

**Department of State Health Services
Agenda Item for State Health Services Council
November 17, 2005**

Agenda Item Title: New 25 TAC §37.350 School Health Advisory Committee
Agenda Number: 3e

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The purpose of the Youth Focused Group in the Division of Prevention of Preparedness of DSHS, is to provide guidance and resources for school administrators, nurses, teachers and other school staff; as well as to community organizations who support school staff, in the development, implementation, and evaluation of school health programs and services to Texas school children. The purpose of the School Health Advisory Committee as mandated during the 2005 legislative session, is for the Department of State Health Services to provide assistance to the State Health Services Council in establishing a leadership role for the Department of State Health Services in support for and delivery of coordinated school health programs and school health services. The Youth Focused Group serves as a resource for information and guidance on coordinated school health programs and health services, and will be responsible for providing staff support for the School Health Advisory Committee.

Summary: The rule establishes the committee and provides procedures for its operation. Specifically, it includes language describing how the committee shall be appointed and governed; states the applicable laws to which the committee is subject; explains the purpose of the committee; details the composition of its membership; and, outlines procedures relating to terms of membership, terms of office, attendance, staff support, parliamentary procedures, establishment of subcommittees, statements by members, reporting processes to the council and expenses reimbursement policies.

Summary of Stakeholder Input to Date (including advisory committees): Feedback on the composition of the membership was sought electronically via the following Youth Focused Group e-lists of stakeholder groups: School Nurse Administrator Database, Texas School Nurses Organization Executive Committee, Texas School Nurses Organization Regional Presidents, DSHS Funded School Based Health Centers, The Alliance, Texas School Health Network, Youth Serving Organizations, Adolescent Health Care Providers & Stakeholders, School Health Stakeholders. All feedback received was positive. As a result of the feedback, changes were made to the composition of committee members reflected in the proposed rules.

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

Agenda Item

Approved by: Debra Stabeno
Assistant Commissioner, Division for Prevention and Preparedness Services

Presented by: Marion Stoutner **Title:** Manager, Youth Focused Health Promotion Group

Program/Division: Disease Prevention and Intervention Section

Contact Name/Phone: Ellen Kelsey **Extension:** 2140

**Date
Submitted**

10/20/2005

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 37 Maternal and Infant Health Services
Subchapter R. School Health Advisory Committee
New §37.350

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §37.350, concerning the School Health Advisory Committee (committee).

BACKGROUND AND PURPOSE

The new section complies with Senate Bill 42, 79th Legislature, 2005, (now codified in part as Health and Safety Code, §1001.0711), which requires the department to provide assistance to the State Health Services Council (council) in establishing a leadership role for the department in the support and delivery of coordinated school health programs and school health services. Government Code, §2110.008, which allows state agencies to designate a date on which the committee will automatically be abolished, and does not apply to a committee created under this section.

Senate Bill 42, 79th Legislature, 2005, establishes, a comprehensive school health education package for public primary and secondary schools. The legislation focuses on health education, physical activity, and food products. It: (1) cites proper nutrition and exercise as the focus of health for the required enrichment curriculum in kindergarten through grade 12; (2) authorizes the State Board of Education (SBOE) to adopt rules for expansion of the requirement for daily physical activity into middle school and junior high school; (3) provides for coordinated school health programs to be made available for middle schools and junior high schools; (4) holds districts accountable for the bill's requirements by requesting information on student health and physical activity information; and (5) establishes a state-level school health advisory committee.

The 76th, 77th and 78th Legislative Sessions created and modified School Health Advisory Councils (SHAC) at the school district level for the purpose of advising local school boards on coordinated school health programs, based on the needs of the individual district. Research has shown that having an active SHAC promotes district-wide coordinated school health.

The establishment of a state-level committee with a membership that reflects the broad diversity of our challenging school health issues, will add another dimension to the systematic dissemination of coordinated school health programming and school health services in Texas. The law mandates that a representative from the Texas Education Agency and the Texas Department of Agriculture serve as members of the committee. Additional appointments by the commissioner of members with a broad range of school health experience will strengthen the knowledge base of the committee. The membership nomination process will combine the Health and Human Services Commission guidelines, research-based criteria, stakeholder input, and department staff guidance.

SECTION-BY-SECTION SUMMARY

New §37.350 establishes the committee and provides procedures for its operation. Specifically, the section includes language describing how the committee shall be appointed and governed; states the applicable laws to which the committee is subject; explains the purpose of the committee; details the composition of its membership; and, outlines procedures relating to terms of membership, terms of office, attendance, staff support, parliamentary procedures, establishment of subcommittees, statements by members, reporting processes to the council and expenses reimbursement policies.

