



**TO:** Medical Care Advisory Committee  
**DATE:** May 17, 2018  
**FROM:** Meagan Kirby  
Senior Advisor  
Health, Developmental and  
Independence Services Department

**Agenda Item No.: 6**

**SUBJECT:** Healthy Texas Women Waiver

**Amendments to:** The Texas Health and Human Services Commission proposes amendments to §382.1, concerning Introduction; §382.5, concerning Definitions; §382.7, concerning Client Eligibility; §382.9, concerning Application and Renewal Procedures; §382.13, concerning Denial, Suspension, or Termination of Services and Client Appeals; §382.17, concerning Health-Care Providers; §382.19, concerning Prohibition of Abortion; and §382.29 concerning Severability; and the repeal of §382.3, concerning Non-entitlement and Availability.

**BACKGROUND:**  Federal Requirement  Legislative Requirement   
Other: (e.g., Program Initiative)

On July 1, 2016, HHSC launched the Healthy Texas Women (HTW) program. The HTW program provides women's health and family planning services at no cost to eligible, low-income Texas women and is currently fully state funded.

On June 30, 2017, HHSC submitted an application to the Centers for Medicare & Medicaid Services (CMS) to request a new waiver under Section 1115 of the Social Security Act for a program to be called the Healthy Texas Women Section 1115 Demonstration Waiver (HTW demonstration). The effective date for the HTW demonstration is September 1, 2018, for a five-year period ending August 31, 2023. Through the HTW demonstration, HHSC seeks to enhance women's health care services by increasing access to and participation in the HTW program.

The purpose of the amendments and repeal is to implement the HTW demonstration and to be consistent with state budget provisions from the 85th Legislative Session.

## ISSUES AND ALTERNATIVES:

High stakeholder interest and engagement is expected since the topic is women's health. However, the specific changes made in the rule project should not be controversial.

## STAKEHOLDER INVOLVEMENT:

The proposed rule amendments were sent to external stakeholders for review. Comments received from stakeholders were reviewed by staff and taken into consideration. External stakeholders included: Life Choices SA, Concerned Women for America of South Texas, Teaching Hospitals of Texas, Texas Hospital Association, American Congress of Obstetricians and Gynecologists, Texas Medical Association, Texas Association of Community Health Centers, and Texas Women's Healthcare Coalition. Stakeholder comments included needed clarification on §382.17, concerning Health-Care Providers; updates to §382.5, concerning Definitions; and recommendations for larger programmatic changes.

## FISCAL IMPACT:

None     Yes

	SFY 2019	SFY 2020	SFY 2021	SFY 2022	SFY 2023
State	(\$56,736,418)	(\$61,494,351)	(\$66,413,517)	(\$71,747,362)	(\$77,527,805)
Federal	\$57,123,418	\$61,494,351	\$66,413,517	\$71,747,362	\$77,527,805
Total	\$387,000	\$0	\$0	\$0	\$0

## RULE DEVELOPMENT SCHEDULE:

March 2018	Publish proposed rules in <i>Texas Register</i>
May 2018	Present to the Medical Care Advisory Committee
May 2018	Present to HHSC Executive Council
August 2018	Publish adopted rules in <i>Texas Register</i>
September 2018	Effective date

## REQUESTED ACTION:

- The MCAC recommends approval of the proposed rules for publication.
- Information Only

TITLE 1 ADMINISTRATION  
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 382 WOMEN'S HEALTH SERVICES  
SUBCHAPTER A HEALTHY TEXAS WOMEN

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes amendments to §382.1, concerning Introduction; §382.5, concerning Definitions; §382.7, concerning Client Eligibility; §382.9, concerning Application and Renewal Procedures; §382.13, concerning Denial, Suspension, or Termination of Services and Client Appeals; §382.17, concerning Health-Care Providers; §382.19, concerning Prohibition of Abortion; §382.21, concerning Reimbursement; and §382.29 concerning Severability; and the repeal of §382.3, concerning Non-entitlement and Availability.

BACKGROUND AND PURPOSE

On July 1, 2016, HHSC launched the Healthy Texas Women (HTW) program. The HTW program provides women's health and family planning services at no cost to eligible, low-income Texas women and is currently fully state funded.

