



T E X A S
Women's Healthcare
COALITION

August 23, 2016

Charles Smith
Executive Commissioner
Texas Health and Human Services Commission
Brown-Heatly Building
4900 N. Lamar Blvd.
Austin, TX 78751-2316

Dear Executive Commissioner Smith:

On behalf of the Texas Women's Healthcare Coalition (TWHC), thank you for your commitment to women's preventive health services in the state. The TWHC has identified an important concern among Healthy Texas Women (HTW) and Family Planning Program (FPP) providers regarding the Health and Human Service Commission's reimbursement policy for HTW and FPP contracts. We respectfully request that HHSC ensure program funding for HHSC-contracted¹ HTW and FPP providers for services provided starting July 1, 2016. Options for achieving this goal include (1) changes to HHSC's contracting policy prohibiting retroactive payments; or (2) providing an exception to HHSC's contracting policy.

In recent weeks, HHSC representatives have repeatedly indicated the following in response to providers' questions about changes in HHSC's contracting practices and delays in executing open enrollment contracts:

- As a result of legislative direction during the 84th Legislature, contracts with an effective date earlier than the date of signing, or "backdated" contracts, are prohibited;
- Healthy Texas Women and Family Planning Program contracts must be signed by both parties before services can be rendered and payment can be made by HHSC;
- HHSC's Executive Commissioner must sign all contracts exceeding \$1 million; and
- Legislative intervention will be required to resolve contracting issues.

¹ i.e., those who ultimately have a fully executed contract.

HHSC's policy has caused concern among providers about their ability to successfully serve clients and expend program funds

TWHC has learned that providers received award emails from HHSC that included award amounts “for the fourteen (14) month contract period, July 1, 2016 through August 31, 2017.” Based on HHSC’s initial assertion in the award email that contract amounts were for the 14-month contract period of July 1, 2016 through August 31, 2017, some providers began serving clients in the Family Planning Program’s fee-for-service portion or began expending Healthy Texas Women or Family Planning Program cost reimbursement funds in support of service provision on July 1, 2016.

Providers subsequently received Healthy Texas Women and Family Planning Program contracts that included an effective date of July 1, 2016, “or upon the signature of the latter of the Parties to sign the Contract, whichever occurs later.” However, providers did not receive adequate notice that backdated contracts would not be allowed, as they have in the past. HHSC’s statements have raised concerns that providers will not receive reimbursement for those services or expenditures made on or after July 1, 2016 if HHSC does not consider the contract to be effective until signed by both parties.

Additionally, providers that have complex contract approval processes have raised concerns that they will be unable to expend the full award amount or serve the number of contracted clients during a contract period of less than 14 months. This is of particular concern in the Family Planning Program, as HHSC is still finalizing awards.

TWHC has reviewed contracting laws enacted during the 84th Legislature and HHSC policies adopted in response—including Senate Bill 20 (84th Regular Session), HHS Circular C-046, and the Comptroller’s Contract Management Guide—and is unable to find a precedent for this prohibition of retroactive payments and the position that “backdated” contracts are prohibited insofar as the signatures of both parties are required before a contract is enforceable.

The prohibition in Senate Bill 20 for backdated contracts relates specifically to Department of Information Resources (DIR) contracts, and the TWHC believes that this would not apply to services provided in Healthy Texas Women and the Family Planning Program. SB 20 requires each programs’ contract management handbook to comply with the comptroller’s contract management guide. However, the comptroller’s manual is silent on the issue of retrospective payments. Additionally, HHS Circular C-046 indicate that open enrollment contracts have a stated value of \$0.00, meaning that the requirement that the Executive Commissioner sign for contracts greater than \$1 million would not apply for HTW or FPP contracts.

The TWHC urges HHSC to ensure program funding for TWHC and FPP providers who provided services starting July 1, 2016.

We respectfully request that HHSC clarify and update its policies, either with a change to the contract policy or by approving an exception, in order to enable Healthy Texas Women and Family Planning contractors to be reimbursed for services provided before both parties have signed a contract. We also ask that it be made clear that the Executive Commissioner would not be required to sign contracts for these programs because they were developed through an open enrollment process.

If HHSC should determine that current statute and rules explicitly prohibit retrospective payments for services, we ask that HHSC consider creating an exception for Healthy Texas Women and Family

Planning Providers so that they may be reimbursed retroactively for services provided to clients served during the contracting process.

We believe it is critical that providers are able to receive payment for services provided so that they are able to expend program funds, meet their contract targets, and provide vital services to the clients they serve.

We appreciate your attention on this issue, and would be happy to meet to discuss further.

Respectfully,

A handwritten signature in black ink, reading "Janet P. Realini, MD, MPH". The signature is written in a cursive style with a large initial "J".

Janet P. Realini, MD, MPH
Steering Committee Chair, Texas Women's Healthcare Coalition

CC: Chief Deputy Executive Commissioner Cecile Young
Deputy Executive Commissioner Gary Jessee
Associate Commissioner Lesley French

Texas Women’s Healthcare Coalition Steering Committee Members

Texas Medical Association
 District XI (Texas) American Congress of Obstetricians and Gynecologists
 Texas Academy of Family Physicians
 Texas Association of Community Health Centers
 Methodist Healthcare Ministries
 Teaching Hospitals of Texas
 Women’s Health and Family Planning Association of Texas
 Texans Care for Children
 Center for Public Policy Priorities
 Healthy Futures of Texas

Texas Women’s Healthcare Coalition General Members

Access Esperanza Clinics Inc.	National Latina Institute for Reproductive Health
Amistad Community Health Center	North Harris Montgomery Advanced Practice Nurse Society
Austin Advanced Practice Nurses	North Texas Alliance to Reduce Teen Pregnancy
Austin Physicians for Social Responsibility	North Texas Nurse Practitioners
AWHONN Texas	Panhandle Nurse Practitioner Association
Brazos Valley Nurse Practitioner Association	People’s Community Clinic
Cardea	Port Arthur Housing Authority
Center for Community Health, UNTHSC	SALVERE (Striving to Achieve Literacy via Education, Research, and Engagement)
Central Texas Nurse Practitioners	San Antonio Metro Health District
Children’s Hospital Association of Texas	San Antonio Nurses in Advanced Practice
Coalition for Nurses in Advanced Practice	Schneider Communications
Coastal Bend Advanced Practice Nurses	South Plains Nurse Practitioner Association
Consortium of Texas Certified Nurse Midwives	South Texas Family Planning & Health Corp.
Department of Ob/Gyn of UNTHSC and the ForHER Institute	Southeast Texas Nurse Practitioner Associates
El Paso Area Advanced Practice Nurse Association	St. David’s Foundation
Fort Worth Region Nurse Practitioners	Texas Association of Obstetricians and Gynecologists
Gateway to Care	Texas Campaign to Prevent Teen Pregnancy
Good Neighbor Health Center	Texas Council on Family Violence
Healthy Futures Alliance	Texas Health Institute
Hill Country Advanced Practice Nurses & Physicians	Texas Hospital Association
Assistants Association	Texas Medical Association Alliance
Houston Area Chapter of NAPNAP	Texas Nurse Practitioners
Houston Area Nurse Practitioners	Texas Nurses Association
League of Women Voters of Texas	Texas Pediatric Society
Legacy Community Health Services	Texas Unitarian Universalist Justice Ministry
Mental Health America of Greater Houston	University Health System
National Council of Jewish Women—Texas State Policy	Women’s & Men’s Health Services of the Coastal Bend, Inc.
Advocacy Network	