

**TITLE 25                   HEALTH SERVICES**  
**PART 1                    DEPARTMENT OF STATE HEALTH SERVICES**  
**CHAPTER 39             PRIMARY HEALTH CARE SERVICES PROGRAM**  
**SUBCHAPTER B         TEXAS WOMEN’S HEALTH PROGRAM**

**§39.31. Introduction.**

(a) Governing rules. Notwithstanding any contrary provision in subchapter A of this chapter, this subchapter sets out rules governing the administration of the Texas Women’s Health Program (TWHP) within the department’s Primary Health Care Services program.

(b) Authority. This subchapter is authorized generally by Health and Safety Code §12.001 and §1001.071, and more specifically by Health and Safety Code §31.002(a)(4)(C) and (H), §31.003, and §31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and to adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program.

(c) Objectives. As reflected in several enactments of the Texas Legislature (including, but not limited to, §32.024(c-1), Human Resources Code), the TWHP is established to achieve the following overarching objectives:

(1) 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;

(2) 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;

(3) 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

(4) To the extent permitted by the Constitution of the United States and in addition to the restrictions imposed by this subchapter, to enforce §32.024(c-1), Human Resources Code, and any other state law that regulates delivery of non-federally funded family planning services.

**§39.32. 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.

**§39.33. Definitions.** The following 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 paragraph may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license.

(2) Applicant--A woman applying to receive services under TWHP, including a current recipient 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--A woman who receives services through TWHP.

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

(6) Covered service--A medical procedure for which TWHP will reimburse an enrolled health-care provider, as listed in §39.39 of this subchapter (relating to Covered Services).

(7) DSHS--The Department of State Health Services.

(8) 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; or

(B) in a case in which a woman 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 woman in danger of death unless an abortion is performed.

(9) 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.

(10) 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.

(11) 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.

(12) TWHP--Texas Women's Health Program.

(13) TWHP provider--A health-care provider that performs covered services.

#### **§39.34. Client Eligibility.**

(a) Criteria. A woman is eligible to receive services through TWHP if she:

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

(2) is not pregnant;

(3) is not sterile, infertile, or unable to get pregnant because of medical reasons;

(4) has countable income (as calculated under §39.36 of this subchapter (relating to Financial Eligibility Requirements)) that does not exceed 185 percent of the Federal Poverty Level, as published annually in the Federal Register by the United States Department of Health and Human Services;

(5) is a United States citizen, a United States national, or an alien who qualifies under §39.35(h) of this subchapter (relating to Application Procedures);

(6) resides in Texas;

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

(8) does not have creditable health coverage that covers the services TWHP provides, except as specified in subsection (d) of this section;

(9) is not a patient at a state hospital; and

(10) is not incarcerated in any penal facility maintained under governmental authority. The term “incarcerated” means the involuntary physical restraint of a woman who has been arrested for or convicted of a crime.

(b) Age. For purposes of subsection (a)(1) of this section, an applicant is considered 18 years of age the month of her 18th birthday and 44 years of age through the month of her 45th birthday. A woman is ineligible for TWHP if her application is received the month before her 18th birthday or the month after she turns 45 years of age.

(c) Resources. DSHS or its designee does not request or verify resources for TWHP.

(d) 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 DSHS or its designee, her belief that a liable third party may retaliate against her or cause physical or emotional harm if she assists DSHS or its designee (by providing information or by any other means) in pursuing claims against that third party. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive TWHP benefits.

(e) 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) state law no longer allows the woman to be covered; or

(5) DSHS or its designee determines the client provided information affecting her eligibility that was false at the time of application.

(f) Transfer of eligibility. A woman who, when these rules becomes effective, receives services through the Medicaid Women’s Health Program is automatically enrolled as a TWHP client and is eligible to receive covered services for as long as she would have been eligible for the Medicaid Women’s Health Program.

### **§39.35. Application Procedures.**

(a) Application. A woman, or an individual acting on the woman’s behalf, may apply for TWHP services by completing an application form and providing documentation as required by DSHS or its designee.

