

**Department of State Health Services
Agenda Item for State Health Services Council
August 6, 2007**

Agenda Item Title: Amend 25 TAC §84.1, Rule Relating to the State Preventive Health Advisory Committee

Agenda Number: 3-b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The rule is still needed due to the continued responsibilities for implementing United States Code – Title 42, Section §300w-4(d) regarding formulation of an annual state plan for the Preventive Health and Health Services Block Grant (PHHSBG).

Summary:

This proposal updates the rule regarding the State Preventive Health Advisory Committee (SPHAC) to reflect the new name of the agency, delete the reference to the Texas Board of Health, and make other minor updates that do not substantially change the rule.

The amendment complies with the four-year review of agency rules in Government Code, §2001.039.

Summary of Stakeholder Input to Date (including advisory committees):

Stakeholders comments will be received during the time the amendments are posted in the *Texas Register*. Current SPHAC members were given the opportunity to review the draft rule revisions and had no objections.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # 3-b.

Agenda Item Approved by: _____
Susan Rougeau

Presented by: Susan Rougeau

Title: Special Assistant to the CFO

Program/Division: Chief Financial Officer

Contact Name/Phone: Susan Rougeau, 458-7111, ext. 6815

Date Submitted
6/11/07

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 84. Preventive Health and Health Services Block Grant
Amendment §84.1

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §84.1, concerning the State Preventive Health Advisory Committee.

BACKGROUND AND PURPOSE

The amendment is necessary to update the rule regarding the State Preventive Health Advisory Committee (Committee) to reflect the new name of the agency, delete the reference to the Texas Board of Health, and make other minor updates that do not substantially change the rule. The rule is still needed due to the continued responsibilities for implementing United States Code – Title 42, Section §300w-4(d) regarding formulation of an annual state plan for the Preventive Health and Health Services Block Grant (PHHSBG).

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 84.1 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

The amendment to §84.1 reflects changes in the agency name, removes references to the now non-existent Texas Board of Health, updates references to include the Executive Commissioner of the Health and Human Services Commission, and identifies the center within the department that is to receive the Committee's annual report. The section of the rule regarding abolishing the Committee is removed because the Committee is a requirement of United States Code – Title 42, Section §300w-4(d) which requires the formulation of an annual state plan for the PHHSBG.

FISCAL NOTE

Peggy Belcher, Manager, Funds Coordination and Management Branch, 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. Belcher has also determined that there will be no effect on small businesses or micro-businesses required to comply with the rule 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 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

Ms. Belcher 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 anticipated is a clear understanding of the agencies that now have oversight over the committee since the consolidation of the health-related agencies in fiscal year 2005.

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 amendment 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 to Peggy Belcher, Grant Coordination and Funds Management Unit, Office of the Chief Financial Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7520 or by email to Peggy.Belcher@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, Deputy General Counsel, Linda Wiegman, 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 proposed amendment is authorized by Chapter 2110, which requires state agencies to adopt rules concerning advisory committees; and the 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 amendment affects Health and Safety Code, Chapter 11. Review of the section implements Government Code, §2001.039.

Legend: (Proposed Amendment(s))

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

§84.1. The State Preventive Health Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is established under Health and Safety Code, §11.016, which authorizes the Executive Commissioner of the Health and Human Services Commission **[Texas Board of Health (board)]** to establish advisory committees and is required by 42 USC §300w-4.

(b) - (c) (No change.)

(d) Tasks.

(1) The committee shall make recommendations to the **[Texas]** Department of State Health Services (department) regarding the development and implementation of a state plan, including recommendations on:

(A) - (E) (No change.)

(2) (No change.)

(e) Committee abolished. The committee may not be abolished unless the department ceases to receive Preventive Health and Health Services Block Grant funds or federal law relating to the block grant is amended to no longer require a committee. The date on which the committee shall be abolished is the date of the occurrence of the earlier of these events. [By January 1, 2007, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.]

(f) Composition. The committee shall be composed of eight members.

(1) (No change.)

(2) The members of the committee shall be appointed by the Executive Commissioner of the Health and Human Services Commission **[board]** as follows:

(A) (No change.)

(B) five non-consumer members, including the following:

(i) the Commissioner of the department [**Health**];

(ii) (No change.)

(iii) one department regional [**medical**] director;

(iv) - (v) (No change.)

(g) (No change.)

(h) Officers.

(1) The Commissioner of the department [**Health**] serves as the presiding officer of the committee. The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, and cause proper reports to be made to the federal funding agency.

(2) - (4) (No change.)

(i) - (l) (No change.)

(m) Statement by members.

(1) The [**board, the**] department[,] and the committee 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 [**board,]** department[,] or committee.

(2) The committee and its members may not participate in legislative activity in the name of [**the board,]** the department[,] or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) - (6) (No change.)

(n) Reports to the Center for Consumer and External Affairs (CCEA) [**board**]. The committee shall file an annual written report with the CCEA [**board**].

(1) The report shall list the meeting dates of the committee, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee [**by the board**], the status of any rules which were recommended by the committee [**to the board**], and anticipated activities of the committee for the next year.

(2) (No change.)

(3) The report shall cover the meetings and activities in the immediately preceding fiscal year and shall be filed with the CCEA **[board]** each October **[January]**. The report shall be signed by the commissioner.

(o) (No change.)