



**TO:** Medical Care Advisory Committee  
**DATE:** May 17, 2018  
**FROM:** Michelle Erwin, HHSC Medicaid/CHIP Director, Policy and Program Development

**Agenda Item No.: 7**

**SUBJECT:** CHIP Maternal Depression Screening

**New:** Texas Administrative Code Title 1, Part 15, Chapter 370, Subchapter A, §370.12, Maternal Depression Screening

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

The new rule is necessary to comply with House Bill 2466, 85th Legislature, Regular Session, 2017, as codified in Texas Health and Safety Code §62.1511(c), which requires HHSC to adopt rules regarding coverage in CHIP for a maternal depression screening for an enrollee's mother.

Proposed new §370.12 specifies that CHIP covered services must include a maternal depression screening for an enrollee's mother, regardless of whether the mother is also an enrollee, that is performed during a covered well-child or other office visit for the enrollee that occurs before the enrollee's first birthday.

**ISSUES AND ALTERNATIVES:**

HHSC anticipates minimal external stakeholder concern regarding the amended rule, as the rule does not impose a requirement on providers. During legislative hearings on this bill most testimony was in support, including from major professional associations such as Texas Academy of Family Physicians and Texas Association of Obstetrics and Gynecology. However, a small number of stakeholders expressed concerns that women would be screened at-risk for postpartum depression but not have access to treatment.

Medicaid/CHIP staff is coordinating with the HHSC Health, Developmental, and Independence Services Department (HDIS); the HHSC Intellectual and Developmental Disabilities and Behavioral Health Services Department (IDD-BH); the Department for Family and Protective Services (DFPS) Prevention and Early Intervention Division; and the Department for State Health Services (DSHS) Office of Maternal and Child Health to engage external stakeholders in efforts to support referrals and access to care for women

identified at-risk of postpartum depression.

**STAKEHOLDER INVOLVEMENT:**

The proposed rule was sent to external stakeholders for review. Comments received from stakeholders were reviewed by staff and taken into consideration. External stakeholders included the Texas Medical Association (TMA) and Texas Pediatric Society (TPS). Neither organization expressed concerns.

The following external stakeholders registered in support of H.B. 2466 during legislative committee hearings:

American Congress of Obstetricians and Gynecologists-Texas District;  
Center for Public Policy Priorities;  
Children at Risk;  
Children’s Health System of Texas  
Federation of Texas Psychiatry;  
Healthy Futures of Texas;  
League of Women Voters of Texas;  
March of Dimes;  
Meadows Mental Health Policy Institute;  
Mental Health America of Greater Houston;  
National Alliance of Mental Illness Texas;  
National Association of Social Workers – Texas Chapter;  
Pregnancy and Postpartum Health Alliance of Texas;  
Teaching Hospitals of Texas;  
Texas Academy of Family Physicians  
Texas Association of Obstetricians and Gynecologists;  
Texas Campaign to Prevent Teen Pregnancy;  
Texans Care for Children;  
Texas Children's Hospital;  
Texas Hospital Association;  
Texas Impact;  
Texas Medical Association;  
Texas Nurses Association;  
Texas Pediatric Society

**FISCAL IMPACT:**

None

**RULE DEVELOPMENT SCHEDULE:**

May 2018 Present to the Medical Care Advisory Committee  
May 2018 Present to HHSC Executive Council  
May 2018 Publish proposed rules in *Texas Register*  
August 2018 Publish adopted rules in *Texas Register*  
September 2018 Effective date

**REQUESTED ACTION: (Check appropriate box)**

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

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TITLE 1                   ADMINISTRATION  
PART 15                 TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 370           STATE CHILDREN'S HEALTH INSURANCE PROGRAM  
SUBCHAPTER A         PROGRAM ADMINISTRATION

### PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes new §370.12, concerning Maternal Depression Screening.

### BACKGROUND AND PURPOSE

The new rule is necessary to comply with House Bill 2466, 85th Legislature, Regular Session, 2017, as codified in Texas Health and Safety Code §62.1511(c), which requires HHSC to adopt rules regarding coverage in CHIP for a maternal depression screening for an enrollee's mother. The proposed rule is based on clinical and empirical evidence provided in the Centers for Medicare & Medicaid Services Informational Bulletin, "Maternal Depression Screening and Treatment: A Critical Role for Medicaid in the Care of Mothers and Children," and the AAP recommendation to screen mothers for maternal depression as a best practice for primary care pediatricians caring for infants and their families.

### SECTION-BY-SECTION SUMMARY

Proposed new §370.12 specifies that CHIP covered services must include a maternal depression screening for an enrollee's mother, regardless of whether the mother is also an enrollee, that is performed during a covered well-child or other office visit for the enrollee that occurs before the enrollee's first birthday. This is consistent with Texas Health and Safety Code §62.1511(c).

### FISCAL NOTE

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the section will be in effect:

(1) the proposed rule will not create or eliminate a government program;

- (2) implementation of the proposed rule will not affect the number of employee positions;
- (3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to the agency;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities. While managed care organizations are required to cover the screenings, provider participation is optional.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section 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 rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT

Stephanie Muth, State Medicaid and CHIP Director, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The maternal depression screening is already a covered benefit in CHIP. The public benefit anticipated as a result of enforcing or administering the section will be improved access to maternal depression screenings.

#### 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 *HHRulesCoordinationOffice@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 CHIP Rule" in the subject line.

#### STATUTORY AUTHORITY

The proposed rule is authorized by Texas Government Code §531.033 that provides the Executive Commissioner of HHSC with broad rulemaking authority to adopt rules necessary to carry out the Commission's duties under Chapter 531; Texas Government Code §531.0055(e) that directs the Executive Commissioner of HHSC to adopt rules and policies for the operation of and provision of health and human services by the health and human services system; and Chapter 62 of the Texas Health and Safety Code.

The new section implements Texas Health and Safety Code §62.1511(c). 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) 462-6238.

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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 370              STATE CHILDREN'S HEALTH INSURANCE PROGRAM  
SUBCHAPTER A              PROGRAM ADMINISTRATION

§370.12. Maternal Depression Screening.

The covered services under CHIP must include a maternal depression screening for an enrollee's mother, regardless of whether the mother is also an enrollee, that is performed during a covered well-child or other office visit for the enrollee that occurs before the enrollee's first birthday.