

**Department of State Health Services
Council Agenda Memo for State Health Services Council
June 12 - 13, 2013**

Agenda Item Title: Repeal of a rule concerning the Texas Organ, Tissue, and Eye Donor Council

Agenda Number: 5.a

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Texas Organ, Tissue, and Eye Donor Council (council) was established under the Health and Safety Code, Chapter 113, and was administratively supported by the Department of State Health Services (DSHS). The Purchased Health Services Unit, Specialized Health Services Section, of the Family and Community Health Services Division administers the Glenda Dawson Donate Life - Texas Registry program.

The purpose of the council was to advise DSHS on:

- the Glenda Dawson Donate Life - Texas Registry;
- priorities for the initiatives to be implemented under the registry program;
- donor education, awareness, and registry outreach specifically targeted at African American and Hispanic populations;
- allocation of money received by the comptroller for registry activities; and
- necessary performance standards and quality control measures concerning the operation of the registry, as well as related donor educational programs.

House Bill (HB) 2904, 82nd Legislature, Regular Session, 2011, abolished the council and repealed Health and Safety Code, Chapter 113, effective January 1, 2012. HB 2904 did not abolish the registry, but placed its administration with a nonprofit organization under contract with DSHS.

The Glenda Dawson Donate Life - Texas Registry program is funded through \$1 voluntary donations that Texans can make when renewing driver licenses or identification cards or when registering motor vehicles. These funds are appropriated to DSHS for administering the registry.

Summary:

The purpose of the repeal is to reflect the legislative changes in statute. The legislation abolished the council in January 1, 2012; the repeal of the rule will not have any impact on the current operation of the program.

Key Health Measures:

There is no expected key health outcome anticipated with the repeal of the rule. The repeal will remove the unnecessary rule from DSHS' rules base in order to maintain clear and concise rules for the public.

Summary of Input from Stakeholder Groups:

DSHS solicited stakeholder input on January 8, 2013, via e-mail, notifying stakeholders of the proposed repeal.

Stakeholders notified included members of the Texas Organ, Tissue, and Eye Donor Council, whose membership consisted of representatives from DSHS, Texas Department of Public Safety, Texas Department of Transportation, Southwest Transplant Alliance-Dallas, Texas Organ Sharing Alliance-San Antonio, LifeGift Organ Donation Center-Houston, Dallas Nephrology Associates, University of Texas Health Science Center-San Antonio/Department of Pathology, Bryan J. Rollins Research-Austin, and Valley Baptist Medical Center-Mercedes.

Additional stakeholders contacted included: the Texas Medical Association-Austin, Texas Transplantation Society-Austin, National Kidney Foundation of Southeast Texas-Houston, National Kidney Foundation of West Texas-Lubbock, Lone Star Lions Eye Bank-Manor, Transplant Services Center-Dallas, Christus Santa Rosa Health Care-San Antonio, the Blood and Tissue Center of Central Texas-Austin, South Texas Blood and Tissue Centers-San Antonio, Scott & White Memorial Hospital-Temple, San Antonio Eye Bank, Great Plains Lions Eye Bank-Lubbock, Community Tissue Services-Fort Worth, Texas Hospital Association-Austin, Texas Children’s Renal Transplant Services-Houston, Texas Children’s Liver Transplant Services-Houston, Texas Children’s Lung Transplant Services-Houston, Texas Transplant Society-Austin, Dallas County Medical Examiner, University of Texas Southwestern-Dallas, and Medical City-Dallas.

DSHS did not receive any comments from stakeholders.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #5.a.

Approved by Assistant Commissioner/Director:	Evelyn Delgado	Date:	5/10/13
Presenter: Jann Melton-Kissel	Program: Specialized Health Services Section	Phone No.:	512/776-2002
Approved by CCEA:	Carolyn Bivens	Date:	5/9/2013

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 37. Maternal and Infant Health Services
Subchapter L. Texas Organ, Tissue, and Eye Donor Council
Repeal §37.231

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 §37.231, concerning the Texas Organ, Tissue, and Eye Donor Council (council).

BACKGROUND AND PURPOSE

The council was established under the Health and Safety Code, §§113.001 - 113.014 and administered by the department. The purpose of the council was to advise the department on (1) the Glenda Dawson Donate Life-Texas Registry (registry); (2) priorities for the initiatives to be implemented under the registry program; (3) donor education, awareness, and registry outreach specifically targeted at African American and Hispanic populations; (4) allocation of money received by the comptroller for registry activities; and (5) necessary performance standards and quality control measures concerning the operation of the registry, as well as related donor educational programs.

