

1-1 By: Deuell S.B. No. 1854
1-2 (In the Senate - Filed March 11, 2011; March 24, 2011, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 May 6, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 1; May 6, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1854 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the women's health program.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. The legislature finds that:

1-13 (1) taxpayer money should not be used to directly or
1-14 indirectly support elective abortions or to pay for costs,
1-15 including overhead costs, rent, utilities, and operational costs,
1-16 of an entity that performs elective abortions;

1-17 (2) because money is fungible, taxpayer money is used
1-18 to support elective abortions when the state awards grant money to
1-19 an entity or the affiliate of an entity that performs or promotes
1-20 elective abortions, even if the money is designated exclusively for
1-21 purposes that are not related to elective abortions;

1-22 (3) an effort to separate an entity that performs
1-23 elective abortions from an affiliate of the entity is insufficient
1-24 to prevent taxpayer money from being used to support elective
1-25 abortions because, if taxpayer money is provided to the affiliate,
1-26 additional resources that would have been used by the affiliate are
1-27 available for use by the entity that performs elective abortions;

1-28 (4) prohibiting the distribution of taxpayer money to
1-29 entities that perform elective abortions and the affiliates of
1-30 those entities is the only way to ensure that taxpayer money is not
1-31 used to fund elective abortions; and

1-32 (5) no provision of 42 U.S.C. Section 300 et seq.,
1-33 Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), or
1-34 Title XX, Social Security Act (42 U.S.C. Section 1397 et seq.), is
1-35 capable of preempting a state law that prohibits the use of taxpayer
1-36 money to support the performance or promotion of elective abortions
1-37 or that imposes a mandate or obligation on the state regarding the
1-38 use of state money to support the performance or promotion of
1-39 elective abortions because those laws only specify the conditions
1-40 under which the United States secretary of health and human
1-41 services may award grant money to or reimburse the expenses of a
1-42 state and they do not impose a mandate or obligation on this state.

1-43 SECTION 2. Section 32.0248, Human Resources Code, is
1-44 amended to read as follows:

1-45 Sec. 32.0248. [~~DEMONSTRATION PROJECT FOR~~] WOMEN'S HEALTH
1-46 PROGRAM [~~CARE SERVICES~~]. (a) In this section, "program" means the
1-47 women's health program provided under this section.

1-48 (a-1) Subject to Subsection (i), the [The] department shall
1-49 provide [establish] a women's health program [five-year
1-50 demonstration project] through the medical assistance program to
1-51 expand access to preventive health and family planning services for
1-52 women. A woman eligible under Subsection (b) to participate in the
1-53 program [demonstration project] may receive appropriate preventive
1-54 health and family planning services, including:

- 1-55 (1) medical history recording and evaluation;
1-56 (2) physical examinations;
1-57 (3) health screenings, including screening for:
1-58 (A) diabetes;
1-59 (B) cervical cancer;
1-60 (C) breast cancer;
1-61 (D) sexually transmitted diseases;
1-62 (E) hypertension;
1-63 (F) cholesterol; and

2-1 (G) tuberculosis;

2-2 (4) counseling and education on contraceptive methods

2-3 emphasizing the health benefits of abstinence from sexual activity

2-4 to recipients who are not married, except for counseling and

2-5 education regarding emergency contraception;

2-6 (5) provision of contraceptives, except for the

2-7 provision of emergency contraception;

2-8 (6) risk assessment; and

2-9 (7) referral of medical problems to appropriate

2-10 providers that are entities or organizations that do not perform or

2-11 promote elective abortions or contract or affiliate with entities

2-12 that perform or promote elective abortions.

2-13 (b) A woman is eligible to participate in the program

2-14 [~~demonstration project~~] if the woman is at least 18 years of age

2-15 and:

2-16 (1) has a net family income that is at or below 185

2-17 percent of the federal poverty level;

2-18 (2) participates in or receives benefits under any of

2-19 the following:

2-20 (A) the medical assistance program;

2-21 (B) the financial assistance program under

2-22 Chapter 31;

2-23 (C) the nutritional assistance program under

2-24 Chapter 33;

2-25 (D) the Supplemental Food Program for Women,

2-26 Infants and Children; or

2-27 (E) another program administered by the state

2-28 that:

2-29 (i) requires documentation of income; and

2-30 (ii) restricts eligibility to persons with

2-31 income equal to or less than the income eligibility guidelines

2-32 applicable to the medical assistance program;

2-33 (3) is presumed eligible for one of the programs

2-34 listed in Subdivision (2) pending completion of that program's

2-35 eligibility process; or

2-36 (4) is a member of a family that contains at least one

2-37 person who participates in or receives benefits under one of the

2-38 programs listed in Subdivision (2).

