



T E X A S
Women's Healthcare
COALITION

Janet P. Realini, MD, MPH
Steering Committee Chair
The Texas Women's Healthcare Coalition
2300 W. Commerce St. #212
San Antonio, TX 78207

TO: Claudia Himes-Crayton, Nurse Consultant
Texas Health and Human Services Commission

CC: Lesley French, Associate Commissioner for Women's Health
Texas Health and Human Services Commission

DATE: April 22, 2016

SUBJECT: Family Planning Program Proposed Rules

Thank you for this opportunity to provide comments on the proposed rules for the Family Planning Program. The Texas Women's Healthcare Coalition (TWHC) and its 63 healthcare, faith, and community-based member organizations are dedicated to improving the health and well-being of Texas women, babies, and families by ensuring access to preventive healthcare for all Texas women. Access to preventive and preconception care—including health screenings and contraception—means healthy, planned pregnancies and early detection of cancers and other treatable conditions.

Included below are the TWHC's recommendations related to the proposed rules for the Family Planning Program. Recommended changes for each section are indicated in red, with additional comments following. The TWHC would like to highlight the following concerns, many of which are reflected in the proposed changes below:

- Having a robust Family Planning network and increasing provider participation in FPP is a requirement for meeting the growing demand for women's preventive healthcare in Texas. We urge HHSC to take all necessary steps to reduce administrative barriers to program enrollment, ensure FPP has adequate funding, and increase provider participation in geographic areas experiencing a shortage of qualified family planning providers.

- As the FPP rules are currently written, there is insufficient detail on the types of services the program will provide. Core benefits such as pregnancy testing and treatment for certain sexually transmitted infections should be clearly outlined within the rules. The TWHC has suggested benefits language in the comments below.
- The Family Planning Program rules currently in statute include a number of provisions that are important for a quality family planning program, and that have been removed from the proposed FPP rules. These include provisions regarding civil rights, freedom from coercion, child abuse reporting, not denying services due to inability to pay, and not requiring consent from a spouse to receive services. The TWHC believes these are crucial components of any family planning program and should be added back in to the FPP rules.
- Healthy Texas Women and the Family Planning Program will work best when enrollment in the two programs is streamlined and the administrative practices of the programs are aligned. For this reason, the TWHC recommends that the calculation for countable income be identical for HTW and FPP. This will simplify transition between the programs and ease the process for clients.
- Child support payments should be excluded from countable income for Healthy Texas Women and the Family Planning program. Excluding child support from countable income will better align HTW and FPP with other healthcare systems, and will ensure that the receipt of child support does not disqualify certain clients from receiving services.
- Neither the FPP nor HTW is considered minimum essential coverage under the Affordable Care Act. Individuals above a certain income who do not enroll in a plan with minimum essential coverage may face a substantial tax penalty. HHSC should therefore take all steps necessary to ensure clients eligible for Medicaid or the health insurance exchange are consistently informed that FPP and HTW participation will not prevent a tax penalty, and enrolled in those programs.

The TWHC thanks the Health and Human Services Commission (HHSC) for their time and consideration of these issues.

§382.105. Definitions.

(6) Contraceptive method—~~A broad range of birth control options, approved by the~~ Any United States Food and Drug Administration (FDA)-approved means of pregnancy prevention, ~~with the exception of emergency contraception.~~ **Methods include permanent and temporary methods. A broad range of FDA-approved contraceptive methods must be made available to the client, either directly (preferably on-site) or by referral. All brands of the different contraceptive methods need not be made available; however, each major contraceptive category must be made available.**

§382.107. Client Eligibility.

(d) 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.

§382.113. Covered and Non-covered Services.

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- (a)(1) health history and physical, **including family planning exam, follow-up visits related to the chosen contraceptive method, and follow-up visits related to sterilization for men and women, including procedures to confirm sterilization;**
- (2) counseling and education, **including counseling on specific methods and use of contraception;**
- (3) laboratory testing, **including pregnancy testing and screening for sexually transmitted infections (STIs), diabetes mellitus, and hypercholesterolemia;**
- (4) provision of a contraceptive method **and removal of temporary contraceptive methods. Methods include male and female sterilization;**
- (5) treatment of certain sexually transmitted infections (STIs);**
- ~~(6)~~ referrals for additional services, as needed;
- ~~(7)~~ immunizations; and
- ~~(8)~~ breast and cervical cancer screening and diagnostic services.
- ~~(9)~~ prenatal services.
- (b) Non-covered services. Services not provided through FPP include:
- ~~(2) counseling on and provision of emergency contraceptives and;~~
- ~~(23)~~ other services that cannot be appropriately billed with a permissible procedure code.