On June 30, 2017, HHSC submitted an application to the Centers for Medicare & Medicaid Services (CMS) to request a new waiver under Section 1115 of the Social Security Act for a program to be called the Healthy Texas Women Section 1115 Demonstration Waiver (HTW demonstration). The effective date for the HTW demonstration is September 1, 2018, for a five-year period ending August 31, 2023. Through the HTW demonstration, HHSC seeks to enhance women's health care services by increasing access to and participation in the HTW program.

The HTW demonstration will be a successor program to the Medicaid Women's Health Program and therefore subject to Texas Human Resources Code §32.024(c-1).

The purpose of the amendments and repeal is to implement the HTW demonstration and to be consistent with state budget provisions from the 85th Legislative Session.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §382.1 updates the purpose of the rules to better align with the goals and objectives of the HTW demonstration and removes the subsection on rule authority. The section on rule authority is removed because Texas Government Code §531.033 provides the Executive Commissioner of HHSC with broad rulemaking authority to adopt rules necessary to carry out HHSC's duties under Chapter 531.

The proposed repeal of §382.3 deletes the rule because the HTW demonstration will align with existing Medicaid policies on access to services for eligible individuals.

The proposed amendment of §382.5 adds a definition for "creditable health coverage" which is a term used throughout the subchapter; broadens the definition for "health-care provider" and repeals the definition for "health-clinic" as no longer necessary due to the broader definition for "health-care provider"; updates the definition for "elective abortion" to be consistent with state legislation from the 85th Legislative Session; updates the definition for "unintended pregnancy" to be more concise; and relocates the definition for "promote" to this section from §382.17.

The proposed amendment of §382.7 updates the eligibility requirements for the HTW demonstration to exclude women who are receiving benefits through a Medicaid program that provides full benefits; updates the language used in subsection (c) for clarification purposes; and deletes subsection (e) as it references a transfer of eligibility no longer relevant for current HTW clients. New subsection (e) is proposed to reflect the HTW program's transition to a Medicaid program.

The proposed amendment of §382.9 updates the subsection lettering to reflect changes made in §382.7; adds additional avenues for submitting an HTW application or renewal form; and updates subsection (f) in order to best reflect current processes in place.

The proposed amendment of §382.13 deletes the last sentence of subsection (c) as redundant because Chapter 357 of this title currently addresses an across-the-board reduction in the Medicaid program.

The proposed amendment of §382.17 amends subsection (b) to be consistent with state budget provisions from the 85th Legislative Session; moves former subsection (c) to §382.5, concerning Definitions; and deletes subsection (h) as it references an exemption from initial certification that is no longer relevant for current HTW program providers. The subsection lettering is updated to reflect the amended subsections.

The proposed amendment of §382.19 updates language to reflect the HTW demonstration will receive both state and federal funding and to be consistent with state budget provisions from the 85th Legislative Session.

The proposed amendment of §382.21 updates language to be consistent with state budget provisions from the 85th Legislative Session.

The proposed amendment of §382.29 adds a hyphen to the term "Health Care Providers" to accurately reflect how the term is written in §382.5, concerning Definitions.

#### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the rules will be in effect, there will be a fiscal impact to state government of General Revenue (GR) savings in all years, because the state will begin sharing program costs with federal matching funds through the Medicaid Waiver. The enforcement and administration of the proposed rules will operate under the authority of the Waiver. The anticipated impact by year is a net cost of \$387,000 All Funds (AF) (savings of \$56,736,418 GR) in state fiscal year (SFY) 2019. The SFY 2019 net cost AF represents automation costs to implement the federal waiver. There is a cost savings anticipated of \$0 AF (\$61,494,351 GR) for FY 2020, \$0 AF (\$66,413,517 GR) for FY 2021, \$0 AF (\$71,747,362 GR) for FY 2022, and \$0 (\$77,527,805 GR) for SFY 2023.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be in effect, the proposed rules will not create a government program; implementation of the proposed rules will not affect the number of employee positions; implementation of the proposed rules will not require an increase or decrease in future legislative appropriations; the proposed rules will not affect fees paid to the agency; the proposed rules will not create a new rule; the proposed rules will not expand, limit, or repeal an existing rule; the proposed rules will not change the number of individuals subject to the rule; and the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not require small businesses, micro-businesses, or rural

communities to alter their business practices as a result of the amended and repealed rules.

#### 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.

#### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT

Lesley French, Associate Commissioner for Health, Developmental and Independence Services, has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections related to the HTW demonstration will be increased access to women's health and family planning services including positively impacting the health and wellbeing of women and their families.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does 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, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030; or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to *WomensHealthComments@hhsc.state.tx.us*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing

comments, please indicate "Comments on Proposed Rule 1R036" in the subject line.

