

**Department of State Health Services
Agenda Item for State Health Services Council
October 10-11, 2007**

Agenda Item Title: Repeal of §§1.61 - 1.62 and new §1.61 - Rules for the Worksite Wellness Advisory Board

Agenda Number: 4-h

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The "State Employees Health Fitness and Education Act of 1983" (Government Code, Chapter 664) allowed state agencies to encourage employee fitness. Before implementing such a program, the agency was required to develop a plan that was approved by the department. The 2007 Legislature has amended this Act to further encourage employee fitness, providing for a statewide wellness coordinator and the Worksite Wellness Advisory Board, but repealing the requirement that the department approve individual agency plans.

Summary: The repeal is necessary to comply with the passing of House Bill 1297 in the 80th Legislative Session, which amends the Government Code, by repealing §664.006. The new rule is necessary to comply with Government Code, §664.052, to adopt a rule to administer Subchapter B. State Employee Wellness Program, outlining the composition of the Worksite Wellness Advisory Board, purpose and tasks, and meeting requirements.

Summary of Stakeholder Input to Date (including advisory committees): E-mail notification of the proposed rules was provided to the state agencies and associations listed in the House Bill 1297. No changes were suggested.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # 4-h.

Agenda Item Approved by: Debra Stabeno, Assistant Commissioner
Prevention and Preparedness Services Division

Date Submitted
August 29, 2007

Presented by: Jennifer Smith **Title:** Manager

Program/Division: Adult Health & Chronic Disease Group

Contact Name/Phone: Evelyn Shewmaker, ext. 6116

Title 25. Health Services
Part 1. Department Of State Health Services
Chapter 1. Texas Board Of Health
Subchapter D. State Employee Health Fitness And Education Programs
Repeal §§1.61, 1.62
New §1.61

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §1.61 and §1.62, and new rule §1.61, concerning the Worksite Wellness Advisory Board (board).

BACKGROUND AND PURPOSE

The "State Employees Health Fitness and Education Act of 1983" (Government Code, Chapter 664) allowed state agencies to encourage employee fitness. Before implementing such a program, the agency was required to develop a plan that was approved by the department. The 80th Legislature, 2007, has amended this Act to further encourage employee fitness, providing for a statewide wellness coordinator and the board, but repealing the requirement that the department approve individual agency plans.

The repeal is necessary to comply with House Bill (HB) 1297 (Chapter 665) in the 80th Legislative Session, which amends Government Code, by repealing §664.006, Plans. The new rule is necessary to meet the legislation which added Government Code, §664.052, Rules, requiring the Executive Commissioner of the Health and Human Services Commission to adopt rules to administer Subchapter B. State Employee Wellness Program, outlining the composition of the newly created board, purpose and tasks, and meeting requirements, and Government Code, §2110.005, which requires rules on Advisory Committees which serve state agencies.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 1.61 and 1.62 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, §§1.61 and 1.62 are being repealed and a new §1.61 is being proposed.

SECTION-BY-SECTION SUMMARY

Government Code, §664.006, requires state agencies to submit plans to conduct health fitness programs for their employees is repealed, thereby requiring the repeal of §1.61 and §1.62 which prescribes what items must be covered in the development of a health fitness plan.

The new §1.61 will contain the requirements of the new Government Code, §664.052, outlining the composition of the board, its duties, and meeting requirements.

FISCAL NOTE

Casey Blass, has determined that for each year of the first five-year period that the sections will be in effect, there will be fiscal implications to state government given that no appropriations were provided to support the administration of the sections. Specifically, the department, as a result of enforcing and administering the sections as proposed, will incur costs from existing state and federal funding sources for personnel, supplies, phone and mail. There will be no fiscal implications to local government.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Casey 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 rule 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, Casey 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 section by providing the public with a clear understanding of the Board. It is anticipated that administering the sections as proposed will inform the public about the board and its purpose to advise the department on employee wellness activities that can improve employee wellness in state government.

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 proposal 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 Jennifer Smith, Manager, Department of State Health Services, Disease Prevention and Intervention, Adult Health and Chronic Disease Group,

1100 West 49th Street, Austin, Texas 78756, 512/458-7111, extension 2209, or by e-mail to Jennifer.Smith@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 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 repeal and new rule that support administration of Government Code, Chapter 664, State Employees Health Fitness and Education Act are authorized by House Bill 1297 (Chapter 665), 80th Legislative Session, Section 4, which amends Government Code, Chapter 664; Section 6, which repeals Government Code, §664.006; Government Code, §2110.005 which requires rules on advisory committees which serve state agencies; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of 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 Health and Safety Code, Chapter 1001.

