

**Department of State Health Services
Agenda Item for State Health Services Council
August 6, 2007**

Agenda Item Title: Amend 25 TAC, Chapter 98, Subsection C, concerning the Texas HIV Medication Program

Agenda Number: 3-m

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The Health Promotions Unit, HIV/STD Comprehensive Services Branch is responsible for implementing the Texas HIV Medication Program which distributes life-sustaining medications to medically and financially eligible Texas residents.

Summary: The proposed amendments update all legacy agency references; clarify eligibility requirements; and address the Texas HIV Medication Advisory Committee issues such as which members who may be eligible for travel reimbursement, time frames for meeting notes, and term limits for members. Amendments also add language to clarify that the program will not provide HIV medications to individual in facilities already required by law to provide HIV medications for their residents. Changes would also function to increase accountability (e.g., establishment of a renewal requirement).

Summary of Stakeholder Input to Date (including advisory committees): The HIV/STD Comprehensive Services Branch consulted the Texas HIV Medications Advisory Committee and placed the proposed rule amendments on the HIV/STD website for public comment.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # 3-m.

Agenda Item

Approved by: _____
Debra Stabeno, Assistant Commissioner, Prevention and Preparedness

Presented by: Dwayne Haught **Title:** Manager

Program/Division: HIV Medication Program

Contact Name/Phone: Evelyn Shewmaker **Extension:** 6116

Date Submitted

6/18/07

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 98. Texas HIV Medication Program
Subchapter C. Texas HIV Medication Program
Division 1. General Provisions
Amendments §§98.101 – 98.115, §§98.117 – 98.119
Division 2. Advisory Committee
Amendments §98.121

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) proposes amendments to §§98.101 – 98.115, §§98.117 – 98.119 and §98.121, concerning the Texas HIV Medication Program.

BACKGROUND AND PURPOSE

The amendments are proposed to update, clarify, and improve the efficiency and accountability of the Texas HIV Medication Program, which was established under Texas Health and Safety Code, Title II, Chapter 85, Subchapter C.

Also, Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency every four years, pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 98.101 – 98.115, 98.117 – 98.119 and §98.121 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. The proposed changes should improve the efficiency and accountability of the program, as well as improve the clarity and readability of the rules themselves.

SECTION-BY-SECTION SUMMARY

Amendments to §98.101 would overtly state that HIV-infected individuals may directly request assistance; changes to this section would also clarify that the medications which can be requested are based on the program formulary (created under the authority of Texas Health and Safety Code, §85.061) and for clarity, deletes a redundant reference to the Health and Safety Code. Amendments to §98.102 would revise text for clarity, update legacy agency references, delete the definition for “services” as unnecessary, delete the definition of “client” and add a definition for “recipient” to more accurately reflect the relationship between the agency and the individual, clarify the definition of a “Texas resident”, and identify the Centers for Disease Control and Prevention as a federal agency. Amendments to §98.103 would update legacy agency references, and update the internet address for the program’s website. Amendments to §98.104 would revise text to describe covered classes in the most legally appropriate manner. Amendments to §98.105 would revise text as necessary for clarity. Amendments to §98.106 would revise text as necessary for clarity. Amendments to §98.107 would update legacy agency references, improve readability, and facilitate portability within the limits of Texas’ eligibility

