

**Department of State Health Services
Council Agenda Memo for State Health Services Council
January 22, 2010**

Agenda Item Title: Repeal of rules concerning the Program for Amplification for Children of Texas (PACT)

Agenda Number: 5i

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The PACT program provides hearing aids and hearing-related services for Texas children from birth through 20 years of age who have a permanent hearing loss. The PACT program was administered by the Family and Community Health Services Division, Newborn Screening Unit until September 1, 2009, when it was transitioned to the Health and Human Services Commission (HHSC). Providers of PACT hearing services for Texas children younger than 21 years of age who are eligible for Medicaid are reimbursed by HHSC.

Summary:

The purpose of the repeal is to eliminate unnecessary and duplicative rules and processes because the PACT program, effective September 1, 2009, was integrated into the Medicaid services structure administered by HHSC. The Centers for Medicare and Medicaid Services (CMS) recommended standardization and integration of PACT services and processes with the Texas Medicaid program. The relocation of the PACT program will standardize the payment processes and will bring the PACT payment processing in compliance with the CMS audit conducted in 2000.

DSHS is repealing the PACT rules concurrently with HHSC amending Medicaid rules for hearing aid services to include clients younger than 21 years of age, enabling hearing services to align with the CMS recommendation for PACT. Due to the integration of the program into the Medicaid services structure, there is no need for the PACT rules to remain within DSHS' authority. No significant issues are anticipated with the repeal of the rules and there will be no fiscal impact to DSHS.

Hearing services are currently provided to Medicaid clients 21 years of age and older in accordance with HHSC rules at 1 Texas Administrative Code, Part 15, Chapter 354, Subchapter A, Division 15. Section 354.1231(b)(1) and will be amended by HHSC to include clients under 21 years of age who currently receive services through the PACT program.

Summary of Input from Stakeholder Groups:

The PACT program notified providers and solicited input by letter regarding the transition of the program. Providers include an extensive listing of audiologists; ear, nose, and throat doctors; hearing aid dispensers; school districts; and professional associates. No comments were received.

The Medical Care Advisory Committee will review the repeal of the PACT rules on January 14, 2010.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #5i

Approved by Assistant Commissioner/Director: Evelyn Delgado **Date:** 12/7/09

Presenter: Jann Melton-Kissel **Program:** Specialized Health Services **Phone No.:** 458-7111 ext. 2002
Section

Approved by CPCPI: Carolyn Bivens **Date:** 12/7/09

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 37. Maternal and Infant Health Services
Subchapter U. Program for the Amplification for Children of Texas
Repeal §§37.561- 37.573

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department), proposes the repeal of §§37.561 - 37.573, concerning the Program for Amplification for Children of Texas (PACT).

BACKGROUND AND PURPOSE

The PACT program currently provides identification and remediation services for Texas children from birth through 20 years of age who have a permanent hearing loss. The repeal of §§37.561 - 37.573 is necessary because the PACT program is being integrated into the Medicaid services structure administered by HHSC.

The relocation of the PACT program will standardize the payment processes administered by the Texas Medicaid program and will bring the PACT payment processing in compliance with the Centers for Medicaid Medicare Services audit conducted in 2000. Other program components of the PACT program will utilize the existing Medicaid enrollment for providers including eligibility requirements and the hearing aid manufacturers already under contract with HHSC.

Hearing Aid Services are currently provided to Medicaid clients 21 years of age and older in accordance with HHSC rules in 1 TAC, Chapter 354. Medicaid Health Services, Subchapter A. Purchased Health Services, Division 15. Hearing Aid Services. These rules will be amended by HHSC to include clients under 21 years of age who currently receive services through the PACT program.

SECTION-BY-SECTION SUMMARY

The PACT program enrolls audiologists to provide hearing services to children; verifies Medicaid eligibility of children; receives and distributes hearing aids from manufacturers; and processes payments for PACT services. Due to the integration of the program into the Medicaid services structure, there is no need for the PACT rules to remain within the department's authority.

FISCAL NOTE

Jann Melton-Kissel, Section Director, Specialized Health Services Section, has determined that there will be no fiscal implications to the state or local governments as a result of repealing the sections as proposed because no requirements resulting in any fiscal implication were added or deleted.

MICRO-BUSINESS AND SMALL BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Melton-Kissel has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses affected by the PACT rules will be required to alter their business practices in order to comply with the rules, and an economic impact statement and regulatory flexibility analysis are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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, Ms. Melton-Kissel has also determined that for each year of the first five years the repeals are in effect, the repeal of these rules will benefit the public by eliminating unnecessary and duplicative rules and processes. If the department does not repeal these rules, there will appear to be dual administration.