The rules affect Government Code, Chapters 531, 664, 2110; and Health and Safety Code, 1001.

Sections for Repeal.

§1.61. Introductions.

§1.62. Administration.

Legend: Proposed New Rule
Regular Print = Proposed New Language

§1.61. Worksite Wellness Advisory Board.

(a) Definitions. The following words and terms, when used in these sections, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act - The State Employee Health Fitness and Education Act, Government Code, Chapter 664, as amended by House Bill 1297, June 2007

(2) State Employee--A state employee who participates in a health benefits program administered under Insurance Code, Chapter 1551.

(3) Best Practices--Recommended interventions that have been proven through the strength of evidence of effectiveness found through a systematic review of published evidence by peers.

(4) Department--The Department of State Health Services.

(5) State Agency--A department, institution, commission or other agency that is in the executive, judicial, or legislative branch of state government.

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

(7) Statewide Wellness Coordinator--A person designated by the department to create and develop for use the model statewide wellness program.

(8) Worksite Wellness Advisory Board--A board appointed by the Executive Commissioner that consists of 13 members representing specific areas of expertise in state government and health and wellness.

(b) Worksite Wellness Advisory Board. Composition, Meetings, Purpose, Reporting.

(1) Composition. The Executive Commissioner shall appoint 13 members representing the following areas:

(A) Five state agency employees, including one employee each of the following agencies:

(i) Department of Agriculture;

(ii) Texas Education Agency;

(iii) Texas Department of Transportation;

(iv) Texas Department of Criminal Justice; and

(v) the department;

(B) one other employee of the department who is involved in worksite wellness efforts at the department;

(C) one employee of the Employee Retirement System of Texas;

(D) two state employee representatives of an eligible state employee organization described by Government Code, §403.0165, with at least 10,000 active, dues-paying members;

(E) one worksite wellness professional

(F) one representative of the American Cancer Society;

(G) one representative of the American Heart Association; and

(H) one representative of the Texas Medical Association.

(2) Meetings.

(A) The board shall meet at least once a year in Austin. A meeting may be called with the agreement of department staff and the board.

(B) Each meeting of the board shall be announced and conducted in accordance with the Open Meetings Act, Government Code, Chapter 551.

(C) A simple majority of the members of the board shall constitute a quorum for the purpose of transacting official business.

(D) The board is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(E) Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(F) Any action taken by the board must be approved by a majority vote of the members present once quorum is established. Each member shall have one vote. A member may not authorize another individual to represent the member by proxy.

(3) Purpose and tasks. The purpose and tasks of the board are to advise the department, executive commissioner and statewide wellness coordinator on worksite wellness issues including:

(A) funding and resource development for worksite wellness programs;

(B) identifying food vendors that successfully market healthy foods;

(C) best practices for worksite wellness used by the private sector; and

(D) worksite wellness features and architecture for new state buildings based on features and architecture used by the private sector.

(4) Reporting. At the end of each meeting, the board will provide oral and/or written recommendations, based on the discussions of the board, to the department. The recommendations will be captured in the minutes of the meeting.

§1.61 Introduction

(a) ~~Definitions. The following words and terms, when used in these sections, shall have the following meanings unless the context clearly indicates otherwise.~~

~~—(1) Act—The State Employees Health Fitness and Education Act, Texas Civil Statutes, Article 6252-27, as amended by Senate Bill 545, June 1989.~~

~~—(2) Cost—A method of sharing expenditures between one or more sharing organizations and their employees.~~

~~—(3) Employees—The classified and unclassified staff of a state organization.~~

~~—(4) Facilities—Buildings and their fixtures, sidewalks, activity areas, parking lots, and other property improvements, owned or operated by a state organization.~~

~~—(5) Health fitness—A condition of physical and mental well-being.~~

~~—(6) Health risk factors—Characteristics, identified through epidemiologic studies, which may influence the development of various diseases within individuals.~~

~~—(7) Organization—A state department, institution, commission, or agency affected by the Act.~~

