

**Department of State Health Services  
Agenda Item for State Health Services Council  
January 30-31, 2008**

**Agenda Item Title:** Spinal Screening Program (Chapter 37, Subchapter G)

**Agenda Number:** 4d

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

The Spinal Screening Program is in the Division of Family and Community Health Services. The Program implements the minimum standards and requirements for detection of abnormal spinal curvature in certain school-age children attending public and private schools.

The Health and Safety Code, Chapter 37, requires DSHS to provide training to screeners for the detection of abnormal spinal curvature and the collection of screening data. DSHS regional nursing staff provide training to certify nurses as instructors to train screeners. The source of funding is Title V and the program has an annual operating budget of \$97,500.

**Summary:**

The amendments are necessary to comply with Health and Safety Code, Chapter 37, which requires the department to provide training to screeners for the detection of abnormal spinal curvature in certain school-age children attending public and private schools and the collection of screening data. Proposed changes to the rules were made following a four-year rule review as required by §2001.039 of the Government Code. Individuals affected by the amendments are public, private and charter school spinal screeners. The amendments provide editorial changes and clarification to the rules.

DSHS proposes amendments to §§37.141-37.152. The changes include editorial changes, clarification to the rules, and updating the current agency name. The new §37.148 clarifies how the screening requirements can be met. The amendment to §37.151 clarifies that the program cannot unilaterally enforce a promise of confidentiality of information pertaining to individuals screened unless permitted to do so by statute.

**Summary of Input from Stakeholder Groups:**

School Health Stakeholders (which include members of Texas State Nurses Organization and Texas State Nurses Association of Administrators), DSHS nurses, school nurses and statewide Spinal Screening trainers were contacted for input. The stakeholders were contacted by e-mail on July 30 & 31, 2007, and through the School Health weekly electronic publication on August 3, 2007. The program received no comments from the stakeholders.

**Proposed Motion:**

Motion to recommend HHSC approval for publication of rules contained in agenda item #4d.

**Agenda Item Approved by Assistant Commissioner/Director:** Evelyn Delgado **Date:** 12/18/07  
Family & Community Health Services Division

**Person Presenting:** Jann Melton-Kissel **Program:** Spinal Screening Program **Phone No:** 458-7111 ext 2002

**Final CAM Reviewed by Consumer Affairs:** RMM **Date:** 12/17/07

TITLE 25. HEALTH SERVICES  
Part I. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 37. Maternal and Infant Health Services  
Subchapter G. Spinal Screening Program  
Amendments §§37.141-37.152

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§37.141-37.152 concerning the minimum standards and requirements for detection of abnormal spinal curvature in certain school-age children attending public and private schools.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Government Code, Chapter 37, Subchapter G, which requires the department to provide training to screeners for the detection of abnormal spinal curvature and the collection of screening data.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.141-37.152 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Amendments to §§37.141-37.152 include editorial changes, clarification to the rules, and where applicable, changes to the new agency name from the legacy agency name.

An amendment to §37.141 restates and clarifies the purpose of the Subchapter.

The amendments to §37.142-37.143 change “Texas Department of Health” to “Department of State Health Services.”

The amendments to §§37.144, 37.145, 37.146(b), 37.149(c), and 37.150(b) add new language for clarity, delete superfluous language, and restructure sentences for clarity.

The amendment to §37.147(1) provides the department’s current mailing address.

The amendment to §37.148 clarifies how the screening requirements can be met.

The amendment to §37.151 clarifies that the program cannot unilaterally enforce a promise of confidentiality of information pertaining to individuals screened unless also permitted to do so by statute.

The amendment to §37.152 includes the name of the program directly in the nondiscrimination statement.

#### FISCAL NOTE

Jann Melton-Kissel, Director, Specialized Health Services Section, has determined that for each year of the first five years, the proposed amendments will be in effect, there will be no fiscal implications to state or local government as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel has also determined that there will be no adverse economic effect on screeners subject to these sections as small businesses or micro-businesses because the amended sections make no changes in the scope of coverage of the current Spinal Screening Program, and the changes do not require small businesses or micro businesses to alter their business practices in any way in order to comply with the sections. There is no impact anticipated on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Melton-Kissel has also determined that for each of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing the sections will be increased assurance that all school-aged children will receive spinal screening as mandated by law; increased efficiency of the spinal screening certification process; and increased efficiency in the implementation of the program.