requirements. Amendments to §98.108 would revise text to clarify the list of documents the applicant could provide to verify Texas residency, and would also delete paragraphs (3) and (4), since that subject matter would be covered by the new §§98.110(a)(1)(A) and 98.110(f). Amendments to §98.109 would clarify the formula for adjusting annual gross income, and would be consistent with federal grant conditions regarding frequency of eligibility verifications; proposed changes would also change references from client to recipient. Amendments to §98.110 would update the section title to reflect new proposed content; add a new subsection (a) to establish what constitutes a complete application, and would add a new subsection (b) to state how incomplete applications will be handled; would update legacy agency references, correct the website address for accessing a program application; further changes in this section, designed to increase accountability, would expressly state that the program may at any time require a recipient to verify eligibility status, and would also require renewal every three years. Amendments to §98.111 would clarify the program would disclose confidential information only as allowed by law; clarify terms by replacing client with applicant or recipient; update legacy agency references, and correct the website address for accessing HIPAA information. Amendments to §98.112 would update legacy agency references, and would add a reference to Medicare on the list of third party payors, because, as of January 1, 2006, federal Medicare insurance implemented prescription drug coverage; and clarify terms by replacing clients with recipients. Amendments to §98.113 would revise the rule title for clarity. Amendments to §98.114 would revise text to clarify how prescription fees are paid for Medicaid clients. Amendments to §98.115(a) would clarify how the program calculates costs and revenue, while changes to §98.115(b) propose that the analysis of program expenditures be changed to a quarterly, as opposed to a monthly, basis to better allow cost trends to manifest themselves; changes to §98.115(c) propose to delete unnecessary language and adds a website reference, and amendments to §98.115(d) would clarify terms by replacing clients with recipients. Amendments to §98.117 would update the title to include non-renewal, would help ensure accountability in the eligibility process by making sure only those clients who are truly eligible receive program benefits; also, proposed changes would prevent double-dipping by incarcerated patients who are already receiving that care, and would clarify terms by replacing client with applicant or recipient. Amendments to §98.118 update legacy agency references and legacy agency positions; amendments to this section would also clarify language regarding appeals by fully outlining who can appeal, all steps in the process and the limitations to the appeal process; proposed changes would also delete language regarding open records since the Public Information Act itself, in conjunction with statutory confidentiality provisions, will determine whether documents associated with an individual appeal are subject to disclosure. Amendments to §98.119 would clarify terms by replacing client with recipient, and would revise text for clarity. Amendments to §98.121 update legacy references, delineate responsibilities within the advisory board between the commissioner of the department and the executive commissioner of the commission upon dissolution of the Board of Health, revise text for clarity, delete timeframes for approval of meeting minutes, delete term limitations for presiding officer and assistant presiding officer, simplify language prohibiting compensatory per diem and simplify language to clarify which committee members are eligible for travel reimbursement.

FISCAL NOTE

Casey S. Blass, Director, Disease Intervention and Prevention Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed. The proposed amendments are designed to improve program efficiency and accountability and should have a positive impact on the state program on the provision of services.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. 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.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is that the program can continue to provide life-sustaining medications to HIV positive needy Texans.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Todd Logan, HIV/STD Comprehensive Services Branch, Health Promotion Unit, Department of State Health Services, 1100 West 49th Street,

Austin, Texas 78756, (512) 533-3098 or by e-mail to todd.logan@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services, Deputy General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, Chapter 85, which requires the department to implement the HIV Medications Program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code. Review of the rules implements Government Code, §2001.039.

The proposed amendments affect the Health and Safety Code, Chapters 85 and 1001; and Government Code, Chapter 531.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

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

§98.101. Purpose.

This subchapter establishes procedures and eligibility guidelines for the Texas HIV Medication Program (program) as required in the Health and Safety Code, §85.063. The program is designed to provide **[, established under the authority of the Health and Safety Code, Chapter 85, Subchapter C, HIV Medication Program, provides]** prescription drugs to low-income individuals with HIV disease. Hospital districts, local health departments, public or nonprofit hospitals and clinics, **[and]** nonprofit community organizations and HIV-infected individuals may request assistance from the program with obtaining **[public health pricing for]** medications on the program formulary used in the treatment of **[to treat individuals with]** HIV disease.

§98.102. Definitions.

These **[The following words and]** terms, when used in this subchapter, are defined as follows: **[shall have the following meanings, unless the context clearly indicates otherwise.]**

(1) AIDS--Acquired immune deficiency syndrome as defined by the federal Centers for Disease Control and Prevention.

(2) Council **[Board]**--The **[Texas]** Department of State **[Board of]** Health Services Council.

[(3) Client--An individual who, under these sections, is determined by a program to be eligible for services.]

(3) **[(4)]** Commissioner--The commissioner of the Department of State Health Services **[health]**.

(4) **[(5)]** Department--The **[Texas]** Department of State Health Services.

(5) **[(6)]** Eligible Metropolitan Area--A metropolitan area that is eligible to receive direct federal funding as defined in 42 U.S.C. 300ff-17.

(6) Executive Commissioner – The Executive Commissioner of the Health and Human Services Commission.

