordination of Care, which may be obtained from the
59 department's website http://www.dshs.state.tx.us/lead or by calling 1-800-588-1248, and
60 meets the federal requirements for the recommended schedule for:
61 (1) obtaining a ~~confirmatory~~diagnostic venous blood lead test ~~sample~~; and
62 (2) providing early and late follow-up care and other activities.
63 (b) Environmental lead investigation, shall comply with the department's eligibility
64 criteria for environmental lead investigation as prescribed in §37.339(a) of this title
65 (relating to Environmental Lead Investigations Procedures).
66 (c) The investigator shall provide guidance to parents, guardians, and consulting
67 physicians from lead-risk assessment reports on how to eliminate or control lead
68 exposures that may be contributing to the child's blood lead level.

Proposed Rule Changes – Chapter 37, Rule §37.338

To be eligible for an environmental lead investigation, the child's ~~elevated~~ blood lead level(s) must meet the most recent criteria for environmental investigation ~~issued by the Centers for Disease Control and Prevention of the United States Public Health Service~~ as listed on the department's most current form, Pb-101, Environmental Lead Investigation Request.

(b) The request for an environmental lead investigation shall be on the department's most current form, Pb-101, ~~Request for Environmental Lead Investigation~~Environmental Lead Investigation Request ~~or equivalent~~. A current version of form Pb-101 may be obtained from the department's website at http://www.dshs.state.tx.us/lead, or by calling 1-800-588-1248. The completed form should be sent by FAX, ATTENTION: Environmental Specialist, using the fax number on the form.

Proposed Rule Changes – Chapter 37, Rule §37.338

12 (c) On receiving a report of a child with a confirmed (venous) blood lead level warranting

13 an environmental lead investigation, the department or its authorized agent may conduct

14 an environmental lead investigation, using Form Pb-103 ~~(~~Elevated Blood Lead Level

15 Investigation Questionnaire~~)~~ of ~~or its equivalent, of~~:

16 (1) the home environment in which the child resides, or other premises frequented by a

17 child, if the department or the department's authorized agent obtains the written consent

18 of an adult occupant;

Proposed Rule Changes – Chapter 37, Rule §37.338

35 (g) Written consent is not required for an investigation for a child with a venous blood
36 lead level of at least 45 micrograms per deciliter if a good faith attempt to contact the
37 person authorized to provide written consent under subsection (e) of this section has been
38 unsuccessful.

Proposed Rule Changes – Chapter 37, Rule §37.339

39 Eligibility Criteria for Environmental Lead Investigation.

40 (1) The eligibility criteria for an environmental lead investigation shall be as stated on

41 the department's Form Pb-101, Environmental Lead Investigation Request~~Request for~~

42 ~~Environmental Lead Investigation or equivalent~~.

43 (2) A city, health district, or local health department may conduct an environmental lead

44 investigation using lower ~~elevated~~ blood lead results than those in paragraph (1) of this

45 subsection.

46 (3) Before conducting the investigation, city, health district, or local health department

47 will:

48 (A) inform the health care provider of the intent to conduct the investigation; and

Proposed Rule Changes – Chapter 37, Rule §37.339

55 (2) The following persons may request an environmental lead investigation for a child

56 meeting criteria in subsection (a) of this section:

57 (A) ~~the child's attending healthcare provider~~ a Physician (MD or DO);

58 (B) ~~a public health nurse~~ a Physician's Assistant; or

59 (C) ~~local health department staff~~an Advanced Practicing Registered Nurse;

60 (D) ~~local Childhood Lead Poisoning Prevention Program staff; or~~

61 (E) ~~designated Texas Childhood Lead Poisoning Prevention Program staff~~.

62 (3) An environmental lead investigation request may be denied by the department if the

63 eligibility criteria ~~is~~ are not met.

Proposed Rule Changes – Chapter 37, Rule §37.339

70 (3) The lead risk assessor shall provide a written report of each completed

71 environmental lead investigation to the ~~provider~~requestor; parent or guardian; and

72 homeowner or property owner.