~~—(8) Plan—The description of an organization's health fitness program which addresses the participants, purpose, nature, duration, costs, and expected results of the program.~~

~~—(9) Program—The activities described in an organization's plan for implementing the Act.~~

(b) ~~Program overview and authorization.~~

~~—(1) Overview. A brief overview of the organization's program will be given which generally describes its purpose. An example is as follows: The (name of organization) employee health fitness and education program is a voluntary program of structured activities for its administrators and employees designed to result in an increase in the general level of their health fitness.~~

~~—(2) Authorization.~~

~~—(A) This program is authorized by the State Employees Health Fitness and Education Act of 1983, Texas Civil Statutes, Article 6252-27, as amended by Senate Bill 545, 71st Legislature, Regular Session.~~

~~—(B) Executive Order WPC-89-10, dated July 21, 1989, designates the commissioner of health as the governor's representative for approving state agency health fitness and education programs and authorizes the department to adopt rules concerning the programs which require the expenditure of public funds.~~

~~—(C) Agencies which have approved plans under the governor's Commission on Physical Fitness are not required to resubmit plans to the Texas Department of Health.~~

(c) ~~Program categories. Most programs will be targeted to one or more of the levels shown as follows. The program plan will identify activities to be conducted under the appropriate level(s).~~

~~—(1) Awareness. An awareness program increases the employees' level of awareness or interest in the topic of the program. Such programs often result in increased knowledge about healthy behavior and can be effective morale boosters and ways to publicize the program to a large number of employees. These types of activities are also an inexpensive way to begin the program. Examples include newsletters, posters, health fairs, one-time education classes, brown bag seminars, and health screening without ongoing follow-up.~~

~~—(2) Lifestyle change. Lifestyle change programs are intended to change the health behavior of the employee. Health education or behavior modification are two common methods used. Such programs should continue at least eight to 12 weeks if they are to have any long-term impact.~~

Examples include ongoing fitness classes, regular meetings of weight loss groups, or extended stress management education.

—(3) Supportive environment. A supportive environment program is intended to create within the worksite an environment that encourages healthy lifestyles. The major elements of that environment are the physical setting, departmental policies and culture, ongoing programs and structure, and employee involvement in programs.

(d) Program objectives.

—(1) Primary goal. The primary goal of each organization's program will be stated. The goal might include management goals of reducing health care costs or improving morale, or health goals such as reducing the incidence of heart attacks or back injuries. Bear in mind that if the program goal is to reduce health care costs or absenteeism, significant amounts of effort over at least five years will be necessary.

—(2) Objectives. The organization's plan will include measurable objectives which allow the program to accomplish its goal. Objectives in one or both of two categories, process or impact, will be included.

—(A) Process objectives state what the program will do in measurable terms, such as "Recruit 50% of the employees to participate in a health screening/health fair in 1990."

—(B) Impact objectives state what the program expects to happen as a result of its activities, such as "Increase by 5.0% the number of employees who participate in aerobic exercise at least two times/week."

—(3) Evidence. Evidence that employees' needs and interests have been considered in planning program objectives will be included.

§1.62 Administration

a) Administration overview.

—(1) The basic policies as outlined in the provisions in these sections will be used in developing each organization's employee health fitness program plan.

—(2) Each organization's policies and procedures such as travel regulations and personnel policies will be considered in conjunction with the provisions in these sections in the development of program plans.

(b) Eligibility requirements.

—(1) All administrators and employees (full-time and part-time) will be eligible for voluntary participation in program activities.

—(2) Spouses and other immediate family members of administrators and employees are encouraged to participate in selected program activities, as determined by an organization's chief executive officer or his/her designate so long as:

—(A) each family member pays directly to a service provider any individual costs charged for such participation; and

—(B) such participation by family members will not preclude participation in the program activity by other interested employees.

(c) Use of facilities.

—(1) The Act provides for the use of available facilities for health fitness programs. Examples of such facilities might include conference or meeting rooms, auditoriums, showers, lockers, and outdoor areas suitable for instruction or fitness activities. All facilities available for use in any

organization's health fitness program must primarily be or have been required by that organization in carrying out its normal duties and responsibilities. Only secondarily shall such facilities be used in conjunction with an organization's health fitness plan. No new buildings or rooms may be built with money available under this Act.