(7) HIV--Human immunodeficiency virus infection as defined by the federal Centers for Disease Control and Prevention.

(8) - (10) (No change.)

(11) Recipient--An individual who, under these sections, is determined by the department to be eligible for services. **[Services--Activities determined by the department as appropriate to carry out the intent of, Health and Safety Code, Chapter 85, Subchapter C.]**

(12) Texas resident—A person is presumed to be a Texas resident if that person [An individual who] physically resides within the geographic boundaries of the state[.], with a manifest intent to continue to physically reside within those boundaries. Manifest intent may be evidenced by any relevant information, including: voting records; automobile registration; Texas driver's license or other official identification; enrollment of children in a public or private school; or payment of property tax. The burden of proving intent to reside is on the person requesting assistance.

§98.103. Medication Coverage.

(a) – (b) (No change.)

(c) A list of the approved medications and specific eligibility criteria for them may be obtained from the [Texas] Department of State Health Services, HIV/STD Comprehensive Services Branch [Bureau of HIV and STD Prevention], Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199 or on the program's website at: <http://www.dshs.state.tx.us/hivstd/meds/> [<http://www.tdh.state.tx.us/hivstd/meds/document.htm>].

§98.104. Nondiscrimination.

The department operates this program in a manner that allows full participation of individuals regardless of their race, color, national origin, age or disability [**handicapping conditions**]. In addition and for purposes of the program, discrimination on the basis of gender or sexual orientation is prohibited.

§98.105. Program Priority.

The department shall give priority to participation in the program to eligible women and infants[,], and to children below the age of 18 as specified in 42 U.S.C. 300ff-21, and Health and Safety Code §85.062.

§98.106. General Eligibility Criteria.

A person is eligible to participate in the program if the person [**applying to the program**]:

(1) – (5) (No change.)

§98.107. Medical Eligibility Criteria.

(a) A person is medically eligible to participate in the program if the person applying to the program:

(1) provides evidence that the applicant has a diagnosis of HIV disease from a licensed physician [**of HIV disease**]; and

(2) is under the care of a physician licensed to practice medicine within the United States of America [in Texas] who prescribes the medications for that person.

(b) Exceptions to the Medical Eligibility Criteria can be made at the discretion of the Director [**Chief**] of the Health Promotions Unit [Bureau of HIV and STD Prevention].

§98.108. Residency Eligibility Criteria.

The applicant [**program requires and the client**] must present documentation of Texas residency as specified in §§98.101-98.119[during the program's review of the client's application for services]. Documents that may provide evidence of residency include:

(1) documents issued by the state or federal government, e.g., driver's license or identification card issued by the Texas Department of Public Safety; a motor vehicle registration or automobile registration form; a current Texas voter registration card; or a current [**Texas Medicaid card**] benefit award letter (e.g., Social Security, Medicare, Medicaid, Temporary Assistance for Needy Families, or Food Stamps) displaying the applicant's Texas residential address;

(2) documents relating to the applicant's sources of income, both from employment and other benefits, e.g., a recent payroll check; retirement pension or social security check; or disability check;

[(3) all documents must be in the name of the applicant unless the applicant is a dependent minor or a ward. In that event, the documents may be in the name of the legally responsible person; and]

[(4) the program may verify residency periodically during the receipt of services and if requested by the program, a client must provide additional documentation.]

§98.109. Financial Eligibility Criteria.

(a) (No change.)

(b) Formula for adjusting annual gross income.

(1) An applicant's annual gross income (if single), or the combined annual gross income of the applicant and his or her spouse, minus the program's annualized cost of the prescribed medication(s).

(2) For a minor child, the (combined) annual gross income of the child's parent(s), minus the program's annualized cost of the prescribed medication(s). Only the income of the parent(s) living in the same household as the child at the time of application or recertification will be used to determine financial eligibility.

(3) (No change.)

(c) The department shall periodically [**annually**] verify the financial status of a recipient [**an enrolled client**] to determine if the recipient continues [**client is continuing**] to meet the financial eligibility criteria of the program.

§98.110. Application Process; Verification; Renewal.