#### STATUTORY AUTHORITY

The proposed amended and repealed rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority to adopt rules necessary to carry out the commission's duties under Chapter 531; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amended and repealed rules implement Texas Human Resource Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

#### ADDITIONAL INFORMATION

For further information, please call: (512) 428-1989.

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Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision

TITLE 1	ADMINISTRATION
PART 15	TEXAS HEALTH AND HUMAN SERVICES
COMMISSION	
CHAPTER 382	WOMEN'S HEALTH SERVICES
SUBCHAPTER A	HEALTHY TEXAS WOMEN

§382.1. Introduction.

(a) Governing rules. This subchapter sets out rules governing the administration of the Healthy Texas Women program (HTW).

~~[(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.]~~

(b) ~~[(e)]~~ Objectives. HTW is established to achieve the following overarching objectives:

(1) to increase access to women's 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 wellbeing of women and their families;

(2) \_\_\_\_\_ to increase access to preventive health care, including screening and treatment for hypertension, diabetes, and high cholesterol, to positively impact maternal health and reduce maternal mortality;

(3) to increase access to women's breast and cervical cancer services to promote early cancer detection;

(4) [(2)] to implement the state policy to favor childbirth and family planning services that do not include elective abortions [~~abortion~~] or the promotion of elective abortions [~~abortion~~] within the continuum of care or services and to [÷]

~~[(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 abortions [~~abortion~~]; and~~

(5) [(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 Texas Human Resources Code §32.024(c-1) and any other state law that regulates the delivery of non-federally funded family planning services, to the extent permitted by the Constitution of the United States.]~~

~~[§382.3. 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.]~~

#### §382.5. 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--A female applying to receive services under HTW, 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) Child--An adoptive, step, or natural child who is under 19 years of age.

(5) Client--A female who receives services through HTW.

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

(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 HTW will reimburse an enrolled health-care provider.

(9) Creditable health coverage--Includes group health insurance, health insurance coverage, Medicare (Part A or B), Medicaid, Children's Health Insurance Program (CHIP), armed forces insurance, or a state health risk pool.

(10) [(9)] Elective abortion--Does not include an abortion procedure that is reimbursable under the State's Medicaid program as described under Chapter 354 of this title (relating to Medicaid Health Services). [~~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.]~~

(11) ~~[(10)]~~ 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.

(12) ~~[(11)]~~ 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.

(13) ~~[(12)]~~ Health-care provider--Any individual or entity furnishing Medicaid services under a provider agreement with HHSC. ~~[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.]~~

~~[(13) 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.]~~

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

(15) HTW--The Healthy Texas Women program administered by HHSC as outlined in this subchapter.

(16) HTW provider--A health-care provider that is qualified to perform covered services. An HTW provider may be contracted with HHSC to provide additional services.

(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) Promote--Advancing, furthering, advocating, or popularizing elective abortion by, for example:

(A) taking affirmative action to secure elective abortion services for an HTW client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion health-care 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;

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

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

(20) [~~(19)~~] 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) [~~(20)~~] Unintended pregnancy--Pregnancy a female reports as either mistimed or undesired [~~at the time of conception~~].

(22) [~~(21)~~] U.S.C.--United States Code.

§382.7. Client Eligibility.

(a) Criteria. A female is eligible to receive services through HTW if she:

(1) meets the following age requirements:

(A) is 18 through 44 years of age, inclusive; or

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

(2) is not pregnant;

(3) has countable income (as calculated under §382.11 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 200 percent of the federal poverty level;

(4) is a United States citizen, a United States national, or an alien who qualifies under §382.9(g) of this subchapter (relating to Application and Renewal Procedures);

(5) resides in Texas;

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

(7) does not have other creditable health coverage that covers the services HTW provides, except as specified in subsection (c) of this section.

(b) Age. For purposes of subsection (a)(1)(A) of this section, an applicant is considered 18 years of age on the day of her 18th birthday and 44 years of age through the last day of the month of her 45th birthday. For purposes of subsection (a)(1)(B) of this section, an applicant is considered 15 years of age the first day of the month of her 15th birthday and 17 years of age through the day before her 18th birthday. A female is ineligible for HTW if her application is received the month before her 15th birthday or the month after she turns 45 years of age.

