

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 4, 2009**

Agenda Item Title: New rule concerning Texas Health Steps environmental lead investigations

Agenda Number: 7a

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Texas Health Steps (THSteps) Branch, located in the Division for Family and Community Health Services, in collaboration with the Health and Human Services Commission (HHSC), administers THSteps services and benefits, which include medical and dental checkups, diagnosis, and medically necessary treatment to Medicaid clients from birth through 20 years of age. THSteps is the name in Texas for the federally mandated Medicaid service known as Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

By authorization of HHSC, the Department of State Health Services (DSHS) operates and administers the outreach and informing efforts, medical and dental screening, and dental treatment services components of EPSDT. THSteps encourages and assists recipients to gain access to preventive services. In 2008, 2.9 million Medicaid clients from birth through 20 years of age were eligible to receive THSteps benefits and services.

THSteps benefits and services are made available and provided through a partnership that includes DSHS, HHSC, and HHSC contractors responsible for providing access to services, Medicaid providers, others interested in serving Texas' children and parents and/or caretakers. THSteps is funded with state and federal funds and HHSC transfers funds to DSHS to administer THSteps.

Summary:

The purpose of the new rule is to provide a clearly defined benefit for all THSteps clients with elevated blood lead levels. The prompt identification of the cause of a persistent elevated blood lead level or confirmed case of lead poisoning in a child is a high priority in the management of children with lead poisoning (elevated blood lead levels).

The proposed new rule will make environmental lead investigations, subject to the requirements of 25 TAC Section 37.338 and Section 37.339 (relating to Reporting, Treatment and Investigation of Child Blood Lead Levels), a Medicaid benefit for THSteps clients with elevated blood lead levels. These investigations are currently provided through local health department programs or through DSHS's Regulatory Division when there is no local health department to provide the investigation. Adoption of the rule will be compliant with the Centers for Medicare and Medicaid Services direction that lead investigations are a required benefit for Medicaid children with elevated blood lead levels.

Summary of Input from Stakeholder Groups:

DSHS sought stakeholder input from the following entities: representatives of agencies that are on the Texas Childhood Lead Poisoning Prevention Program (CLPPP) Strategic Planning Committee and CLPPP Network; United States (U.S.) Department of Housing and Urban Development grantees in Fort Worth, San Antonio,

Austin, Houston and Harris Counties; UT Health Sciences Center, San Antonio; Southwest Center for Pediatric Environmental Health, Tyler; Texas Tech University, Lubbock; local health departments in the cities of Dallas, Houston, San Antonio, Wichita Falls, Galveston, Laredo; and the Harris County Health Department, who currently conduct their own environmental lead investigations. Stakeholder input was also sought from the Councils of Government statewide. Input was sought in multiple formats, including e-mail and meeting discussions.

No comments were received from these stakeholders. DSHS is continuing to seek stakeholder input from Head Start grantees, an entity with a known interest in lead rules and activities.

The rule was presented to the Medical Care Advisory Committee (MCAC) at its September 10, 2009 meeting. MCAC recommended approval of the proposed rule for publication.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #7a

Approved by Assistant Commissioner/Director: Evelyn Delgado **Date:** 9-15-09

Presenter: Ms. Jann Melton-Kissel **Program:** Specialized Health Services **Phone No.:** 512-458-7111 ext 2002

Approved by CPCPI: Carolyn Bivens **Date:** 9-15-09

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment
Subchapter G. Environmental Lead Investigations
New §33.80

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department) proposes new §33.80 concerning the Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, known in Texas as the Texas Health Steps (THSteps) Program.

BACKGROUND AND PURPOSE

Texas Health Steps is the Texas name for the federally-mandated Medicaid service known as EPSDT. EPSDT provides medical and dental check-ups, diagnosis, and medically necessary treatment to Medicaid clients from birth through 20 years of age. By authorization of HHSC, the department operates and administers the outreach and informing, medical and dental screening, and dental treatment services components of EPSDT.

The United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) has informed HHSC that environmental lead investigations are a required EPSDT benefit for children with elevated blood lead levels. These investigations are currently provided through local health department lead programs or through the department's Regulatory Division when there is no local health department accessible that can provide the investigation. HHSC will be requesting a Medicaid state plan waiver under the federal Social Security Act, 42 U.S.C. §1396 *et seq.*, from CMS to limit environmental lead investigations to those same providers. The proposed rule change will make environmental lead investigations conducted in accordance with §37.338 and §37.339 of this title (relating to Reporting, Treatment and Investigation of Child Blood Lead Levels), a Medicaid benefit for THSteps clients with elevated blood lead levels.

SECTION-BY-SECTION SUMMARY

Proposed §33.80 provides for Medicaid coverage of environmental lead investigations for THSteps clients from birth through 20 years of age with elevated blood lead levels.

FISCAL NOTE

Ms. Jann Melton-Kissel, the Director of Specialized Health Services Section, has determined that for each year of the first five-year period that the section is in effect, there will be a cost to the state of \$19,975 in Fiscal Year (FY) 2010 (4 months) in General Revenue (\$48,471 All Funds); \$66,316 in FY 2011 in General Revenue (\$159,146 All Funds); \$72,445 in FY 2012 in General Revenue (\$173,688 All Funds); \$79,184 in FY 2013 in General Revenue (\$189,845 All Funds); \$85,586 in FY 2014 in General Revenue (\$205,194 All Funds); and \$92,662 in FY 2015 in

General Revenue (\$222,159 All Funds). No major impact on local governments is anticipated as a result of the proposed rule. Local governments that operate local health departments that provide lead investigations for the department currently use existing non-Medicaid funds for those investigations. Medicaid reimbursement for some of those investigations provides an alternative source of funding for this service. The potential exists for some positive fiscal impact if current local government dollars expended on environmental lead investigations may become available for other local government purposes.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT

Ms. Melton-Kissel also has determined that there will be no adverse economic impact on small businesses or micro-businesses.

Government agencies are currently the sole provider of environmental lead investigations for THSteps clients. HHSC will submit a state plan amendment to CMS and request that the provider of the benefit be limited to the current provider base through a waiver of freedom of provider choice. If approved, reimbursement for the benefit will be limited to government agencies, resulting in an alternate funding source for the service.

If the state plan waiver is not approved by CMS, information about the provider enrollment process will be made available to the public prior to implementation. The addition of Medicaid payment for environmental lead investigations does not impose a regulatory burden on businesses of any size. Because the services are reimbursed through Medicaid, the rule may result in an economic increase to small or micro-businesses that become providers.

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

Ms. Jann Melton-Kissel, the Director of Specialized Health Services Section, has 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 anticipated public benefit is a clearly defined benefit for all THSteps clients with elevated blood lead levels because the prompt identification of the cause of a persistent elevated blood lead level or confirmed case of lead poisoning in a child is a high priority in the management of children with lead poisoning (elevated blood lead levels).

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 the 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 specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal 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 Ms. Maria Vega, THSteps Branch, Department of State Health Services, P. O. Box 149347, Austin, Texas 78714-9347, by telephone at (512) 458-7111 (ext. 3003) or by email to Maria.Vega@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 proposed new section is 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 new rule affects the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531.

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

CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT

Subchapter G. Environmental Lead Investigations.

§33.80. Environmental Lead Investigations. Environmental lead investigations are a benefit of Medicaid for all THSteps clients with elevated blood lead levels. Environmental lead investigations are subject to the requirements in §37.338 and §37.339 of this title (relating to Reporting, Treatment and Investigation of Child Blood Lead Levels).