(a) Persons meeting the aforementioned eligibility requirements must submit a complete application for benefits to the department, on the form specified by the department, accompanied by the required supporting documentation. A complete application shall consist of all of the following:

(1) a complete Application for Services, with the original signature of the applicant, or the person legally responsible for the applicant, certifying that the statements made within the application are factual and true;

(2) documentation of current Texas residency;

(3) documentation acceptable to the department to establish the applicant's financial qualifications;

(4) verification that the applicant has a diagnosis of HIV disease and is under the care of a physician licensed to practice medicine in the United States of America, who prescribes drugs for that person;

(b) Any application that does not meet all of the above requirements is considered incomplete. Incomplete applications will not be processed further, and the applicant will be contacted concerning the insufficiency of the application.

(c) [(a)] To request an application packet, call toll-free 1-800-255-1090 or write to: [Texas] Department of State Health Services, HIV/STD Comprehensive Services Branch, [Bureau of HIV and STD Prevention] Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199. The program's [client] application for assistance is also available online at the following URL: <http://www.dshs.state.tx.us/hivstd/meds/> [<http://www.tdh.state.tx.us/hivstd/meds/document.htm>].

(d) [(b)] Submit completed application, [applications] along with accompanying documentation and certification forms, to: [Texas] Department of State Health Services, HIV/STD Comprehensive Services Branch, [Bureau of HIV and STD Prevention] Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199.

(e) [(c)] The applicant is expected to give informed consent to the department so that the program may contact a **[an applicant, client, or]** medical provider, Medicare, or Medicare prescription drug plan to verify information contained in the application and/or to request additional supporting documentation pertaining to the application [for enrollment or recertification purposes].

(f) The department may, at any time, verify the eligibility status of an enrolled recipient to determine if the recipient is continuing to meet the eligibility criteria of the program. The recipient must cooperate with the department, and furnish requested documentation to the department as directed.

(g) A recipient must renew enrollment in the program every three years according to the procedures established by the department. Recipient must demonstrate, at that time, continuing eligibility for the program to the satisfaction of the department. Recipients must use the department's renewal application form (which may be obtained from the department calling toll-free 1-800-255-1090 or writing to: Department of State Health Services, HIV/STD Comprehensive Services Branch, Texas HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756-3199), and comply with all associated deadlines and requirements for accompanying documents.

§98.111. Confidentiality.

(a) (No change.)

(b) The department may use or disclose individual health information to provide, coordinate, or manage health care or related services, as allowed by law. This includes referring the recipient [client] to other health care resources. The department may contact a program applicant or recipient [participant] to discuss enrollment benefits, resources for treatment, or other health-related information as appropriate [necessary].

(c) An individual may request a copy of the department's privacy notice by writing to: **[Texas]** Department of State Health Services, Privacy Officer, 1100 West 49th Street, Austin, Texas 78756. More information pertaining to the Health Insurance and Portability and Accountability Act (HIPPA) is available online from the department at the following URL: <http://www.dshs.state.tx.us/hipaa> [<http://www.tdh.state.tx.us/hipaa/default.htm>].

§98.112. Program Distribution of Medications.

(a) The department will contract with a pharmaceutical wholesaler for purchase of drugs. The **[Texas]** Department of State Health Services[,] Pharmacy [Division,] will distribute drugs to pharmacies participating in the program and a mail order pharmaceutical distributor for the dispensing of drugs directly to recipients [clients] who reside outside areas covered by participating pharmacies.

(b) Program funds must be used as payor of last resort and coordinated with other local, state, and federal funds, including Medicaid and Medicare.

§98.113. Participating Pharmacies **[Pharmacy]**.

(No change.)

§98.114. Prescription Fees.

A dispensing fee may be collected by a participating pharmacy for each prescription dispensed in accordance with the existing Memorandum of Agreement with the department. Program recipients concurrently approved for Medicaid [clients] will have their specific dispensing fees covered via a periodic lump sum payment generated [paid for] by the program for payment to the pharmacies.

§98.115. Fiscal Planning.

(a) To ensure the program's expenditures do not exceed the program's budget, the department will analyze the latest actuarial projections for the upcoming year, including the average annual cost per recipient and the projected number of recipients the program will be able to serve using current budget figures [program expenditures as follows].

[(1) Determine the annual average client cost using program expenditures from the previous 12 months. The annual average client cost is calculated by dividing the total amount of funds expended during a 12-month period into the total number of clients served during the same 12-month period.]