- (1) An applicant may obtain a paper application in the following ways:

(A) from a local benefits office of the Health and Human Services Commission, a TWHP provider's office, or any other location that makes TWHP applications available;

(B) from the TWHP website; or

(C) by calling 2-1-1.

(2) DSHS or its designee accepts and processes every application received through the following means:

(A) in person at a local benefits office of the Health and Human Services Commission;

(B) by fax; or

(C) through the mail.

(b) Processing timeline. DSHS or its designee processes a TWHP application by the 45th day after the date DSHS or its designee receives the application.

(c) Start of coverage. Program coverage begins on the first day of the month in which DSHS or its designee receives a valid application. A valid application has, at a minimum, the applicant's name, address, and signature.

(d) Exclusive application. The TWHP application form may not be used to apply for any other programs.

(e) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), DSHS or its designee requires an applicant to provide or apply for a social security number. DSHS or its designee requests, but does not require, budget group members who are not applying for TWHP to provide or apply for an SSN.

(f) Face-to-face interviews. In general, DSHS or its designee does not require an applicant to attend a face-to-face interview unless DSHS or its designee has received conflicting information related to the household membership or income that affects eligibility. An applicant may, however, request a face-to-face or telephone interview for an initial or a renewal application.

(g) Identity. An applicant must verify her identity the first time she applies to receive covered services.

(h) Citizenship. If an applicant is a citizen, she must provide proof of citizenship. If the applicant, who is otherwise eligible to receive TWHP services, is not a citizen, DSHS or its designee determines her eligibility in accordance with 1 TAC §366.513 (relating to Citizenship).

### **§39.36. Financial Eligibility Requirements.**

(a) Calculating countable income. Unless an applicant is adjunctively eligible as described in subsection (b) of this section, DSHS or its designee determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, DSHS or its designee 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) DSHS or its designee determines countable income in accordance with 1 TAC §366.531(a) (relating to Determining Whose Income Counts).

(2) In determining countable income, DSHS or its designee deducts the items set forth in 1 TAC §366.533 (relating to Allowable Income Deductions).

(3) DSHS or its designee exempts from the determination of countable income the items set out in 1 TAC §366.535 (relating to Exempt Income).

(b) Adjunctive eligibility. An applicant or client is considered adjunctively eligible at an initial or renewal application, and therefore 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 SNAP household;

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

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

### **§39.37. Denial, Suspension, or Termination of Services; Client appeals.**

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

(b) Notice and opportunity for a fair hearing. Before DSHS or its designee finalizes the denial, suspension, or termination under subsection (a) of this section, the applicant or client will be notified and provided an opportunity for a fair hearing.

(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 1, Subchapter C of this title (relating to Fair Hearing Procedures). 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.

### **§39.38. Health-Care Providers.**

(a) Procedures. A TWHP provider must comply with the requirements set out in 1 TAC Chapter 354, Subchapter A, Division 1 (relating to Medicaid Procedures for Providers).

(b) Qualifications. A TWHP provider must ensure that:

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

(2) in offering or performing a TWHP service, the provider

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

(B) maintains physical separation between its TWHP activities and any abortion-performing or abortion-promoting activity by, for example, providing TWHP services at a physical address that differs from the address at which elective abortions are performed, even if those abortions are performed by a different corporate entity, and not sharing employees or volunteer personnel with an entity that performs elective abortions; 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” includes, but is not necessarily limited to:

(1) providing to a TWHP client counseling concerning the use of abortion as a method of family planning or within the continuum of family planning services;

(2) providing to a TWHP client a referral for an elective abortion as a method of family planning or within the continuum of family planning services;

(3) furnishing or displaying to a TWHP client information that publicizes or advertises an abortion service or provider; and

(4) 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, a TWHP provider must provide DSHS or its designee with all information DSHS or its designee requires to determine the provider's compliance with this section.

(e) Provider disqualification. If, after the effective date of this section, DSHS or its designee determines that a TWHP provider fails to comply with subsection (b) of this section, DSHS or its designee will disqualify the provider from TWHP.