(c) Third-party resources. An applicant with creditable health coverage that would pay for all or part of the costs of covered services may be eligible to receive covered services if she affirms, in a manner satisfactory to HHSC, her belief that a party may retaliate against her or cause physical or emotional harm if she assists HHSC (by providing information or by any other means) in pursuing claims under that coverage [~~against that third~~

party]. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive HTW benefits.

(d) Period of eligibility. A client is deemed eligible to receive covered services for 12 continuous months after her application is approved, unless:

(1) the client dies;

(2) the client voluntarily withdraws;

(3) the client no longer satisfies criteria set out in subsection (a) of this section;

(4) federal or state law no longer allows the female to be covered; or

(5) HHSC determines the client provided information affecting her eligibility that was false at the time of application.

~~[(e) Transfer of eligibility. A female who received services through the Texas Women's Health Program is automatically enrolled as an HTW client and is eligible to receive covered services for as long as she would have been eligible for the Texas Women's Health Program.]~~

(e) ~~[(f)]~~ Auto-Enrollment. A female who is receiving Medicaid for pregnant women is enrolled into HTW at the end of her Medicaid for pregnant women certification period. Program coverage begins on the first day following the termination of her Medicaid for pregnant women coverage. A female enrolled into HTW has the option to opt out of receiving HTW. To be auto-enrolled, a female must:

(1) be 18 to 44 years of age, inclusive, as defined in subsection (b) of this section;

(2) be ineligible for any other Medicaid program providing full benefits or CHIP; and

(3) ~~[(2)]~~ not have other creditable health coverage [be receiving active third-party resources] at the time of auto-enrollment. ~~[-and]~~

~~[(3) be ineligible for any other Medicaid or CHIP program.]~~

§382.9. Application and Renewal Procedures.

(a) Application. A female, or a parent or legal guardian acting on her behalf if she is 15 through 17 years of age, inclusive, may apply for HTW services by completing an application form and providing documentation as required by HHSC.

(1) An applicant may obtain an application in the following ways:

(A) from a local benefits office of HHSC, an HTW provider's office, or any other location that makes HTW applications available;

(B) from the HTW or HHSC website;

(C) by calling 2-1-1; or

(D) by any other means approved by HHSC.

(2) HHSC accepts and processes every application received through the following means:

(A) in person at a local benefits office of HHSC;

(B) from the HTW or HHSC website;

(C) [~~(B)~~] by fax;

(D) [~~(C)~~] through the mail; or

(E) [~~(D)~~] by any other means approved by HHSC.

(b) Processing timeline. HHSC processes an HTW application by the 45th day after the date HHSC receives the application.

(c) Start of coverage. Program coverage, for females who are not auto-enrolled in accordance with §382.7(e) [~~§382.7(f)~~] of this subchapter (relating to Client Eligibility), begins on the first day of the month in which HHSC receives a valid application. For applicants 18 through 44 years of age, inclusive, a valid application has, at a minimum, the applicant's name, address, and signature. For applicants 15 through 17 years of age, inclusive, a valid application has, at a minimum, the applicant's name, address, and the signature of a parent or legal guardian.

(d) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), HHSC requires an applicant to provide or apply for a social security number. If an applicant is not eligible to receive an SSN, the

applicant must provide HHSC with any documents requested by HHSC to verify the applicant's identity. HHSC requests, but does not require, budget group members who are not applying for HTW to provide or apply for an SSN.

(e) Interviews. HHSC does not require an interview for purposes of an eligibility determination. An applicant may, however, request an interview for an initial or renewal application.

(f) Identity. An applicant's identity [~~applicant~~] must be verified [~~verify her identity~~] the first time she applies to receive covered services.

(g) Citizenship. If an applicant is a United States citizen, she must provide proof of 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). Citizenship is only verified once, unless HHSC receives conflicting information related to citizenship. If an applicant's citizenship has already been verified by HHSC for eligibility for Medicaid or HTW, the applicant is not required to re-verify her citizenship.

(h) Renewal. A female, or a parent or legal guardian acting on her behalf if she is 15 through 17 years of age, inclusive, may renew HTW services by completing a renewal form and providing documentation as required by HHSC.

(1) An HTW client will be sent a renewal packet during the 10th month of her 12-month certification period for HTW.

(2) HHSC accepts and processes every renewal form received through the following means:

(A) in person at a local benefits office of HHSC;

(B) by fax;

(C) through the mail; [~~or~~]

(D) by calling 2-1-1; or

(E) [~~D~~] by any other means approved by HHSC.

