



# 87th Texas Regular Legislative Session Wrap-Up

July 16, 2021

On May 31, 2021, the Texas Legislature adjourned *sine die*, ending the 87<sup>th</sup> Regular Legislative Session. Every Body Texas's legislative wrap-up summarizes the work of this session through the lens of our [policy priorities](#):

- Prioritize critical safety net healthcare programs including Healthy Texas Women and the Family Planning Program.
- Address healthcare coverage gaps by extending Medicaid coverage for new moms from 60 days to one year postpartum and accepting federal Medicaid funding to offer insurance to low-income adults in Texas.
- Maintain and adopt new flexibilities that promote increased access to sexual and reproductive healthcare services, including telehealth.

While we saw limited progress in each of our priorities, there were missed opportunities to increase access to critical healthcare services for Texans during this session. More work remains during the legislative interim to increase access to sexual and reproductive healthcare—which we preview here.

We encourage you to visit our website ([www.everybodytexas.org](http://www.everybodytexas.org)) to learn more about our [policy and advocacy](#) work. There you can stay informed about our critical work to increase access to safe, unbiased, high-quality sexual and reproductive healthcare services, as well as [sign up for our newsletter](#).

We are deeply thankful for the advocacy and support of providers, lawmakers, and staff during this challenging and unique session.

## Support the Safety Net

[SB 1](#), the budget for the 2022–2023 biennium (September 1, 2021 – August 31, 2023), was signed by the Governor on June 18, 2021. Below we share a few key takeaways from the budget, with a focus on the funding requested to support the women's health programs administered through the state by the Texas Health and Human Services Commission (HHSC): Healthy Texas Women, Family Planning Program, and Breast and Cervical Cancer Services.



## Funding for Women’s Health Programs

For additional background on legislative appropriations, we encourage you to review our [issue brief](#) with key takeaways from the [legislative appropriations request prepared by HHSC](#) and [public comments](#) submitted during budget hearings before the start of the 87<sup>th</sup> Texas Legislature.

Funding for the women’s health programs administered by HHSC is outlined below.<sup>i</sup> A total of \$352.6M is appropriated for fiscal years 2022 and 2023 (September 1, 2021 – August 31, 2023) to support HHSC’s women’s health programs. As detailed below, this amount represents a \$5.7M increase in funding when compared to the \$346.9M appropriated in the General Appropriations Act for the 2020–2021 biennium—the small increase heavily favors the enhanced postpartum benefit package recently launched as Healthy Texas Women Plus.

Strategy D.1.1 Women’s Health Programs Sub-Strategy Level Detail		2020-2021 GAA	2022-2023 GAA	Biennial Difference	
				\$	%
Healthy Texas Women (HTW)	HTW	206,339,636	202,616,672	-3,722,964	-2%
	HTW Plus	14,672,838	27,287,276	12,614,438	86%
	Total	221,012,474	229,903,948	8,891,474	4%
Family Planning Program		87,800,000	87,800,000	0	0%
Breast & Cervical Cancer Services		20,968,552	21,791,310	822,758	4%
Administrative Costs		17,180,829	13,119,770	-4,061,059	-24%
<b>Strategy D.1.1 Total</b>		<b>346,961,855</b>	<b>352,615,028</b>	<b>5,653,173</b>	<b>2%</b>

While Every Body Texas supports the enhanced postpartum services included in Healthy Texas Women Plus, funding for these services must not be made at the expense of the core family planning services provided as a part of Healthy Texas Women and the Family Planning Program. As outlined in further detail below, this was a missed opportunity for legislators to make much needed investments in women’s health funding. HHSC has not provided legislators or advocates with data on the funding levels needed to account for program growth and it is an interim priority that we obtain this data and advocate for the legislature to fully fund the Family Planning Program—which has not seen an increase since the 85th Legislative Session (2017) despite HHSC acknowledging growth and unmet need.

We know from both our network of Title X providers and from recent HHSC reporting<sup>ii</sup> that funds in the Family Planning Program often run out before the program year is finished—frequently leaving providers without reimbursement for services that the Family Planning Program should cover. Even as funding has failed to keep up with population growth, level funding for Family Planning Program also represents an underfunding to a program that historically has been unable to fully meet the demands of clients needing care.