FISCAL NOTE

Casey Blass, Section Director, Disease Prevention and Intervention, 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 the state as a result of enforcing and administering the sections as proposed. There is no anticipated fiscal implication for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section 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

In addition, Mr. Blass 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 public benefit anticipated as a result of establishing the committee will be more than likely anecdotal during the first one to three years with statistical results emerging towards the end of the five-year period. The most significant outcomes, however, will be the long term effect from the results of the efforts of the committee. By that time, the original intent of the law will have become a reality and the department will be recognized as a credible, informed leader for providing support and delivery of coordinated school health programs and school health services for Texas schools. The committee will be able to study and recommend solutions to complex school health issues based on successful coordination of multi-level systems. The short and long term effect of the efforts of the state committee and the dynamic and supportive leadership of the department will have an effect on our future workforce. Recommendations by the committee will provide support for school systems, organizations, communities and consumers that have the potential to reduce childhood obesity in Texas.

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 rule 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Kelsey, Information Specialist, Youth-Focused Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7111, Extension 2140 or by email to ellen.kelsey@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 new section is authorized by Health and Safety Code, §1001.0711, which requires the Health and Human Services Commission to establish this advisory committee; 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 Chapter 1001, Health and Safety Code.

The new section affects the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531

Legend: (Proposed new rule)
Regular Print = Proposed new language

§37.350. School Health Advisory Committee.

(a) The committee. The School Health Advisory Committee (committee) shall be appointed under and governed by this section. The committee is established under the Health and Safety Code, §11.016, which allows the Health and Human Services Commission (commission) to establish advisory committees.

(b) Applicable law. Government Code, §2110.008, does not apply to a committee created under this section. The committee is subject to the Health and Safety Code, §1001.0711, concerning the School Health Advisory Committee.

(c) Purpose. The purpose of the committee is to provide assistance to the State Health Services Council (council) in establishing a leadership role for the Department of State Health Services (department) in support for and delivery of coordinated school health programs and school health services.

(d) Composition.

(1) The committee shall be composed of 20 members appointed by the Commissioner of State Health Services (commissioner). The members shall consist of:

(A) one representative from the Department of Agriculture appointed by the Commissioner of Agriculture;

(B) one representative from the Texas Education Agency, appointed by the Commissioner of Education;

(C) The School Health Coordinator from the department;

(D) two individuals representing school superintendents or other school administrators; and/or school district board members;

(E) one registered nurse with school district or school health administrative nursing experience;

(F) five consumer members who are parents of school-age children with at least one parent of a child with special needs;

(G) one physician, or physician's assistant, or nurse practitioner providing health services to school aged children;

(H) one representative working in the school setting with certification in student counseling and guidance and/or safety;

(I) four members representing organizations and/or agencies involved with the health of school children;

(J) one representative working in the school setting with certification as a physical educator;

(K) one representative working in the school setting with certification as a health educator; and

(L) one representative working in the school setting as part of the district's school nutrition services.

(2) During all phases of the membership selection process, the following information will be regarded with special consideration in an effort to build a committee reflective of the current Texas population: race, gender, age and ethnic diversity; urban, rural and suburban diversity; and, a broad state-wide geographic representation whenever possible.

(e) Terms of office: The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on June 1 of each odd-numbered year beginning in 2007.

(2) If a vacancy occurs, an individual shall be appointed to serve the unexpired portion of that term.

(f) Officers. The commissioner shall appoint a presiding officer and an assistant presiding officer to begin serving on June 1 of each odd-numbered year.

(1) Each officer shall serve until May 31 of each odd-numbered year. Each officer may hold over until the commissioner appoints his or her replacement.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the commissioner. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. If the office of the presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled temporarily by vote of the committee until the commissioner appoints a successor.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(g) Meetings. The committee shall meet at least twice each year.

(1) A meeting may be called by agreement of the department staff and either the presiding officer or at least three members of the committee.

(2) The department shall make meeting arrangements and shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act, Government Code, Chapter 551. However, in order to promote public participation, each meeting of the committee 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.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) Ten members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(h) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent for more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(i) Staff. The department shall provide administrative support for the committee.

(j) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any committee action must be approved with a quorum present and by a majority vote of the members present.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee 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.

(5) Minutes of each committee meeting shall be taken by the department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the council and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(k) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each of its meetings or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(l) Statement by members.

(1) The commission, the council, 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 commission, council, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the commission, the council, 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.

(m) Reports to council: The committee shall file an annual written report to the council.

(1) The report shall list the meeting dates of the committee and any subcommittees, 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 council, the status of any rules which were recommended by the committee to the council and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the council each June. The presiding officer and appropriate department staff shall sign it.

(n) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.