This proposal implements House Bill (HB) 2904, 82nd Legislature, Regular Session, 2011, abolishing the council and associated statute, effective January 1, 2012. HB 2904 did not abolish the registry, but placed its administration with a nonprofit organization under contract with the department.

SECTION-BY-SECTION SUMMARY

The department is repealing §37.231 in accordance with HB 2904 abolishing the department's administration of the registry under Health and Safety Code, §§113.001 - 113.014, Texas Organ, Tissue, and Eye Donor Council.

FISCAL NOTE

Jann Melton-Kissel, Section Director, Specialized Health Services Section, 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 the state or local governments as a result of repealing the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the section as proposed because small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

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.

PUBLIC BENEFIT

In addition, Ms. Melton-Kissel has also determined that for each year of the first five years that the repeal will be in effect, the public will benefit by eliminating an unnecessary rule that was abolished by statute effective January 1, 2012.

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 repeal 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

Comments on the proposal may be submitted by mail to Laura Ethridge, Purchased Health Services Unit, Mail Code 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone at (512) 776-3664; or email to laura.ethridge@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 repeal has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeal is proposed under Government Code, §531.0055(e), 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 Health and Safety Code, Chapter 1001.

The repeal affects Government Code, Chapter 531; and Health and Safety Code, 1001.

Section for repeal.

§37.231. Texas Organ, Tissue, and Eye Donor Council.

Legend: Proposed Repealed
~~Strikethrough~~=repealed text

~~§37.231. Texas Organ, Tissue, and Eye Donor Council.~~

~~(a) The council. The council is established by Health and Safety Code, Chapter 113, and shall be appointed under and governed by this section.~~

~~(b) Applicable law. The council is subject to Government Code, Chapter 2110, relating to state agency advisory councils.~~

~~(c) Definitions. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.~~

~~(1) Council—The Texas Organ, Tissue, and Eye Donor Council.~~

~~(2) Commissioner—The commissioner of state health services.~~

~~(3) Department—The Department of State Health Services.~~

~~(4) Public safety director—The public safety director of the Department of Public Safety (DPS).~~

~~(d) Purpose. The council shall advise:~~

~~(1) the department concerning the Glenda Dawson Donate Life—Texas Registry;~~

~~(2) the department on priorities for the initiatives to be implemented under the Glenda Dawson Donate Life—Texas Registry;~~

~~(3) the department regarding donor education, awareness, and registry outreach specifically targeted at African American and Hispanic populations;~~

~~(4) the commissioner, public safety director, and director of the Texas Department of Transportation (TxDOT) on the allocation of money received by the state comptroller for the activities authorized under the Revised Uniform Anatomical Gift Act, Health and Safety Code, Chapter 692A; and~~

~~(5) the department, DPS, and TxDOT regarding necessary performance standards and quality control measures concerning the operation of the statewide Internet-based donor registry, as well as related donor educational programs.~~

~~(e) Sunset Provision; Abolishment. The council is subject to the Texas Sunset Act, Government Code, Chapter 325.~~

~~(f) Composition. The council shall be composed of 10 members.~~

(1) The council shall include:

- (A) a representative of the department appointed by the commissioner;
- (B) a representative of DPS appointed by the public safety director;
- (C) a representative of TxDOT appointed by the executive director of that agency;
- (D) five professional members appointed by the commissioner; and
- (E) two public members appointed by the commissioner.

(2) The professional members of the council shall be appointed as follows:

- (A) one representative nominated by each of the state's three federally qualified organ procurement organizations;
- (B) one representative who is a transplant physician or nurse licensed in this state; and
- (C) one representative of an acute care hospital in this state.

(3) Each of the public members must be:

- (A) a donor, recipient, or member of a donor's family; and
- (B) selected from a pool of members compiled from the recommendations of the following nonprofit organizations in the field of transplantation and organ donor education:

- (i) the Texas Medical Association;
- (ii) the Texas Transplantation Society;
- (iii) the Transplant Nurses' Association;
- (iv) the National Kidney Foundation;
- (v) the National Minority Organ Tissue Transplant Education Program; and
- (vi) the American Society of Minority Health and Transplant Professionals.