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 with 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 repeals 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 proposed repeals may be submitted to David R. Martinez, Newborn Screening Branch, Health Screening and Case Management Unit, Specialized Services Section, Department of State Health Services, P.O. Box 149347, MC 1918, Austin, Texas 78714-9347, (512) 458-7111, extension 2216, or by e-mail to davidr.martinez@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 proposed repeals are authorized by 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 Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

Sections for repeal.

§37.561. Purpose.

§37.562. Definitions.

§37.563. Program Benefits.

§37.564. Temporary Loan of Hearing Aids.

§37.565. Requirements for Provider Participation.

§37.566. Provider Application Process.

§37.567. Denial, Modification, Suspension, or Termination of Provider Approval.

§37.568. Recipient Eligibility Criteria.

§37.569. Requirements for Recipients to Receive Services.

§37.570. Denial of Application or Modification, Suspension, or Termination of Recipients' Program Participation.

§37.571. Recipient Rights.

§37.572. Monitoring and Record Keeping Concerning Individuals with Hearing Loss.

§37.573. Confidentiality of Information.

~~§37.561. Purpose.~~

~~The Program for Amplification for Children of Texas (PACT) provides identification and remediation services for Texas children from birth through 20 years of age who have a permanent hearing loss.~~

~~§37.562. Definitions.~~

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

- ~~–(1) Audiologist—A person licensed to practice as an audiologist in Texas by the State Board of Examiners for Speech Language Pathology and Audiology.~~
- ~~–(2) Board—The Texas Board of Health, or its successor.~~
- ~~–(3) Calibration—The process of comparing an instrument or device with a standard to determine its accuracy and to make the necessary repairs or adjustments to assure that the operating characteristics are within the allowable limits established by a national standard or manufacturer's specifications.~~
- ~~–(4) Communication disorder—A functional abnormality related to a person's ability to express and/or receive ideas.~~
- ~~–(5) Department—The Texas Department of Health, or its successor.~~
- ~~–(6) Educator—An individual engaged in the formal educational development of the individual with hearing loss.~~
- ~~–(7) Hearing aid—A small portable electronic device that amplifies sound and is worn by a person to compensate for auditory impairment.~~
- ~~–(8) Hearing aid fitting—The physical attaching of the hearing aid(s) to the earmold(s), adjusting the hearing aid(s) to control parameters in order to meet the needs of the hearing-impaired individual, placing the resulting hearing aid arrangement on the individual's ear(s) and counseling regarding the appropriate usage of, care of, and maintenance of the hearing aid arrangement.~~
- ~~–(9) Identification services—Professional examinations/evaluations to determine the type and degree of a recipient's hearing loss.~~
- ~~–(10) Medicaid—The medical assistance program implemented by the State of Texas under the provisions of Title XIX of the Social Security Act, as amended, (42 USC §§1396-1396v).~~
- ~~–(11) Otolologist—A physician licensed to practice medicine by the Texas State Board of Medical Examiners, also referred to as an ear, nose, and throat specialist, an otolaryngologist, or an otorhinolaryngologist, who specializes in diseases of the ear and hearing mechanism.~~
- ~~–(12) Program—The Program for Amplification for Children of Texas (PACT).~~
- ~~–(13) Provider—A physician, audiologist, hospital, clinic, rehabilitation center, university, or medical school approved by the program to provide remedial services to individuals who have auditory impairment.~~
- ~~–(14) Recipient—A person who is determined to be eligible for assistance through the program.~~
- ~~(15) Remediation services—Professional examinations/evaluations and prescribed remediation for auditory impairment, including hearing aids.~~

~~§37.563. Program Benefits.~~

- ~~(a) Recipients may receive only medically necessary identification and remediation services for hearing loss.~~
- ~~(b) Recipients may receive medically necessary services and hearing aid(s) only if a provider has requested and received prior authorization for the services and hearing aid(s).~~
- ~~(c) A provider must submit a written request to the program in order to receive prior authorization for services or hearing aid(s). The provider is responsible for fitting the hearing aid(s) on the recipient.~~
- ~~(d) Providers shall be reimbursed on a fee for service basis for professional hearing services provided to recipients according to the approved fee schedule.~~

~~§37.564. Temporary Loan of Hearing Aids.~~

~~The program shall maintain hearing aids that have been donated to the program for temporary loan to recipients for the following purposes: (1) evaluation of the benefits of amplification to the recipient; or (2) use by a recipient while the permanent hearing aid(s) is being repaired.~~

~~§37.565. Requirements for Provider Participation.~~

~~All providers must be enrolled with the program and must meet the following criteria:~~