#### 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 sections 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 Elijah R. Brown, Department of State Health Services, Health Screening and Case Management Unit, MC 1938, P.O. 149347, Austin, Texas 78714-9347; phone (512) 458-7111, extension 6442; or fax (512) 458-7256. 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 amendments are authorized by Health and Safety Code, §37.001(c), which mandates adoption of rules necessary to carry out the program; and Government Code, §531.0055, and Health and Safety Code, §1001.075 which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed amendments affect the Health and Safety Code, Chapters 37 and 1001; and Government Code, Chapters 531 and 2001.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

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

Regular Print = Current language

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

§37.141. Purpose. The purpose of these rules is to implement the requirements of Health and Safety Code, Chapter 37, concerning **[relating to]** the detection of abnormal spinal curvature in children.

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

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

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

(5)-(15) (No change.)

§37.143. Stages of the Department's Authorization. The department, in cooperation and coordination with the Texas Education Agency and other department bureaus, divisions or programs serving school-age children, shall develop, implement, and administer a program for the detection of abnormal spinal curvature in children. The program shall be known as the Department of State Health Services **[Texas Department of Health]** Spinal Screening Program, and **[which]** is authorized to:

(1)-(8) (No change.)

§37.144. Certification Training for Non-health Practitioners. The department shall monitor **[be responsible for monitoring]** the quality of spinal screener training activities under the following guidelines.

(1)-(5) (No change.)

§37.145. Approval of Certification Courses and Trainers.

(a) (No change.)

(b) The **[In addition, the]** individual must have a minimum of two years of school spinal-screening experience.

(c)-(f) (No change.)

§37.146. Termination of Screener or Trainer Participation.

(a) (No change.)

(b) The department may suspend or terminate a screener's approval [**Approval of a screener may be suspended or terminated**] if the screener:

(1)-(5) (No change.)

(c) (No change.)

§37.147. Standards for Spinal Screening Testing. The department and school districts, private schools, state agencies, volunteer organizations, and other entities performing spinal screening shall adhere to the following standards.

(1) The basic spinal screening test, known as the forward-bend test, shall be used to screen children for abnormal spinal curvature. A description of the test is available from the Department of State Health Services, Health Screening and Case Management Unit, MC 1938, P.O. 149347, Austin, Texas 78714-9347 [**Texas Department of Health, Bureau of Children's Health, Child Wellness Division, 1100 West 49th Street, Austin, Texas 78756**].

(2) (No change.)

§37.148. Responsibilities of Public and Private Schools.

(a)-(b) (No change.)

(c) New students enrolling in grades scheduled for screening (i.e., grades six and nine or five and eight) who have no record of having received their scheduled screening(s) shall be screened the year they enroll. Schools may offer [**shall consider offering**] a student enrolling in grades 10, 11, or 12 the opportunity for spinal screening if the student has no record of having been screened previously.

(d)-(o) (No change.)

§37.149. Responsibilities of Parent, Managing Conservator, or Guardian. When screening indicates possible abnormal spinal curvature, the child's parent, managing conservator, or guardian is [**shall be**] responsible for securing the services of a qualified health practitioner to perform a professional examination to diagnose the problem.

§37.150. Further Responsibilities of the Department.

(a) (No change.)

(b) Coordination and cooperation. The department shall encourage coordination and cooperation among entities in areas where more than one entity provides spinal screening so that the efforts of each entity are complementary, rather than duplicative.

§37.151. Confidentiality of Information. The department shall maintain the confidentiality of all information concerning those individuals screened, to the extent permitted **[as authorized]** by law.

§37.152. Nondiscrimination Statement. No person shall be excluded from participation **[in the program]**, be denied **[the]** benefits **[of the program]**, or be otherwise subjected to discrimination in the Department of State Health Services Spinal Screening Program on the grounds of race, color, national origin, sex, creed, handicap, or age.