~~(4) A member of the council who is a representative of an agency of this state is a nonvoting member of the council.~~

~~(5) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.~~

~~(g) Terms of office. Council members appointed by the commissioner serve for staggered six year terms, with the terms of two or three members, as applicable, expiring February 1 of each odd numbered year.~~

~~(1) A council member appointed as a representative of an agency serves at the will of the appointing agency.~~

~~(2) If a vacancy occurs, the commissioner or other appropriate appointing authority shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.~~

~~(3) An appointed member may not serve more than one term consecutively.~~

~~(h) Officers. The commissioner shall designate a public member of the council as the presiding officer of the council to serve in that capacity at the will of the commissioner.~~

~~(1) The council may select from its members an assistant presiding officer or other officers.~~

~~(2) The presiding officer shall preside at all council meetings at which he or she is in attendance, call meetings in accordance with Health and Safety Code, Chapter 113, and appoint subcommittees of the council as necessary. The presiding officer may serve as an ex-officio member of any subcommittees of the council.~~

~~(3) The council may reference its officers by other terms, such as chairperson and vice chairperson.~~

~~(i) Meetings. The council shall meet at least twice each calendar year and at the call of the presiding officer.~~

~~(1) Department staff shall make meeting arrangements, and contact council members to determine availability for a meeting date and place.~~

~~(2) The council is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the council shall be announced and conducted in accordance with the Open Meetings Act, Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.~~

~~(3) Meetings may be conducted by telephone conference.~~

~~(4) Each member of the council shall be informed of a council meeting at least five working days before the meeting.~~

~~(5) Two thirds of the members of the council (i.e., seven members) shall constitute a quorum for the purpose of transacting official business. Actions taken by the council must be approved by a majority of the voting members present.~~

~~(6) The council is authorized to transact official business only when in a legally constituted meeting with a quorum present.~~

~~(7) The agenda for each meeting shall include an opportunity for any person to address the council on matters related to council business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.~~

~~(j) Attendance.~~

~~(1) Members shall attend council meetings as scheduled, and meetings of subcommittees to which the members are assigned.~~

~~(2) Members may attend meetings via telephone.~~

~~(3) A member shall notify the presiding officer, subcommittee chairperson, or appropriate department staff if he or she is unable to attend a scheduled meeting.~~

~~(k) Grounds for removal.~~

~~(1) It is a ground for removal from the council that a member:~~

~~(A) does not have at the time of taking office the qualifications required by this section;~~

~~(B) does not maintain during service on the council the qualifications required by this section;~~

~~(C) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or~~

~~(D) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.~~

~~(2) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.~~

~~(3) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the council of the potential ground. The~~

~~presiding officer shall then notify the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer or most senior member of the council, who shall then notify the attorney general that a potential ground for removal exists.~~

~~(l) Staff. The department shall provide staff support for the council and its subcommittees.~~

~~(m) Procedures. *Roberts Rules of Order, Newly Revised*, shall be the basis of parliamentary decisions except where otherwise provided by law.~~

~~(1) Any action taken by the council must be approved by a majority vote of the voting members present once a quorum is established.~~

~~(2) Each voting member shall have one vote.~~

~~(3) A voting member may not authorize another individual to represent the member by proxy.~~

~~(4) The council shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status except where otherwise provided by law.~~

~~(5) Department staff shall take minutes of each council meeting.~~

~~(A) A draft of the minutes approved by the presiding officer shall be provided to each member of the council within 30 days of the meeting.~~

~~(B) After approval by the council, the minutes shall be signed by the presiding officer.~~

~~(n) Subcommittees. The council may establish subcommittees as necessary to assist the council in carrying out its duties.~~

~~(1) The presiding officer shall appoint members of the council to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the council to serve on subcommittees.~~

~~(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the council.~~

~~(3) A subcommittee chairperson shall make regular reports to the council at each council meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.~~

~~(o) Statements by members.~~

~~(1) The department, DPS, TxDOT, and the council 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 department, DPS, TxDOT, or the council.~~

~~(2) The council and its members may not participate in legislative activity in the name of the council, the department, DPS, or TxDOT except with approval through the departments' legislative processes. Council members may represent themselves or other entities in the legislative process.~~

~~(3) A council member shall not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.~~

~~(4) A council member shall not disclose confidential information acquired through his or her council membership.~~

~~(5) A council member shall not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of or against another person.~~

~~(6) A council member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the council member has a direct pecuniary interest in the matter but does not include the council member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.~~

~~(p) Report. Before December 1 of each even-numbered year, the council shall submit a report of the council's activities and recommendations to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature.~~

~~(q) Reimbursement for expenses. A member shall be reimbursed for the member's actual and necessary expenses for meals, lodging, transportation, and incidental expenses incurred while performing council business, subject to any applicable limitation on reimbursement prescribed by the General Appropriations Act.~~