

Texas Administrative Code

TITLE 1 ADMINISTRATION
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 382 WOMEN'S HEALTH SERVICES
SUBCHAPTER B FAMILY PLANNING PROGRAM

RULE §382.101 Introduction

(a) Governing rules. This subchapter sets out rules governing the administration of the HHSC Family Planning Program. This program is separate from family planning services provided through Medicaid.

(b) Authority. This subchapter is authorized generally by Texas Government Code §531.0201(a)(2)(C), which transfers client services functions performed by the Texas Department of State Health Services to HHSC, and Texas Government Code §531.0204 which requires the HHSC Executive Commissioner to develop a transition plan which includes an outline of HHSC's reorganized structure and a definition of client services functions.

(c) Objectives. The HHSC Family Planning Program is established to achieve the following overarching objectives:

(1) to increase access to health and family planning services to:

(A) avert unintended pregnancies;

(B) positively affect the outcome of future pregnancies; and

(C) positively impact the health and well-being of women and their families;

(2) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(3) to ensure the efficient and effective use of state funds in support of these objectives and to avoid the direct or indirect use of state funds to promote or support elective abortion;

(4) to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(5) to enforce any state law that regulates the delivery of non-federally funded family planning services, to the extent permitted by the Constitution of the United States.

RULE §382.103 Non-entitlement and Availability

(a) No entitlement. This subchapter does not establish an entitlement to the services described in this subchapter.

(b) Fund availability. The services described in this subchapter are subject to the availability of appropriated funds.

RULE §382.105 Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group agreement, staffing agreement, management agreement, or collaborative practice agreement.

(2) Applicant--An individual applying to receive services under FPP, including a current client who is applying to renew.

(3) Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

(4) Client--Any individual seeking assistance from an FPP health-care provider to meet their family planning goals.

(5) Contraceptive method--Any birth control option approved by the United States Food and Drug Administration, with the exception of emergency contraception.

(6) Contractor--An entity that HHSC has contracted with to provide services. The contractor is the responsible entity, even if a subcontractor provides the service.

(7) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.

(8) Covered service--A medical procedure for which FPP will reimburse a contracted health-care provider.

(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:

(A) to terminate a pregnancy that resulted from an act of rape or incest;

(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or

(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.

(10) Family Planning Program (FPP)--The non-Medicaid program administered by HHSC as outlined in this subchapter.

(11) Family Planning Program health-care provider--A health-care provider that is contracted with HHSC and qualified to perform covered services.

(12) Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(13) Federal poverty level--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(14) Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.

(15) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in

three or more organ systems. The term does not include a clinic specializing in family planning services.

(16) HHSC--The Texas Health and Human Services Commission or its designee.

(17) Medicaid--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(18) Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).

(19) Point of Service--The location where an individual can receive FPP services.

(20) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or client, who may be liable as a source of payment of the applicant's or client's medical expenses (for example, a health insurance company).

(21) Unintended pregnancy--Pregnancy a female reports as either mistimed or undesired at the time of conception.

(22) U.S.C.--United States Code.

RULE §382.107 Client Eligibility

(a) Criteria. A male or female is eligible to receive services through FPP if:

(1) he or she is 64 years of age or younger;

(2) he or she resides in Texas; and

(3) has countable income (as calculated under §382.109 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 250 percent of the federal poverty level (FPL).

(b) Contractors determine eligibility at the point of service in accordance with program policy and procedures.

(c) Adjunctive eligibility--An applicant is considered adjunctively (automatically) eligible for FPP services at an initial or renewal eligibility screening if the applicant can provide proof of active enrollment in one of the following programs:

(1) Children's Health Insurance Program (CHIP) Perinatal;

(2) Medicaid for Pregnant Women;

- (3) Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); or
- (4) Supplement Nutrition Assistance Program (SNAP).

RULE §382.109 Financial Eligibility Requirements

Calculating countable income. FPP determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, FPP adds the incomes listed in paragraph (1) of this section, less any deductions listed in paragraph (2) of this section, and exempting any amounts listed in paragraph (3) of this section.

(1) To determine income eligibility, FPP counts the income of the following individuals if living together:

(A) the individual age 18 through 64, inclusive, applying for FPP;

(i) the individual's spouse; and

(ii) the individual's children age 18 and younger; or

(B) the individual age 17 or younger, inclusive, applying for FPP;

(i) the individual's parent(s);

(ii) the individual's siblings age 18 and younger; and

(iii) the individual's children;

(2) In determining countable income, FPP deducts the following items:

(A) a dependent care deduction of up to \$200 per month for each child under two years of age, and up to \$175 per month for each dependent two years of age or older;

(B) a deduction of up to \$175 per month for each dependent adult with a disability; and

(C) child support payments.