- ~~(1) Providers shall comply with the Health and Safety Code, Chapters 36 and 401; Occupations Code, Chapter 401; and other laws applicable to services provided through the program.~~
- ~~—(2) A provider may not bill a recipient for services covered by Medicaid.~~
- ~~—(3) A provider may bill a recipient for noncovered services for which Medicaid does not make any payment only if:
 - ~~—(A) a specific service is provided at the client's request; and~~
 - ~~—(B) the recipient, or the recipient's parent, guardian, or managing conservator, has acknowledged in writing that he or she is responsible for payment for services requested by or on behalf of the recipient that are determined not to be reasonable and necessary by Medicaid.~~~~
- ~~—(4) A provider must demonstrate that each staff member has a current professional license or certification required for the provision of program services.~~
- ~~—(5) A provider's testing equipment must be appropriately calibrated, be registered with the department, and must be suitable for and capable of evaluating the hearing loss of any recipient being tested.~~
- ~~—(6) A provider must be capable of conducting all hearing evaluations in a sound-treated facility meeting current American National Standards Institute (ANSI) standards and any federal, state, or manufacturer's specifications in order to ensure the accuracy of all nonmedical evaluations including, but not limited to, pure tone air and bone conduction testing and speech audiometry, both under earphones and in sound field, unaided and aided.~~
- ~~—(7) A provider must supply its federal tax identification number to the program.~~
- ~~—(8) A provider's equipment requiring calibration shall be calibrated annually by a calibration firm registered with the department.~~
- ~~—(9) A provider's equipment and facilities shall be subject to monitoring and inspection visits by department staff in accordance with Health and Safety Code, Chapter 401.~~

~~—(10) Providers who furnish services and/or hearing aids shall obtain a written statement from an otologist that the recipient has no medical contraindications to fitting and use of a hearing aid(s). Providers who are themselves otologists may attest to the lack of medical contraindications if they also fit the hearing aid(s).~~

~~(11) All providers, except those listed in §37.566(d)(2) of this title (relating to Application Process) shall have an audiologist on staff or on contract.~~

~~§37.566. Provider Application Process.~~

~~(a) An applicant must submit an application to the program.~~

~~(b) The application must be signed by the applicant's chief administrative officer.~~

~~(c) An applicant must provide written assurances that the applicant's facility and staff are capable of providing auditory services according to the standards established by the program. Program staff will confirm the status of the applicant's license with the appropriate licensing board.~~

~~(d) An applicant may seek approval to provide different levels of service, including the following:~~

~~—(1) all program services to recipients from birth through 20 years of age;~~

~~—(2) only otologic services for recipients from birth through 20 years of age, but no evaluation services; or~~

~~—(3) a range of otologic and/or evaluation services for older children, but not for infants and very young children, according to the capabilities of the applicant's facility and personnel.~~

~~(e) All applications shall be reviewed by program staff. The review process shall be completed within 20 working days following receipt of an application.~~

~~(f) Incomplete applications shall be returned to the applicant without approval or denial by the program.~~

~~(g) Applications which do not meet program requirements shall be denied. (h) After approval of a provider's application and enrollment by the program, the provider may participate as long as he or she continues to meet program criteria stated in §37.565 of this title (relating to Requirements for Provider Participation).~~

~~§37.567. Denial, Modification, Suspension, or Termination of Provider Approval.~~

~~The program shall deny a provider's application to participate in the program or modify, suspend, or terminate a provider's participation for the following reasons:~~

~~(1) failure to submit information requested by the program for the purpose of monitoring the provider's compliance with:~~

~~(A) Health and Safety Code, Chapters 36 and 401;~~

~~—(B) Occupations Code, Chapter 401; or~~

~~—(C) this subchapter.~~

~~—(2) intentional submission of false or misleading information to the program that is material to the issue of whether the provider:~~

~~—(A) should be approved to participate in the program; or~~

~~—(B) is in compliance with the provisions of Health and Safety Code, Chapters 36 and 401; Occupations Code, Chapter 401; and/or this subchapter.~~

~~—(3) failure to reimburse the program when overpayments have been made;~~

~~—(4) filing false claims;~~

~~–(5) failure to maintain valid licensure and/or certification of its professional staff; or
–(6) failure to maintain equipment as required by §37.565(5) of this title (relating to Requirements for Provider Participation).~~

~~§37.568. Recipient Eligibility Criteria.~~

~~In order to receive services from the program, a recipient must:~~

- ~~(1) be less than 21 years of age;~~
- ~~(2) be eligible for Medicaid in Texas or be eligible for the Texas Children with Special Health Care Needs Services Program; and~~
- ~~(3) have a potential or confirmed permanent hearing loss.~~

~~§37.569. Requirements for Recipients to Receive Services.~~

~~(a) The recipient must choose a provider, submit an application for PACT services through the provider, and be approved by the program.~~

~~(b) To receive identification services, the program must concur that the recipient has a potential hearing loss and give the recipient's provider prior authorization to perform identification services.~~