(f) Client assistance and recoupment. If a TWHP provider is disqualified, DSHS or its

designee will take appropriate action to:

(1) assist a TWHP client to find an alternate provider; and

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

(g) Certification. Upon initial application for enrollment in the TWHP, a provider must certify its compliance with subsection (b) of this section and any other requirement specified by DSHS or its designee. Each provider enrolled in TWHP must annually certify that the provider complies with subsection (b) of this section.

(h) Exemption from initial certification. The initial application requirement of subsection (g) does not apply to a provider that certified and was determined to be in compliance with the requirements of the Women's Health Program administered by the Health and Human Services Commission pursuant to §32.024(c-1), Human Resources Code.

### **§39.39. Covered Services.**

A client may receive the following services through TWHP:

(1) annual family planning exam and Pap test;

(2) follow-up visits related to the chosen contraceptive method;

(3) counseling on specific methods and use of contraception (as part of evaluation and management services), including natural family planning and excluding emergency contraception;

(4) female sterilization;

(5) follow-up visits related to sterilization, including procedures to confirm sterilization;

(6) family-planning services as listed in the *Texas Medicaid Provider Procedures Manual*, including:

(A) pregnancy tests;

(B) sexually transmitted infection (STI) screenings;

(C) treatment of certain STIs; and

(D) contraceptive methods; and

(7) lab services related to a service listed in paragraphs (1) - (6) of this section.

### **§39.40. Non-covered Services.**

TWHP does not cover:

- (1) counseling on and provision of abortion services;
- (2) mammography and diagnostic services for breast cancer;
- (3) treatment for any condition diagnosed during a TWHP visit, other than a sexually transmitted infection for which treatment is a covered service;
- (4) a visit for a pregnancy test only;
- (5) a visit for a sexually transmitted infection test only;
- (6) a follow-up after an abnormal Pap test;
- (7) counseling on and provision of emergency contraceptives; or
- (8) other visits that cannot be appropriately billed with a permissible procedure code.

### **§39.41. Reimbursement.**

(a) Fee for service reimbursement. Services provided through TWHP will be reimbursed on a fee-for-service basis in accordance with Title 1, Texas Administrative Code (TAC), Chapter 355 (relating to Reimbursement Rates).

(b) Claims procedures. A TWHP provider must comply with 1 TAC Chapter 354, Subchapter A, Division 1 (relating to Medicaid Procedures for Providers) and Division 5 (relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. A TWHP provider may not use any funds received for providing a covered service to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

### **§39.42. Provider's Request for Review of Claim Denial.**

(a) Review of denied claim. A TWHP provider may request a review of a denied claim. The request must be submitted as an administrative appeal under Title 1, Texas Administrative Code (TAC), §354.2217 (relating to Provider Appeals and Reviews).

(b) Appeal procedures. The administrative appeal will be subject to the timelines and procedures set out in 1 TAC §354.2217 and all other procedures and timelines applicable to a provider's appeal of a Medicaid claim denial.

### **§39.43. Confidentiality.**

(a) Confidentiality required. A TWHP provider must maintain all family planning information as confidential to the extent required by law.

(b) Written release authorization. Before a TWHP provider may release any information that might identify a client, the client must authorize the release in writing.

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

(d) Records monitoring. A TWHP provider must monitor client records to ensure that only appropriate staff and DSHS or its designee may access the records.

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

### **§39.44. Audits; Reports.**

(a) Compliance audits. DSHS or the Health and Human Services Commission's Office of Inspector General may audit any TWHP provider to verify compliance with any applicable law or regulation.

(b) Reporting duties. A TWHP provider must submit information to DSHS or its designee as DSHS or its designee requires.

### **§39.45. Severability.**

To the extent any part of this subchapter is determined by a court of competent jurisdiction to be unconstitutional or unenforceable, or to the degree an official or employee of DSHS, the Health and Human Services Commission, or the State of Texas is enjoined from enforcing any part of this subchapter, DSHS or its designee shall enforce the parts of this subchapter not affected by such injunctive relief to the extent DSHS or its designee determines it can do so consistently with legislative intent and the objectives of this subchapter, and to this end the provisions and application of this subchapter are severable.