73 (A) The written report shall contain at least the following from the investigation:

74 (i) date lead risk assessment was performed;

75 (ii) address where lead risk assessment was performed;

76 (iii) name and address of property owner;

77 (iv) date structure or unit was built;

78 (v) name, ~~and~~ signature of lead risk assessor, and certification number, ~~or business~~

79 ~~affiliation of the person that conducted the investigation;~~

Proposed Rule Changes – Chapter 37, Rule §37.339

80 (vi) testing methods used (e.g. X-ray fluorescence (XRF), what samples were

81 collected, and name, address, and telephone number of the accredited laboratory that

82 analyzed samples);

83 (vii) a general statement of the results;

84 (viii) a description of recommended interim controls and/or abatement options for

85 each identified lead-based paint hazard;

86 (ix) a suggested prioritization for taking each action based on the immediacy and

87 severity of the hazard; and

88 (x) if the risk assessor is recommending use of an encapsulant or enclosure, the report

89 shall include maintenance and monitoring schedule for the encapsulant or enclosure.

Proposed Rule Changes – Chapter 37, Rule §37.339

- **Rationale: Centers for Disease Control Response to Advisory Committee on Childhood Lead Poisoning Prevention Recommendations in "*Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention*" (p. 6)**

"a. CDC will emphasize that the best way to end childhood lead poisoning is to prevent, control or eliminate lead exposures. **Since no safe blood lead level** in children has been identified, a blood lead "level of concern" cannot be used to define individuals in need of intervention.

b. In FY2012, **CDC will discontinue using the term 'level of concern'** in future publications and replace it with the reference value and the date of the NHANES that was used to calculate the reference value. CDC also will make this standard language available to operating divisions across CDC and use the cross-clearance procedure to ensure that authors adopt this language. "

Proposed Rule Changes – Chapter 37, Rule §37.338

- **Rationale: Medicaid Bulletin, No. 231**

"**A lead screening provider is a physician, NP, CNS, or PA** that conducts blood lead screens for a THSteps client. **Lead screening providers may submit a request** for an ELI after a blood lead screen has been conducted and there is evidence of persistent and confirmed elevated blood lead levels for the client.

An ELI may be **considered medically necessary if** documentation of the most recent blood lead levels, indicates one of the following:

A **venous** blood lead level result of 10-19 mcg/dL from two separate specimens conducted at least 12 weeks apart

A **venous** blood lead level result of 20 mcg/dL or greater from one specimen

- **Note:** *The ELI must be requested as soon as possible and no later than 30 days after the most recent blood lead level indicating medical necessity is obtained. The lead screening provider must maintain the ELI request and documentation of the blood lead levels that indicate medical necessity in the client's medical record.*

The lead screening provider may **request an ELI by completing Form Pb-101 "Environmental Lead Investigation Request"** and submitting it to the Texas Childhood Lead Poisoning Prevention Program (TX CLPPP). TX CLPPP reviews the request and determines whether the criteria for an ELI are met. If an ELI request meets TX CLPPP criteria, TX CLPPP sends a referral for an ELI to a state or local health department enrolled as a THSteps provider for assignment to a certified lead risk assessor."

SPC Voting & Recommendations

Does the SPC approve the proposed changes?

Does the SPC propose additional recommendations?

Questions & Answers

- **Webinar Participants** - Please use the **Chat** feature to submit questions.

- **Austin Participants** – Please use microphones at table.

TXCLPPP will read and address Webinar questions first. Then Austin participants may ask questions accordingly.

Presenter

Cristina Baker, Program Coordinator

Texas Childhood Lead Poisoning Prevention Program
1100 W. 49th St., Austin, TX 78756
PO Box 149347, MC1964, Austin, TX 78714

www.dshs.state.tx.us/lead

Meeting Dates

- March 27, 2013
- April 24, 2013