§382.11. Financial Eligibility Requirements.

(a) Calculating countable income. Unless an applicant is adjunctively eligible as described in subsection (b) of this section, HHSC determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, HHSC adds the incomes listed in paragraph (1) of this subsection, less any deductions listed in paragraph (2) of this subsection, and exempting any amounts listed in paragraph (3) of this subsection.

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

(A) the female age 18 through 44, inclusive, applying for HTW;

(i) the female's spouse; and

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

(B) the female age 15 through 17, inclusive, applying for HTW;

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

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

(iii) the female's children;

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

(A) work-related expense deductions of up to \$120 of earned income;

(B) a dependent care deduction of \$200 per month for each child under two years of age, and \$175 per month for each dependent two years of age or older, including an earned income deduction for the actual costs of unreimbursed payments if the person incurs an expense for the care of a child or incapacitated adult or transportation of a child to and from day care or school;

(C) payments to dependents living outside the home;

(D) alimony;

(E) child support payments; and

(F) up to \$75 per month in received regular child support payments, except HHSC counts all child support payments an applicant received if HHSC determines the applicant has violated an agreement to assign child support to the State.

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

(A) any income that federal law excludes;

(B) the earnings of a child:

(i) who is 18 years of age and is a full-time student, including a home-schooled student, or a part-time student employed less than 30 hours a week; or

(ii) who is under 18 years of age and is:

(I) a full-time student, including a home-schooled student; or

(II) a part-time student employment less than 30 hours a week;

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

(D) proceeds from claims on insurance policies to compensate for a loss or that are used to pay medical expenses;

(E) payments from federal volunteer programs for volunteer service, such as payments:

(i) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §§5000 et seq.);

(ii) for volunteer service to Volunteers in Service to America (VISTA), (42 U.S.C. §§4951 - 4960); and

(iii) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12657);

(F) payments under the Workforce Innovation and Opportunity Act (29 U.S.C. §§3101, et seq.);

(G) 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.);

(H) foster care payments;

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

(J) energy assistance payments;

(K) job training payments that:

(i) are earmarked as reimbursement for training-related expenses; and

(ii) do not duplicate payment for an item that is covered by budgetary needs;

(L) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(M) reimbursements for monies spent on items not covered by budgetary needs;

(N) amounts deducted from royalties for production expenses and severance taxes;

(O) all income of Supplemental Security Income recipients;

(P) third-party funds received and used for a third-party beneficiary who is not a household member;

(Q) vendor payments made from funds not legally obligated to the household;

(R) veterans benefits for special needs that are not items covered by budgetary needs;

(S) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(T) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least \$1,000 annually;

(U) up to \$2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(V) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §§670 et seq.);

(W) funds from payments of up to \$2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §§2301-2307) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §§1601-1629);

(X) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973 (42 U.S.C. §§4950, et seq.);

(Y) funds from adoption subsidy payments made under Title IV-A (42 U.S.C. §§601, et seq.) and Title IV-E (42 U.S.C. §§670, et seq.) of the Social Security Act;

(Z) funds from insurance policy dividends;

(AA) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(BB) earned income tax credit payments;

(CC) 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;

(DD) funds from educational assistance payments (but only during the quarter, semester, or applicable period that the payment is intended to cover);

(EE) loans, if the circumstances satisfy HHSC that there exists an understanding that the money will be repaid, and the applicant or client reasonably explains to HHSC how the money will be repaid; and

(FF) crime victim's compensation payments.

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

(1) a member in her budget group receives benefits under the Women, Infants, and Children (WIC) supplemental nutrition program;

(2) she is a member of a certified Supplemental Nutrition Assistance Program (SNAP) household;

(3) she is in a Children's Medicaid budget group for someone receiving Medicaid; or

(4) she is receiving Temporary Assistance for Needy Families (TANF) cash or is in a TANF budget group for someone receiving TANF cash.

#### §382.13. 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 HTW.

(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.]~~

#### §382.15. Covered and Non-covered Services.

(a) Covered services. Services provided through HTW 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; and
- (10) other services subject to available funding.

(b) Non-covered services. Services not provided through HTW 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.

