

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

Agenda Item Title: New rule concerning the Texas Organ, Tissue, and Eye Donor Council

Agenda Number: 5k

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The Glenda Dawson Donate Life-Texas Registry program, located in the Purchased Health Services Unit, Specialized Health Services Section, Family and Community Health Services Division, is responsible for managing the Donor Registry and state-funded donor education projects. The three Texas organ procurement organizations (OPOs) access the registry to facilitate organ transplants upon the death of a certified donor. Additionally, Texas blood and tissue and eye centers work jointly with the OPOs to acquire specimens for transplantation purposes. As of September 1, 2009, there were 9,399 candidates on the waiting list for organ transplants.

The registry program determines the effectiveness of the registry by monitoring the number of certified registrants. As of August 31, 2009, there were 378,818 certified registrants.

The registry program's annual budget is \$727,474. The program is funded by a \$1 voluntary contribution made by Texans when renewing their driver's licenses or identification cards, or when registering their motor vehicles.

The Texas Organ, Tissue, and Eye Donor Council (council) was established by Health and Safety Code, Chapter 113, primarily to advise DSHS concerning the following: (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; and (4) necessary performance standards and quality control measures concerning the operation of the registry, as well as related donor educational programs.

Summary: The purpose of the new rule is to streamline the roles and responsibilities of the council by incorporating the provisions of both the authorizing statute and the council bylaws into one document. The better-defined roles and responsibilities of the council, DSHS, the Department of Public Safety (DPS), and the Texas Department of Transportation (TxDOT) are expected to be more effectively interpreted and applied as a result of the new rule.

New Section 37.231 includes the basis for the council's creation, applicable law, definitions, purpose, abolition of the council under the Texas Sunset Act, composition, terms of office, officers, meetings, attendance, grounds for removal, staff, procedures, subcommittees, statements by members, reports, and reimbursement for expenses.

The registry program will assess the impact of the rule after it becomes effective by monitoring council advice to DSHS, DPS, and TxDOT regarding necessary performance standards and quality control measures concerning the operation of the registry, as well as related donor educational programs.

Summary of Input from Stakeholder Groups: The registry program solicited stakeholder input by sending an e-mail, including the proposed rule text, to stakeholders for a 30-day review and comment period.

The stakeholders include the Texas Organ, Tissue, and Eye Donor Council members, whose membership consists of representatives from DSHS; DPS; TxDOT; Southwest Transplant Alliance-Dallas; Texas Organ Sharing Alliance-San Antonio; LifeGift Organ Donation Center-Houston; Dallas Nephrology Associates; UTHSC-San Antonio/Department of Pathology; Bryan J. Rollins Research-Austin; and Valley Baptist Medical Center-Mercedes.

Additional stakeholders contacted: 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; UT Southwestern-Dallas; and Medical City-Dallas.

Stakeholder input was received by the San Antonio Eye Bank; the Living Bank-Houston; Southwest Transplant Alliance, Inc.-Dallas; Texas Transplantation Society-Austin; and Texas Medical Association-Austin.

The summary of input from stakeholder groups includes:

- Allowing the council and its members to participate in legislative activity in the name of the council, DSHS, DPS, or TxDOT if it involves educating and informing legislators about any approved legislative report issued by the council;
- Specifying what constitutes a benefit that might reasonably tend to influence a member in the discharge of the member's official duties;
- Investigating and applying punitive measures for any member receiving any benefit that might reasonably tend to influence the member in the discharge of the member's official duties;
- Specifying what constitutes a conflict of interest;
- Expanding the council to include an advocacy organization;
- Adding an eye bank representative to the council;
- Encouraging partnerships with organ and tissue organizations by including those organizations' logos on the DSHS's website and on the donor cards;
- Suggesting that any vendor Request for Proposal or contract being considered by the council be restricted to Texas applicants unless no state applicant is qualified to receive the contract;
- Recommending that potential registrants be asked, "Would you like to become a registered donor?" or "Would you like to register to become an organ and tissue donor?" to clarify that individuals who decide to register thereby consent to both organ and tissue donation; and
- Recommending council oversight of the contributions given by members of the public when renewing their driver licenses.

No changes were made to the proposed new rule based on the stakeholder input. Comments were not incorporated because they were outside the scope of Health and Safety Code, Chapter 113 or the intent of the proposed rule to establish council bylaws, or conflicted with the specific council membership provisions of Health and Safety Code, Chapter 113. Council oversight of public contributions is currently addressed in subsection (d)(4) of the proposed new rule, concerning the allocation of money received by the state comptroller.

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

Approved by Assistant Commissioner/Director: Evelyn Delgado	Date: 12/7/09	
Presenter: Jann Melton-Kissel	Program: Specialized Health Services Section	Phone No.: (512) 458-7111, ext. 2002
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 L. Texas Organ, Tissue, and Eye Donor Council
New §37.231

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (Executive Commissioner), on behalf of the Department of State Health Services (department), proposes new §37.231, concerning the Texas Organ, Tissue, and Eye Donor Council.

BACKGROUND AND PURPOSE

Health and Safety Code, Chapter 113, created the Texas Organ, Tissue, and Eye Donor Council (council) primarily to advise the department concerning the following: (1) the Glenda Dawson Donate Life-Texas 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; and (4) necessary performance standards and quality control measures concerning the operation of the Glenda Dawson Donate Life-Texas Registry, as well as related donor educational programs. Because its primary function is to advise the department, the council is subject to Government Code, Chapter 2110, concerning state agency advisory committees. Government Code, §2110.005, requires the Executive Commissioner by rule to state the purpose and tasks of the council and to describe the manner in which the council shall report to the department. The Executive Commissioner proposes new §37.231 to comply with those requirements and to provide other operational standards as bylaws for the council.

SECTION-BY-SECTION SUMMARY

New §37.231 includes subsections concerning the basis for the council's creation, applicable law, definitions, purpose, abolition of the council under the Texas Sunset Act, composition, terms of office, officers, meetings, attendance, grounds for removal, staff, procedures, subcommittees, statements by members, reports, and reimbursement for expenses.

FISCAL NOTE

Jann Melton-Kissel, Section Director, Specialized Health Services Section, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering 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. 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 the section is in effect, the public will benefit from adoption of the section. The public benefit of the new rule for the council will be to streamline the roles and responsibilities of the council by incorporating both the authorizing statute and the council bylaws into one document.

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 new section 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 Michele Goddard, Purchased Health Services Unit, MC 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by telephone at (512) 458-7111, ext. 6819; or by email to Michele.goddard@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 rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new section is authorized by Government Code, §2110.005, which requires a state agency that establishes an advisory committee to state by rule the purpose and tasks of the committee and to describe the manner in which the committee will report to the agency; and 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 new section affects Health and Safety Code, Chapter 113; and implements Government Code, Chapter 2110.

Legend: (Proposed New Rule(s))
Regular Print = Proposed new language

§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.