(3) FPP exempts from the determination of countable income the following types of income:

(A) the earnings of a child;

(B) up to \$300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(C) Temporary Assistance to Needy Families (TANF);

(D) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program) (7 U.S.C. §§2011-2036), the Child Nutrition Act of 1966 (42 U.S.C. §§1771-1793), the National School Lunch Act (42 U.S.C. §§1751-1769), and the Older Americans Act of 1965 (42 U.S.C. §§3056, et seq.);

(E) foster care payments;

(F) payments made under a government housing assistance program based on need;

(G) energy assistance payments;

(H) job training payments;

(I) lump sum payments;

(J) Supplemental Security Income;

(K) adoption payments;

(L) dividends, interest and royalties;

(M) Veteran's Administration;

(N) earned income tax credit payments;

(O) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(P) educational assistance payments; and

(Q) crime victim's compensation payments.

RULE §382.111 Denial, Suspension, or Termination of Services and Client Appeals

(a) Notice and opportunity for hearing. HHSC may deny, suspend, or terminate services to an applicant or client if it determines that the applicant or client is ineligible to participate in FPP.

(b) Notice and opportunity for a fair hearing. Before HHSC finalizes the denial, suspension, or termination under subsection (a) of this section, the applicant or client is notified and provided an opportunity for a fair hearing in accordance with Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules).

(c) Appeal procedures. An applicant or client who is aggrieved by the denial, suspension, or termination of services under subsection (a) of this section may appeal the decision in accordance with Chapter 357, Subchapter A of this title. An applicant or client may not appeal a decision to deny, suspend, or terminate services if the decision is the result of a decision by the State to reduce or stop funding the program.

RULE §382.113 Covered and Non-covered Services

(a) Covered services. Services provided through FPP include:

- (1) health history and physical;
- (2) counseling and education;
- (3) laboratory testing;
- (4) provision of a contraceptive method;
- (5) pregnancy tests;
- (6) sexually transmitted infection screenings and treatment;
- (7) referrals for additional services, as needed;
- (8) immunizations;
- (9) breast and cervical cancer screening and diagnostic services;
- (10) prenatal services; and
- (11) other services subject to available funding.

(b) Non-covered services. Services not provided through FPP include:

- (1) counseling on and provision of abortion services;
- (2) counseling on and provision of emergency contraceptives; and
- (3) other services that cannot be appropriately billed with a permissible procedure code.

RULE §382.115 Family Planning Program Health-Care Providers

(a) Procedures. An FPP health-care provider must:

(1) be enrolled as a Medicaid provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);

(2) must complete the FPP certification process as described in subsection (g) of this section; and

(3) must comply with the requirements set out in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).

(b) Requirements. An FPP health-care provider must ensure that:

(1) the FPP health-care provider does not perform or promote elective abortions outside the scope of FPP and is not an affiliate of an entity that performs or promotes elective abortions; and

(2) in offering or performing an FPP service, the FPP health-care provider:

(A) does not promote elective abortion within the scope of FPP;

(B) maintains physical and financial separation between its FPP activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:

(i) physical separation of FPP services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the FPP health-care provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for FPP services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify FPP services and the absence of signs or materials promoting elective abortion in the FPP health-care provider's location or in the FPP health-care provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an FPP client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a health-care provider;

(2) furnishing or displaying to an FPP client information that publicizes or advertises an elective abortion service or health-care provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an FPP health-care provider must provide HHSC with all information HHSC requires to determine the provider's compliance with this section.

(e) Certification. Upon initial application for enrollment in FPP, an FPP contractor must certify its compliance with subsection (b) of this section and any other requirement specified by HHSC. Each FPP contractor must annually certify that the contractor complies with subsection (b) of this section.

(f) Provider disqualification. If HHSC determines that an FPP health-care provider fails to comply with subsection (b) of this section, HHSC disqualifies the FPP health-care provider from providing FPP services under this subchapter.

(g) Client assistance and recoupment. If an FPP health-care provider is disqualified from providing FPP services under this subchapter, HHSC takes appropriate action to:

(1) assist an FPP client to find an alternate health-care provider; and

(2) recoup any funds paid to a disqualified provider for FPP services performed during the period of disqualification.