[(2) Project the number of clients that may be served during the next 12-month period using current budget figures. The projected number of clients that may be served is calculated by dividing the program's total available dollars by the annual average client cost derived from paragraph (1) of this subsection.]

(b) The department will perform this [an] analysis of program expenditures every quarter [month using the methodology in subsection (a) of this section] to determine if funds are sufficient to meet projected expenditures.

(c) To make certain [insure] that expenditures do not exceed the program's budget, the department may implement the following temporary cost-containment measures as necessary.

(1) Cost-containment measures may be implemented in the following order.

(A) Initiate medical criteria to meet at minimum the most recent federal [Federal] Department of Health and Human Services Guidelines for the Use of Antiretroviral Agents in HIV-Infected Adults and Adolescents, which can be found at <http://aidsinfo.nih.gov/Guidelines>. [Present medical criteria is a CD4 +T-cell count at or below 350 cells per cubic millimeter and/or an HIV viral load greater than 30,000 copies per milliliter when using the branched DNA test or more than 55,000 copies per milliliter when using the RT-PCR test.]

(B) Discontinue using the formula for adjusting the applicant's **[clients']** gross annual income described in §98.109(b) of this title (relating to Financial Eligibility Criteria.)

(C) (No change.)

(D) Cease enrollment of new applicants **[clients]**.

(2) (No change.)

(d) Cost-Containment measures, if implemented, will be applied to recipients **[clients]** enrolling after the cost-containment measure(s) is implemented.

§98.117. Denial, Non-Renewal, and **[of Application or]** Termination of **[Client]** Benefits.

(a) A person may be denied enrollment in the program, be denied renewal in the program, and/or have enrollment in the program **[Individuals already receiving services will have their application denied or services] terminated [only] for any [one or more] of the following reasons: [.]**

(1) failure to maintain Texas residency, or upon demand furnish evidence of such **[; Services will be denied or terminated if:]**

[(A) the person is not a resident of the state as required in §98.108 of this title relating to Residency Eligibility Criteria);]

[(B) the annual gross income does not meet the criteria set in §98.109 of this title (relating to Financial Eligibility Criteria);]

[(C) the person does not provide evidence to meet the criteria set in §98.107 of this title (relating to Medical Eligibility Criteria); or]

[(D) the client notifies the program in writing that he/she no longer wants to receive services.]

(2) failure to continue to meet income requirements for eligibility or to provide income data as requested; **[Services may be terminated if:]**

[(A) the applicant or client submits an application form or any document required in support of the application which contains a misstatement of fact which is material to determining program eligibility;]

[(B) the client submits false claims to a participating pharmacy];

[(C) the client has not requested or used services during any period of six consecutive months;]

[(D) program funds are exhausted.]

(3) failure to initially meet or continue to meet the medical requirements for eligibility listed in §98.107 of this title (relating to Medical Eligibility Criteria);

(4) becoming eligible for the full Low Income Subsidy under Medicare Part D;

(5) becoming incarcerated in a city, county, state, or federal jail or prison;

(6) being admitted or committed to a state facility under the Texas Health and Safety Code;

(7) the department determines the individual has made a material misstatement or misrepresentation on their application or any document required to support their application or renewal, or on submissions made to comply with §98.110(f) of this title;

(8) failure to notify the program of changes to permanent home address or insurance coverage;

(9) the recipient notifies the program in writing that he/she no longer wants to receive program benefits;

(10) the recipient has not requested or used services during any period of six consecutive months; and/or

(11) program funds are exhausted.

(b) Denial, modification, suspension, or termination of services to an applicant or recipient [**a client**] will be governed by the procedures required by §98.118 of this title (relating to Appeal Procedures), and §98.119 of this title (relating to Exceptions from Appeal Procedures).

§98.118. Appeal Procedures.

(a) An applicant whose application for initial benefits (or renewal application) is denied, or whose services have been terminated by the department, may appeal the program's decision. An applicant, recipient or person legally responsible for an applicant or recipient, may initiate the appeal process by notifying the department's HIV/STD Comprehensive Services Branch that the person wishes to dispute the program's decision[**A person may initiate the appeal process by notifying the department's Bureau of HIV and STD Prevention that the person wishes to dispute the program's decision concerning either eligibility or funding**]. The written notice must contain all arguments and supporting documents being put forward by the individual in question [**sufficient reasons**] for the appeal. The notice should be addressed to the [**Texas**] Department of State Health Services, HIV/STD Comprehensive Services Branch [**Bureau of HIV and STD Prevention**], 1100 West 49th Street, Austin, Texas, 78756-3199.