§382.125. Confidentiality and Consent.

(b) Written release authorization. Before an HTW provider may release any information that might identify a particular client, that client must authorize the release in writing, **except reports of child abuse required by Texas Family Code, Chapter 261, and as required or authorized by other law.** If the client is 15 through 17 years of age, inclusive, the client's parent, managing

(f) Consent. A provider may not require consent for family planning services from the spouse of a married client.

~~(g)~~ Consent for minors. HTW services must be provided with consent from the minor's parent, managing conservator, or guardian only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations.

§382.128 Freedom of Choice

Clients have the right to freely choose family planning methods and sources of services. Clients shall not be coerced to accept services.

§382.129 Abuse Reporting

Texas Family Code, Chapter 261, requires child abuse reporting.

(1) The department may distribute appropriated funds only to providers that show good faith efforts to comply with all child abuse reporting guidelines and requirements as interpreted by department 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.

§382.130 Civil Rights

Providers shall make family planning services available without regard to marital status, parenthood, handicap, age, color, religion, sex, ethnicity, or national origin. The provider must comply with Title VI of the Civil Rights Act of 1964 (Public Law 88 – 352); §504 of the Rehabilitation Act of 1973 (Public Law 93 – 112); The Americans with Disabilities Act of 1990 (Public Law 101 – 336), including all amendments to each; and all regulations issued pursuant to these Acts.

Thank you for your time and consideration, and for your support for women’s preventive healthcare. If you have any questions or we can provide further information, please contact Janet Realini at JRealini@TexasWHC.org.

Respectfully,



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Steering Committee Chair, Texas Women’s Healthcare Coalition

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**TO: Meagan Kirby, Program Specialist
Texas Health and Human Services Commission**

**CC: Lesley French, Associate Commissioner for Women's Health
Texas Health and Human Services Commission**

DATE: April 22, 2016

SUBJECT: Healthy Texas Women Proposed Rules

Thank you for this opportunity to provide comments on the proposed rules for the Healthy Texas Women program. The Texas Women's Healthcare Coalition (TWHC) and its 63 healthcare, faith, and community-based member organizations are dedicated to improving the health and well-being of Texas women, babies, and families by assuring access to preventive healthcare for all Texas women. Access to preventive and preconception care—including health screenings and contraception—means healthy, planned pregnancies and early detection of cancers and other treatable conditions.

Included below are the TWHC's recommendations related to the proposed rules for the Healthy Texas Women program. Recommended changes for each section are indicated in red, with additional comments following. The TWHC would like to highlight the following concerns, many of which are reflected in the proposed changes below:

- As the HTW rules are currently written, there is insufficient detail on the types of services the program will provide. Core benefits such as pregnancy testing and treatment for certain sexually transmitted infections should be clearly outlined within the rules. The TWHC has suggested benefits language in the comments below.
- The Family Planning Program rules currently in statute include a number of provisions

that are important for a quality family planning program, and that have been removed from the proposed FPP rules. These include provisions regarding civil rights, freedom from coercion, child abuse reporting, not denying services due to inability to pay, and not requiring consent from a spouse to receive services. The TWHC believes these are important components of any family planning program and should be included in both the FPP and HTW rules.

- Healthy Texas Women and the Family Planning Program will work best when enrollment in the two programs is streamlined and the administrative practices of the programs are aligned. For this reason, the TWHC recommends that the calculation for countable income be identical for HTW and FPP. This will simplify transition between the programs and ease the process for clients.
- Child support payments should be excluded from countable income for Healthy Texas Women and the Family Planning program. Excluding child support from countable income will better align HTW and FPP with other healthcare systems, and will ensure that the receipt of child support does not disqualify certain clients from receiving services.
- Neither the FPP nor HTW is considered minimum essential coverage under the Affordable Care Act. Individuals above a certain income who do not enroll in a plan with minimum essential coverage may face a substantial tax penalty. HHSC should therefore take all steps necessary to ensure clients eligible for Medicaid or the health insurance exchange are consistently informed that FPP and HTW participation will not prevent a tax penalty, and are enrolled in those programs.

The TWHC thanks the Health and Human Services Commission (HHSC) for their time and consideration of these issues.

§382.5. Definitions.

(6) Contraceptive method—~~A broad range of birth control options, approved by the~~ Any United States Food and Drug Administration (FDA)-approved means of pregnancy prevention, ~~with the exception of emergency contraception.~~ **Methods include permanent and temporary methods. A broad range of FDA-approved contraceptive methods must be made available to the client, either directly (preferably on-site) or by referral. All brands of the different contraceptive methods need not be made available; however, each major contraceptive category must be made available.**

§382.7. Client Eligibility.