~~(c) To receive remediation services, the program must receive documentation of a recipient's permanent hearing loss and give the recipient's provider prior authorization to perform remediation services. Documentation includes information from:~~

~~–(1) an otologist who has determined that the recipient's condition is treatable with the use of a hearing aid(s) and that use of a hearing aid(s) will pose no danger to the recipient;~~

~~–(2) an otologist who has determined that the recipient has medically treatable hearing loss that should be treated with a hearing aid(s) on a temporary basis; or~~

~~(3) a provider, educator, and/or otologist who has determined that the hearing loss is an impediment to the recipient's educational advancement. (d) The program shall refer individuals determined not to be eligible for Medicaid or the Children with Special Health Care Needs Services Program and who have medically and/or surgically treatable hearing losses to other programs and/or state agencies for medical treatment and management.~~

~~§37.570. Denial of Application or Modification, Suspension, or Termination of Recipients' Program Participation.~~

~~(a) The program shall notify any person applying for or receiving services through the program by mail, sent to the most recent address known to the program, of the program's intention to deny the person's application for participation, or to modify, suspend, or terminate the person's participation if:~~

~~–(1) the person submits an application form or any document required in support of the application which contains an intentional misstatement of fact which is material to the program's consideration of the person's eligibility for program benefits;~~

~~–(2) the person is not eligible for Medicaid;~~

~~–(3) the person is not eligible for the Children With Special Health Care Needs Services Program;~~

~~–(4) the person cannot provide documentation that services are medically necessary;~~

~~–(5) the person has a permanent hearing loss but is eligible for special services that remediate the hearing loss that are administered by the Texas Education Agency through the public schools;~~

~~–(6) the person, or the person's parent, managing conservator, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the program services; or~~

~~–(7) the person notifies the program in writing that he or she no longer seeks program benefits. Such a statement, however, does not free the recipient, or a person(s) with a legal obligation to support the recipient, of any outstanding obligation to reimburse the program at the time of withdrawal.~~

~~(b) The department shall notify any person applying for or receiving services through the program, by certified mail sent to the most recent address known to the program, of the program's intention to deny the person's application for participation, or to modify, suspend, or terminate the person's participation.~~

~~(c) Within 10 working days after receiving the notice described in subsection (b) of this section, the recipient or the recipient's representative must respond to, or question, the program's reason(s) for the proposed action by certified mail sent to the following address: Program for Amplification for Children of Texas, 1100 West 49th Street, Austin, Texas 78756 3190. Failure by the recipient to respond shall be deemed a waiver of the opportunity to respond to the program and of the opportunity for a hearing.~~

~~(d) Upon receipt of the recipient's response, the program shall affirm or modify the proposed action in writing, including the reason(s) for the decision, sent to the recipient's address of record.~~

~~(e) Any recipient aggrieved by a program decision to deny participation, or to modify, suspend, or terminate program participation, may request a fair hearing in writing, sent to the program at the address in subsection (c) of this section, within 10 working days of receipt of the program's decision. If the recipient fails to request a fair hearing within 10 working days of receipt of the program's decision, the recipient is presumed to have waived the opportunity for a fair hearing, and the program may take final action. A fair hearing requested by a recipient shall be conducted in accordance with §§1.51–1.55 of this title (relating to Fair Hearing Procedures).~~

~~(f) These procedures do not apply to adjustments made by the program in the type of program benefits or the amount of benefits available when such adjustments are necessary to conform to budgetary limitations.~~

~~§37.571. Recipient Rights.~~

~~(a) A recipient has the right to choose any provider approved by the program to provide the identification and/or remediation services required by the recipient.~~

~~(b) A recipient has the right to accept or refuse PACT services.~~

~~(c) No person eligible for benefits under the program shall be denied such benefits, or otherwise be subjected to discrimination because of race, color, national origin, sex, creed, handicap, or age.~~

~~§37.572. Monitoring and Record Keeping Concerning Individuals with Hearing Loss.~~

~~The program shall collect data on all individuals reported to the program to help establish the incidence of hearing loss in Texas. The program shall maintain records on all children who receive hearing services and hearing aids through the program.~~

~~§37.573. Confidentiality of Information.~~

~~(a) Federal law and Medicaid regulations prohibit the disclosure of information about Medicaid recipients without the recipient's consent, except for purposes directly connected with the administration of the program. Eligibility and other confidential information may be provided to providers only with the recipient's consent.~~

~~(b) Contracted agencies performing certain administrative functions, including outreach, informing, and transportation services, may receive confidential information without the Medicaid recipient's consent if disclosure is necessary for the administration of the program. Such administrative service contractors are bound by the same standards of confidentiality as the program and must implement effective safeguards to ensure confidentiality of information concerning recipients.~~