



## TEXAS WORKFORCE COMMISSION (TWC) PROPOSES RULES TO TERMINATE MEDICAID IN SITUATIONS NOT ALLOWED BY FEDERAL LAW

*The Texas Workforce Commission (TWC) is proposing a rule that would have the effect of denying Medicaid to extremely poor parents on cash assistance who fail to do things such as meet health check up schedules for their kids or keep their teenagers in school. This is not only a bad idea from a public health perspective; it is also a clear violation of federal law, which only authorizes states to deny Medicaid to parents receiving cash assistance who "refuse to work." This Policy Page provides an overview of the events to date, key issues and next steps. For a full explanation of the issues, background on this policy proposal and additional policy analysis see the longer Policy Brief on our website at: [www.cppp.org](http://www.cppp.org).*

### Events to date:

- HB 2292 (section 2.88) permits (but does not require) Texas to begin terminating Medicaid coverage of TANF caretakers for failure to "cooperate" with TANF "Personal Responsibility Agreement" (PRA) requirements "to the extent allowed by federal law." On August 8, DHS adopted rules<sup>i</sup> to deny Medicaid to TANF adults who violate the work requirement of the PRA (this new Medicaid sanction is added to the sanction already in place for failure to cooperate with child support enforcement efforts). HB 2292 also authorized the termination of all TANF cash assistance to both adults and children for failure to cooperate with all elements of the PRA. DHS rules also implement this new policy.

- On August 5, TWC voted to publish both "emergency" and "regular" proposed rules in the Texas register. One section of these rules<sup>ii</sup> would result in the denial of Medicaid to TANF adults who "do not cooperate" with any requirement of the PRA, not just the work or child support cooperation requirements. TWC's emergency and proposed rules do this by redefining "work" to include every requirement in the PRA, not just those activities related to finding and keeping a job.<sup>iii</sup>

- In addition to work and child support cooperation requirements, the PRA requires TANF recipients to immunize their children, keep their children in school, get their children to regular

dental/health screens, and not use or sell drugs. Under this new definition of "work", for example, a parent could lose her Medicaid if her child skips school.

- **This policy would be a clear violation of federal law, which only permits Medicaid denial for "refusal to work."**

- The center went to court to prevent TWC from implementing that one section of the emergency rule because the agency violated the Open Meetings Act with regard to posting and deliberation, and the Administrative Procedures Act by denying CPPP a right to comment on the rule. We won a temporary injunction on August 28th, preventing the denial of Medicaid to about 2,400 clients on September 1.

**This temporary injunction does not stop TWC from pursuing adoption of regular rules to do the same thing.** TWC is moving ahead with these rules and has scheduled a public hearing for September 24 (see below). The comment period on the proposed rules will end on September 22.

### Why this is a violation of federal law:

- Federal law allows states to impose a Medicaid sanction on a TANF caretaker (but not children or pregnant women) for a "refusal to work" [42 USC 1396u-1(b)(3)].

- Allowable TANF "work activities" are defined in the federal law at 42 USC 607. States may only terminate a TANF client's Medicaid for refusing to

engage in work “required in accordance with this section”. These same work activities also define and limit what states can take credit for in meeting their federally required TANF work participation rates.

- Failure to get your children to attend school, receive medical or dental check-ups, or be immunized does not fall within the federal law definition of a work activity for purposes of Medicaid sanctions.
- Preliminary inquiries to federal Medicaid and TANF officials have confirmed that they agree with this interpretation of federal law.

## What’s Next?

The center plans to join with other interested parties to offer detailed comments on TWC’s proposed rules,

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## What You Can Do:

- ✓ File public comments about the proposed rules prior to September 22. [See TWC’s proposed rule, and specifically new section 8.11.2 (11), which redefines work activities, in 28 TexReg 6786, at [www.sos.state.tx.us/texreg/pdf/backview/0822/0822emer.pdf](http://www.sos.state.tx.us/texreg/pdf/backview/0822/0822emer.pdf).] You can file a comment on these rules by email, regular mail, or fax. Comments should be submitted to:

John Moore, General Counsel  
Texas Workforce Commission  
101 East 15th Street, Room 608  
Austin, Texas 78778  
Fax: 512-463-2220  
E-mail: [john.moore@twc.state.tx.us](mailto:john.moore@twc.state.tx.us)

CPPP will be drafting and sharing its own comments on the proposed Choices and Child Care rules. These comments will be available on our web site at [www.cPPP.org](http://www.cPPP.org) by September 16.

- ✓ Testify at the scheduled public hearing:  
September 24, 2003 - 10:00 a.m.  
Room 244, Texas Workforce Commission, 101 E. 15th St., Austin, TX 78778  
(Note: The hearing will be on all the posted Choices and Child Care rules, not just the one section redefining work activities and resulting in a new Medicaid sanction)
- ✓ Write Albert Hawkins, Commissioner of Health and Human Services urging him to use his authority over TANF and Medicaid to direct TWC to pull down this part of the proposed Choices rules.  
Albert Hawkins, Executive Commissioner  
Texas Health and Services Commission  
P.O. Box 13247  
Austin, TX 78711  
Fax: (512) 424-6587

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<sup>i</sup> see [www.dhs.state.tx.us/about/board/2003/august2003bdpacket.pdf](http://www.dhs.state.tx.us/about/board/2003/august2003bdpacket.pdf), agenda Item K: §4.11. Failure to Comply with Work Requirements. A Temporary Assistance for Needy Families (TANF)-level medical assistance recipient whose TANF cash assistance was terminated pursuant to Social Security Act, §407(e)(1)(B) (42 U.S.C. §607(e)(1)(B)) because of refusing to work without good cause is ineligible for Medicaid until there is no longer a basis for the termination of cash assistance because of such refusal, as provided by the Social Security Act, §1931(b)(3) (42 U.S.C. §1396u-1(b)(3)).

<sup>ii</sup> 40 TAC Chapter 811.2(11)(a), published in *Texas Register* as both Emergency and Proposed rules on August 22, 2003.

<sup>iii</sup> TWC’s rules would add the following new section (see [www.sos.state.tx.us/texreg/pdf/backview/0822/0822emer.pdf](http://www.sos.state.tx.us/texreg/pdf/backview/0822/0822emer.pdf)):

including our analysis of why it is against federal law to terminate Medicaid for the redefined “work” activities, as TWC proposes. We will also testify at the public hearing on September 24.

The center believes this proposed policy change is so clearly in violation of federal law and regulation that state leadership offices and the relevant federal agencies should also be weighing in and urging TWC to withdraw this policy proposal.

Should TWC decide to move forward and adopt this policy change, we anticipate that there will likely be a legal challenge in federal court by affected TANF clients.

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§811.2. Definitions.

(11) Work Activity -- For the purposes of 45 USCA §607 and 45 CFR §261.10, work activities are defined as:

- (A) all activities detailed in the Responsibility Agreement, as set forth in this chapter; and
- (B) (B) all TANF Core and Non-Core activities, as set forth in this chapter.