~~-(2) Where considered appropriate by the organization, it may expend available public funds related to the cost of facilities modification. However, facilities may not be modified so as to make them suitable solely for use in an organization's health fitness program unless such facilities were originally needed by the organization in carrying out its normal duties and responsibilities but are no longer suitable for use as originally planned. If funds will be used for such modifications, the specific costs and expected benefits must be clearly stated in the plan.~~

~~(d) Providers of instruction/services. An organization with an approved employee health fitness plan may contract with qualified providers of instruction and services related to their program. Such providers might include local, state, or federal agencies; hospital, medical care professionals; health educators; nutritionists; dietitians; exercise physiologists; community organizations; consultants; or other individuals or groups with expertise in the health fitness area. Qualified personnel within an organization may serve as health fitness instructors and activity leaders, when appropriate, and training may be provided for these staff members to prepare them for such assignments. However, payment other than regular salary and benefits to an organization's staff instructor will not be allowed if such instruction is a duty assignment of that person or if the instruction is offered during that employee's normal working hours.~~

~~(e) Program content.~~

~~-(1) Many organizations' employee health fitness efforts will consist of both formal activities which will be addressed in their program plan, and informal activities which need not be addressed in the plan. Some activities will have costs involved while others will not and some will be conducted during normal working hours while others will not.~~

~~-(2) Informal program activities need not be addressed in the plan. Such activities might consist of one or more of the type activities listed in the formal/program content description in these sections (e.g., intramural sports or various types of employee club activities). Generally, informal health fitness activities have been coordinated by employees with a special interest in some aspect of health fitness but not necessarily as part of an organization's formal employee health fitness program. Since the Act is the first authorization for state organizations to use available public funds for health fitness related costs, any health fitness activity conducted by an organization prior to the Act's passage must have been at no cost to the state or conducted under other authority such as the State Employees Training Act of 1969.~~

~~-(3) The purpose of the Act and of the provisions in these sections is not to limit the freedom of employees in any organization to continue, on an informal basis, personal health fitness activities either individually or in cooperation with others.~~

~~-(4) If vigorous physical activity is part of an organization's program plan, all employees who wish to participate must first complete a physical fitness readiness questionnaire. This questionnaire will help determine which employees require consultation with a physician before beginning such vigorous activity. Further, all employees participating in such vigorous physical activity must have signed a statement of informed consent. Copies of this very brief questionnaire and examples of informed consent forms are available from the Public Health Promotion Division of the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.~~

~~(f) Program costs.~~

~~—(1) The Act provides an organization with the authority to use available public funds for health fitness education and activities, and other health fitness related costs. This does not mean additional funds but rather the use of existing monies which can be made available for such programs. Many organizations will have in their existing budget structure categories such as training and professional services under which expenditures associated with certain aspects of their health fitness programs may fall.~~

~~—(2) It is not always possible to identify, at any point in time, all the activities which may be appropriate in conducting a successful employee health fitness program. However, monies from existing organization funds can be identified for implementing such a program in general. Some organizations, because of their size, availability of funds and other resources, and the extent to which they have developed their program plans, will be able to identify specific program costs. If such proposed expenditures are deemed appropriate by the organization's chief executive in carrying out his/her organization's health fitness program in accordance with the provisions in these sections, then they are to be reflected in that organization's program plan.~~

~~—(3) While the Act requires that each organization's plan address costs involved, a portion of those costs may have to be estimated. However, to the extent possible activity costs will be reflected. Costs for facility modification must always be stated specifically.~~

~~—(4) The total costs of such programs and the ability of an organization to bear these costs is best determined by the organization's chief executive.~~

~~—(5) In addition to allowable program expenditures thus far addressed in the provisions in these sections associated with facilities, providers of instruction, and program content, additional program costs may be allowed for the following.~~

~~—(A) Equipment and supplies which are needed for carrying out an organization's health fitness and education program will be itemized in the organization's program plan.~~

~~—(B) Training costs are allowed which could include having staff members trained as leaders or instructors of health/fitness education activities. Registration fees and travel/per diem expenses shall be allowed for this type training under authority of the State Employees Training Act of 1969.~~

~~—(C) Incentives and awards may be provided for employees who participate in an organization's health fitness program. Such incentives are strongly encouraged under Executive Order WPC-89-10. Examples of such incentives and awards might include award ribbons, certificates, t-shirts, and other low cost items of recognition.~~