#### §382.17. Health-Care Providers.

(a) Procedures. An HTW 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) complete the HTW certification process as described in subsection (d) [~~(e)~~] of this section; and

(3) 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 HTW provider must ensure that:

(1) the HTW provider does not perform or promote elective abortions;

(2) the HTW provider [outside the scope of HTW and] is not an affiliate of an entity that performs or promotes elective abortions; and

(3) none of the funds the HTW provider receives for performing HTW services are used to perform or promote elective abortions or to contract with individuals or entities that perform or promote elective abortions or with affiliates of such entities that perform or promote elective abortions.

(4) This subsection does not apply to a hospital licensed under Chapter 241 of the Texas Health and Safety Code, a state hospital, a state-owned teaching hospital, a teaching hospital, a residency program accredited for medical education, or an office exempt under §254.004(2), Texas Health and Safety Code.

~~[(2) in offering or performing an HTW service, the HTW provider:]~~

~~[(A) does not promote elective abortion within the scope of HTW;]~~

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

~~[(i) physical separation of HTW 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 HTW 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 HTW 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 HTW and the absence of signs or materials promoting elective abortion in the HTW provider's location or in the HTW 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 HTW client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion health-care 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 HTW 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.]~~

(c) ~~[(d)]~~ Compliance information. Upon request, an HTW provider must provide HHSC with all information HHSC requires to determine the HTW provider's compliance with this section.

(d) ~~[(e)]~~ Certification. Upon initial application for enrollment in HTW, a health-care provider must certify its compliance with subsection (b) of this section and any other requirement specified by HHSC. Each health-care provider enrolled in HTW must annually certify that the HTW provider complies with subsection (b) of this section.

(e) ~~[(f)]~~ HTW provider disqualification. If HHSC determines that an HTW provider fails to comply with subsection (b) of this section, HHSC disqualifies the HTW provider from HTW.

(f) ~~[(g)]~~ Client assistance and recoupment. If an HTW provider is disqualified, HHSC takes appropriate action to:

- (1) assist an HTW client to find an alternate HTW provider; and

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

~~[(h) Exemption from initial certification. The initial application requirement of subsection (g) of this section does not apply to a health-care provider that certified and was determined to be in compliance with the requirements of the Texas Women's Health Program administered by HHSC pursuant to Texas Human Resources Code §32.024(c-1).]~~

#### §382.19. Prohibition of Abortion.

Abortion is not considered a method of family planning, and no [state] funds appropriated for HTW family planning services are used to pay the direct or indirect costs (including marketing, overhead, rent, phones, equipment, and utilities) of abortion procedures in accordance with state and federal law.

#### §382.21. Reimbursement.

##### (a) Reimbursement.

(1) Covered services provided through HTW 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 HTW 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 HTW 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 HTW provider may not use any HTW funds received to pay the direct or indirect costs (including marketing, overhead, rent, phones, equipment, and utilities) of elective abortions.

(d) An HTW provider may not seek reimbursement from a client and may not deny covered services to a client based on the client's inability to pay.

#### §382.23. Health-Care Provider's Request for Review of Claim Denial.

(a) Review of denied claim. An HTW 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 a health-care provider's appeal of a Medicaid claim denial.

#### §382.25. Confidentiality and Consent.

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

(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. 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.

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

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

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

(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.

(g) An HTW provider may not require consent for family planning services from the spouse of a married client.

#### §382.27. Audits and Reports.

(a) Compliance audits. HHSC may audit any HTW provider to verify compliance with any applicable law or regulation.

(b) Reporting duties. An HTW provider must submit information to HHSC as HHSC requires.

#### §382.29. Severability.

(a) Legislative intent. The Texas Legislature, in enacting Texas Human Resources Code §32.024(c-1), confirmed its intent that the Healthy Texas Women program, as successor to the Medicaid Women's Health Program, must be operated only in a manner that ensures that no funds spent under the program are:

(1) spent to perform or promote elective abortions; or

(2) used to 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 HTW, is subject to the conditions specified in Texas Human Resources Code §32.024(c-1). Its authority to operate the program is thus strictly limited, and HHSC has no authority to operate the HTW program except in compliance with such conditions.

(c) Nonseverable provisions.

(1) Section 382.5(1) of this subchapter (relating to Definitions) and §382.17 of this subchapter (relating to Health-Care [~~Health-Care~~] Providers) are necessary and integral to the implementation of the requirements of Texas Human Resources Code §32.024(c-1), the fulfillment of legislative intent, and the achievement of the objectives of HTW. 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 §382.5(1), §382.17, 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 §382.5(1), §382.17, 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.