RULE §382.117 Prohibition of Abortion

Abortion is not considered a method of family planning, and no state funds appropriated for the FPP are used to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of abortion procedures.

RULE §382.119 Reimbursement

(a) Reimbursement.

(1) Covered services provided through FPP are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(2) Entities that contract with HHSC to provide additional services related to family planning that are separate from services referenced in paragraph (1) of this subsection are reimbursed by HHSC in compliance with program standards, policy and procedures, and contract requirements unless payment is prohibited by law.

(b) Claims procedures. An FPP health-care provider must comply with Chapter 354, Subchapter A, Divisions 1 and 5 of this title (relating to Medicaid Procedures for Providers and relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. An FPP health-care provider may not use any FPP funds received to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

(d) An FPP health-care provider may not deny covered services to a client based on the client's inability to pay.

RULE §382.121 Provider's Request for Review of Claim Denial

(a) Review of denied claim. An FPP health-care provider may request a review of a denied claim. The request must be submitted as an administrative appeal under Chapter 354, Subchapter I, Division 3 of this title (relating to Appeals).

(b) Appeal procedures. An administrative appeal is subject to the timelines and procedures set out in Chapter 354, Subchapter I, Division 3 of this title and all other procedures and timelines applicable to an FPP health-care provider's appeal of a Medicaid claim denial.

RULE §382.123 Records Retention

(a) FPP contractors must maintain, for the time period specified by the HHSC, all records pertaining to client services, contracts, and payments.

(b) FPP contractors must comply with the Medicaid record retention requirements found in §354.1004 of this title (relating to Retention of Records).

(c) All records relating to services must be accessible for examination at any reasonable time to representatives of HHSC and as required by law.

RULE §382.125 Confidentiality and Consent

(a) Confidentiality required. An FPP health-care provider must maintain all health care information as confidential to the extent required by law.

(b) Written release authorization. Before an FPP health-care provider may release any information that might identify a particular client, that client must authorize the release in writing. If the client is a minor, 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.

(c) Confidentiality training. An FPP health-care provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.

(d) Records monitoring. An FPP health-care provider must monitor client records to ensure that only appropriate staff and HHSC may access the records.

(e) Assurance of confidentiality. An FPP health-care provider must verbally assure each client that her records are confidential and must explain the meaning of confidentiality.

(f) Consent for minors. FPP 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.

(g) A FPP health-care provider may not require consent for family planning services from the spouse of a married client.

RULE §382.127 FPP Services for Minors

(a) Minors must be provided individualized family planning counseling and family planning medical services that meet their specific needs as soon as possible.

(b) The FPP health-care provider must ensure that:

(1) counseling for minors seeking family planning services is provided with parental consent;

(2) counseling for minors includes information on use and effectiveness of all medically approved birth control methods, including abstinence; and

(3) appointment schedules are flexible enough to accommodate access for minors requesting services.

RULE §382.129 Severability

(a) Legislative intent. It is the intent of the Texas Legislature that FPP must be operated only in a manner that ensures that no funds spent under the program are used to:

(1) perform or promote elective abortions; or

(2) contract with entities that perform or promote elective abortions or affiliates of such entities.

(b) Limitation on administration. HHSC, as the agency responsible for administering FPP, is subject to the conditions specified in state law and legislative appropriations. Its authority to operate the program is thus strictly limited, and HHSC has no authority to operate FPP except in compliance with such conditions.

(c) Nonseverable provisions.

(1) Section 382.105(1) of this subchapter (relating to Definitions) and §382.115 of this subchapter (relating to Family Planning Program Health Care Providers) are necessary and integral to the implementation of the requirements of state law and legislative appropriations and the achievement of the objectives of FPP. As such, HHSC regards the provisions and application of these sections as essential aspects of HHSC's compliance with state law and, therefore, not severable from the other provisions of this subchapter.

(2) Accordingly, to the extent that §382.105(1), §382.115, or this section is determined by a court of competent jurisdiction to be unconstitutional or unenforceable, or to the degree an official or employee of HHSC or the State of Texas is enjoined from enforcing these sections, HHSC will regard this entire subchapter as invalid and unenforceable and will cease operation of the program.

(d) Severable provisions. To the extent that any part of this subchapter other than §382.105(1), §382.115, or this section are enjoined, HHSC may enforce the parts of the subchapter not affected by such injunctive relief to the extent that HHSC determines it can do so consistent with legislative intent and the objectives of this subchapter.