(b) A department review panel will hear the appeal. The panel shall consist of the Health Promotion Unit Manager [Chief, Bureau of HIV and STD Prevention]; the HIV/STD Comprehensive Services Branch Manager [the Director, HIV/STD Clinical Resources Division]; [and] the [Program Manager,] Texas HIV Medication Program Manager, and the HIV/STD Comprehensive Services Medical Officer (or equivalent positions, in the event of an agency reorganization) [Chief, Bureau of Communicable Disease Prevention and Control]. The appellant [appellant(s)] may present the case in person before the panel, or rely on the written submissions, but in either event the issues on appeal and the arguments in support of those issues are limited to those already submitted in writing. Following review of the materials, and hearing from the individual person (if applicable) [After hearing all testimony], the panel will issue a written decision. The panel's decision shall be final.

[(c) Written complaints are subject to the Open Records Act, Government Code, Chapter 552.]

§98.119. Exceptions from Appeal Procedures.

The department is not required to offer an opportunity to dispute the decision to deny or terminate recipient [client] status if the department's actions are the result of [from] the exhaustion of funds **[appropriated to the department for purposes authorized under Health and Safety Code, Chapter 85, Subchapter C, Texas HIV Medication Program]**.

§98.121. Texas HIV Medication Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Texas HIV Medication Advisory Committee (committee).

(2) Texas Health and Safety Code, §85.066, allows the Executive Commissioner of the Texas Health and Human Services Commission (executive commissioner) [Board of Health (board)] to establish the committee.

(b) (No change.)

(c) Purpose. The purpose of the committee is to advise [assist] the executive commissioner [board] and the Texas Department of State Health Services (department) in the development of procedures and guidelines for the Texas HIV Medication Program (program).

(d) Tasks. The committee shall:

(1) review the goals and aims [targets] of the program;

(2) – (3) (No change.)

(4) carry out any other tasks given to the committee by the executive commissioner **[board]**.

(e) Committee abolished. By March 1, 2008, the executive commissioner **[board]** will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 11 members appointed by the executive commissioner as follows:

(1) - (2) (No change.)

(3) four consumer members **[persons]** who must be diagnosed as HIV positive;

(4) - (5) (No change.)

(6) one pharmacist who participates in the Texas HIV Medication Program.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) (No change.)

(2) If a vacancy occurs, a person may **[shall]** be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall select from its members the presiding officer and an assistant presiding officer to begin serving on March 1 of each odd-numbered year.

(1) Each officer shall serve until February 27th of each odd-numbered year. Each officer may holdover until his or her replacement is elected.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper annual reports to be made to the Commissioner of the Department of State Health Services (commissioner) **[board]**. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) – (4) (No change.)

[(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.]

(5) [(6)] The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) (No change.)

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which they are assigned.

(1)- (3) (No change.)

(4) The attendance records of the members shall be reported in the annual report to the commissioner [board]. The report shall include attendance at committee and subcommittee meetings.

(k) (No change.)

(l) Procedures. Robert's Rules of Order, Newly Revised shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1)-(4) (No change.)

(5) Minutes of each committee meeting shall be taken by department staff.

[(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.]

[(B)] After approval by the committee, the minutes shall be signed by the presiding officer.

(m) (No change.)

(n) Statements by members.

(1) The executive commissioner [board], the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the executive commissioner [board], department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the executive commissioner [board], the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) - (6) (No change.)

(o) Reports **[to board]**. The committee shall file an annual written report with the commissioner [board].

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished any specific [the] tasks officially given to the committee **[by the board]**, the status of any rules which were recommended by the committee **[to the board]**, and anticipated activities of the committee for the next year.

(2) (No change.)

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the commissioner [board] each March. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No salary or stipend [compensatory per diem] shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Only HIV-positive consumer committee members shall be eligible for reimbursement of actual travel expenses incurred. Each member who is eligible to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.