~~—(6) Program expenditures will not be allowed for:~~

~~—(A) paying for employee memberships in health clubs;~~

~~—(B) instruction and activities not directly related to improving the health and fitness of an organization's employees;~~

~~—(C) paying the registration fees for an organization's employees to enter teams in sports leagues;~~

~~—(D) buying uniforms or other wearing apparel for an organization's sports teams;~~

~~—(E) sponsoring activities which are not open to both sexes;~~

~~—(F) treatment services covered under the state employees health insurance program such as physical therapy or treatment by a physician for hypertension or diabetes;~~

~~—(G) routine annual physicals which are not specific fitness screenings or health risk evaluations; and~~

~~—(H) any employee medical costs.~~

~~-(7) The concept of cost sharing has been found to result in a high degree of commitment by those sharing in the cost. An organization may choose to cover 100% of the costs of certain program activities, to share the costs of some activities with participating employees, or to have employees pay 100% of the costs associated with certain program activities. Plans for cost sharing will be stated in the plan. Programs which match public funds with other funds will be given preference for approval.~~

~~(g) Program scheduling.~~

~~-(1) Program activities may be scheduled before, during, between, or after normal working hours as deemed appropriate by each organization's chief executive. Generally speaking, activities which are conducted over an extended period of time should be offered at times other than normal working hours.~~

~~-(2) Scheduling will be done in a manner to avoid interference with the normal work of the organization or interference with public access to services and facilities of the organization.~~

~~(h) Program coordination.~~

~~-(1) A successful employee health fitness program will require appropriate planning, coordination, and implementation. An organization wishing to have such a program will designate an employee health fitness coordinator who would devote some on-duty time to the effort. It is unlikely that a successful program can be administered on a strictly volunteer basis after working hours.~~

~~-(2) The Act, §4, allows and encourages state organizations to enter into agreements with one another as well as local or federal organizations including state supported colleges or universities in presenting, joining in presenting, or participating jointly in health fitness education or fitness activity programs for its administrators and employees. Such cooperation will be particularly useful where several agencies are located in the same building, or when regional offices of several agencies are located in the same town.~~

~~(i) Expected results.~~

~~-(1) The expected results of an organization's program will be stated as measurable objectives. Objectives may be process (what you will do) or impact (what you expect to happen as a result of your activities). Examples of measurable objectives are given as follows:~~

~~—(A) process objective—recruit 50% of employees to participate in a health screening/health fair;~~

~~—(B) impact objective—increase by 50% the number of employees who know their blood pressure and cholesterol level; and~~

~~—(C) impact objective—increase by 5.0% the number of employees who participate in aerobic exercise at least two times per week.~~

~~(j) Evaluation.~~

~~-(1) The final section of a program plan will address program evaluation. Plans for evaluating the program will be made when the program objectives are set. Sophisticated, controlled studies and evaluations are unlikely to be appropriate for most agencies, unless a comprehensive and relatively expensive program is being undertaken.~~

~~-(2) Measures are to be selected which allow the agency to determine if its objectives were met. Assessment of employee needs/interests/health risks before offering a program will allow for development of a baseline against which future measurements can be compared. Determination of the number and types of employees who participate in programs, the skills or knowledge gained as a result of participation, and other simple techniques are encouraged.~~

~~(k) Plan submittal.~~

~~–(1) The Act, §5, requires each organization desiring to implement a health fitness program to develop a plan prior to such implementation which shall address the participants, purpose, nature, duration, costs, and expected results of such program. The plan will be reviewed by the Public Health Promotion Division of the Texas Department of Health for its conformity with the Act and the provisions in these sections. The program plan will then be forwarded to the commissioner of health for final approval.~~

~~–(2) Subsequent program plans can and are to be submitted whenever an organization significantly changes the manner in which it plans to conduct its program or whenever it wishes to undertake facilities modification not previously approved.~~

~~–(3) The purpose of requiring program plans is not to hold organizations to rigidly following the original plan it develops, when modifications may well be warranted; rather, it is to make sure that those organizations desiring to implement an employee health fitness program have given due consideration to the types of activities which can be offered, the cost of such activities, and the benefits to be gained.~~

~~–(4) The following review checklist will be used by the Texas Department of Health to determine the extent to which the plan meets the requirements stated in the provisions in these sections. The Public Health Promotion Division will offer assistance to any agency in preparing its plan or revising it to meet these criteria.~~