2-39 (c) The department shall ensure that the standards of care

2-40 provided to a woman participating in the program [~~demonstration~~

2-41 ~~project~~] are consistent with the requirements of law and current

2-42 best practices for provision of public health services.

2-43 (d) The department shall develop procedures for determining

2-44 and certifying eligibility for services under the program

2-45 [~~demonstration project~~] at the point of service delivery using

2-46 integrated procedures that minimize duplication of effort by

2-47 providers, the department, and other state agencies. The

2-48 department may not use a procedure that would require a cost in

2-49 excess of 10 percent of the total costs of actual preventive health

2-50 and family planning services provided under the program

2-51 [~~demonstration project~~]. The eligibility procedure may provide for

2-52 expedited determination and certification using a simplified form

2-53 requiring only family income and family size.

2-54 (e) The department shall compile a list of potential funding

2-55 sources a woman participating in the program [~~demonstration~~

2-56 ~~project~~] may be able to use to help pay for treatment for health

2-57 problems:

2-58 (1) identified using services provided under the

2-59 program [~~demonstration project~~]; and

2-60 (2) for which the woman is not eligible to receive

2-61 treatment under the program or otherwise under the medical

2-62 assistance program [~~or the demonstration project~~].

2-63 (f) Providers of services under the program [~~demonstration~~

2-64 ~~project~~] shall comply with requests made by the department for

2-65 information necessary for the department to:

2-66 (1) make efficient use of money spent for the

2-67 operation and administration of the program [~~demonstration~~

2-68 ~~project~~];

2-69 (2) report and provide information required by federal

3-1 law; and

3-2 (3) compile the report required by Subsection (g).

3-3 (g) Not later than December 1 of each even-numbered year,
3-4 the department shall submit a report to the legislature regarding
3-5 the department's operation of [~~progress in establishing and~~
3-6 ~~operating~~] the program [~~demonstration project~~].

3-7 (h) The department shall ensure the money spent under the
3-8 program [~~demonstration project~~], regardless of the funding source,
3-9 is not used to perform or promote elective abortions. The
3-10 department, for the purpose of the program [~~demonstration project~~],
3-11 may not contract with entities that perform or promote elective
3-12 abortions or are affiliates of entities that perform or promote
3-13 elective abortions.

3-14 (i) The department shall cease the operation of the program
3-15 if a court holds that Subsection (h) or its application to any
3-16 person or entity is invalid or enjoins its enforcement. If the
3-17 department ceases the operation of the program under this
3-18 subsection but a court with binding authority subsequently
3-19 overrules the holding or injunction described by this subsection,
3-20 the department shall reinstate the operation of the program until a
3-21 court subsequently overrules the decision of the court that
3-22 resulted in the reinstatement of the program.

3-23 (j) If any provision of this section or its application to
3-24 any person or circumstance is held invalid, the entire section is
3-25 invalid. The provisions of this section are nonseverable to
3-26 achieve this purpose.

3-27 (k) An officer or employee of the department or an executive
3-28 or administrative official of the state may not refuse to comply
3-29 with Subsection (h) on the basis of the officer's, employee's, or
3-30 official's opinion that the provision is unconstitutional,
3-31 preempted by federal law, or invalid for any other reason unless a
3-32 court, in a final judgment that is not reversed on appeal, is no
3-33 longer subject to appeal, and is applicable to and binding on this
3-34 state, finds that Subsection (h) is unconstitutional, preempted by
3-35 federal law, or invalid for any other reason.

3-36 (l) This section expires September 1, 2016 [~~2011~~].

3-37 SECTION 3. If before implementing Section 32.0248, Human
3-38 Resources Code, as amended by this Act, a state agency determines
3-39 that an amendment to the existing waiver or other authorization is
3-40 necessary to extend the operation of the women's health program
3-41 under that section as amended, the agency affected by the provision
3-42 shall request the amendment to the waiver or authorization and may
3-43 delay implementing that section until the amendment or other
3-44 authorization is granted.

3-45 SECTION 4. This Act takes effect immediately if it receives
3-46 a vote of two-thirds of all the members elected to each house, as
3-47 provided by Section 39, Article III, Texas Constitution. If this
3-48 Act does not receive the vote necessary for immediate effect, this
3-49 Act takes effect August 31, 2011.

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