(a)(1) (B) is 15 through 17 years of age, inclusive, and has a parent, **managing conservator**, or legal guardian apply, renew, and report changes to her case on her behalf;

(a)(6) does not currently receive benefits through a Medicaid program, ~~Children's Health Insurance Program~~, or Medicare Part A or B; and

(a)(7) does not have creditable health coverage that covers the services HTW provides, **with no cost sharing**, except as specified in subsection (c) of this section. **A female is eligible for HTW preventive services if her creditable health coverage requires cost-sharing for these services.**

(g) Auto-enrollment from Children’s Medicaid and the Children’s Health Insurance Program. At age 19, a female who is receiving Children’s Medicaid or CHIP and is not otherwise eligible for a Medicaid group will automatically be enrolled into HTW at the end of their CHIP certification period to ensure that there is no gap in health coverage. HHSC will not auto-enroll a female to HTW if she chooses to opt out of receiving HTW.

Additional Comments:

- HHSC should take steps to streamline enrollment of minors in Pregnant Women Medicaid into the Healthy Texas Women program, if they are not otherwise eligible for any other Medicaid group.
- At the end of their Pregnant Women’s Medicaid certification period and after being determined not eligible for any other Medicaid group, women’s information should be transferred to the federal Health Insurance Marketplace (as is required by 42 CFR 435.1200(e)) even if those women are auto-enrolled into HTW.

§382.9 Application and Renewal Procedures

(f) Identity. An applicant’s **identity** must **be verified** ~~her identity~~ the first time she applies to receive covered services. **HHSC must use available electronic resources to verify identity and citizenship before requesting documentation from the client.**

(g) Citizenship. If an applicant is a United States citizen, she must provide proof of citizenship. **HHSC must use available electronic resources to verify identity and citizenship before requesting documentation from the client. Citizenship will only be verified once, unless HHSC receives conflicting information related to citizenship. If the client’s citizenship has already been verified by HHSC for eligibility for another program, the client will not be required to re-verify her citizenship.** If the applicant, who is otherwise eligible to receive HTW services, is not an United States citizen, HHSC determines her eligibility in accordance with §366.513 of this title (relating to Citizenship).

(b) Adjunctive eligibility. An applicant or client is considered adjunctively eligible at an initial review or renewal application, and therefore automatically financially eligible, if:

(5) She is in a Children’s Health Insurance Program (CHIP) budget group for someone receiving CHIP.

Additional Comments:

- HHSC should prioritize changes to the TIERS system that would enable TIERS to accept Healthy Texas Women clients who are enrolled in CHIP. Even if the TIERS system is not yet able to accommodate the change, HTW rules should indicate that clients eligible for CHIP may receive HTW services.
- HHSC should define what income is included in “countable income” and how “family size” will be determined.

§382.15. Covered and Non-covered Services.

- (a)(1) health history and physical, **including family planning exam, follow-up visits related to the chosen contraceptive method, and follow-up visits related to sterilization, including procedures to confirm sterilization;**
- (a)(2) counseling and education, **including counseling on specific methods and use of contraception;**
- (a)(3) laboratory testing, **including pregnancy testing and screening for sexually transmitted infections (STIs), diabetes mellitus, and hypercholesterolemia;**
- (a)(4) provision of a contraceptive method **and removal of temporary contraceptive methods. Methods include female sterilization;**
- (a)(5) **treatment of certain sexually transmitted infections (STIs);**
- (a)(65) referrals for additional services, as needed;
- (a)(76) immunizations; and
- (a)(87) breast and cervical cancer screening and diagnostic services.
- (a)(9) **other authorized services. HTW providers may offer treatments for conditions specified by HHSC that are identified during screenings, contingent on available funding. Women on Medicaid who are auto-enrolled into HTW will be able to continue treatment for those chronic conditions for which HTW treatment coverage is available, contingent on available funding.**
- (b) Non-covered services. Services not provided through HTW include:
- (b)(2) ~~counseling on and provision of emergency contraceptives; and~~
- (b)(23) other services that cannot be appropriately billed with a permissible procedure code.

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(b) Written release authorization. Before an HTW provider may release any information that might identify a particular client, that client must authorize the release in writing, **except reports of child abuse required by Texas Family Code, Chapter 261, and as required or authorized by other law.** If the client is 15 through 17 years of age, inclusive, the client's parent, managing conservator, or guardian, as authorized by Chapter 32 of the Texas Family Code or by federal law or regulations, must authorize the release.

(f) Consent. A provider may not require consent for family planning services from the spouse of a married client.

(g-f) Consent for minors. HTW services must be provided with consent from the minor's parent, managing conservator, or guardian only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations.

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