The budget also contains a number of women’s health budget riders, or instructions on how to spend appropriated funds. A long-standing rider directing HHSC to submit a savings and performance report on the women’s health programs it administers has been updated to include several new reporting requirements, including requirements designed to better understand

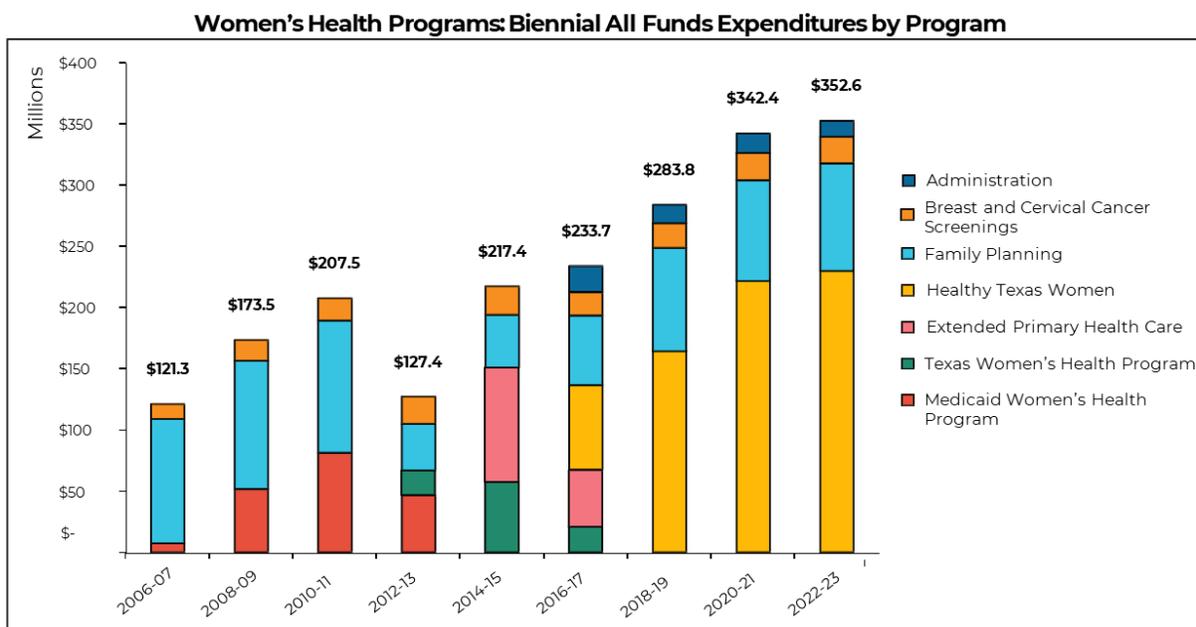


recent changes to Healthy Texas Women’s enrollment and eligibility policies which raised concerns for providers and advocates.<sup>iii</sup>

A new informational listing of women’s health funding amounts not only explains how the \$352.6M included in the budget will be appropriated across programs but also includes language directing HHSC to seek approval to transfer funds from other sources prior to reducing services in the event federal funding is reduced or unavailable.<sup>iv</sup> Similarly, a rider specifically addressing the \$27.2M in funding for Healthy Texas Women Plus services has been added, including the federal share (\$16.2M) anticipated should the Centers for Medicaid and Medicare Services (CMS) approve HHSC’s pending Healthy Texas Women waiver amendment and transfer authority should funds be reduced or unavailable.<sup>v</sup>

### Missed Opportunities + New Challenges

Although funding for women’s health programs remains intact after a challenging legislative cycle, additional funding was available to invest in these programs and the Texas Legislature opted not to do so—with the exception of a substantial increase for the enhanced postpartum benefit package recently launched as Healthy Texas Women Plus. This follows the recent trend of increased appropriations being mostly dedicated to expanding the scope of the Healthy Texas Women program—including funding for Healthy Texas Women Plus—as represented on the chart below. It is important to note that Healthy Texas Women and Healthy Texas Women Plus are not health coverage programs, but instead offer limited services that do not meet the definition of comprehensive health insurance coverage provided by programs like Medicaid.



Source: Legislative Budget Board.

Notes: 1) Healthy Texas Women includes Health Texas Women Plus.

2) Administrative costs are rolled into program costs prior to the 2016-17 biennium.



While Every Body Texas supports the enhanced postpartum services included in Healthy Texas Women Plus, we remain concerned about the potential impact on funding availability for the core family planning services provided as a part of Healthy Texas Women and the Family Planning Program. This is especially true for the Family Planning Program, which has not seen an increase since the 85th Legislative Session (2017) despite significant documented unmet need.<sup>vi,vii</sup>

As it stands, the total allocation for the Family Planning Program (\$87.8M) is now eclipsed by funding for the Alternatives to Abortion program (\$100M)<sup>viii</sup>—an appropriation that has increased 20 fold since 2005.<sup>ix</sup> Due to the limited oversight required of this program, it is difficult to parse out the types of services provided to clients or if this significant investment is having the intended effect or resulting in any measurable cost savings. We have little understanding of what, if any, evidence-based service practices to reduce abortion rates are being funded by this program.<sup>x</sup> We do know, however, that this program does not provide family planning or healthcare services to clients, despite overwhelming evidence that access to comprehensive family planning services reduces the need for abortion services. **Every Body Texas is dismayed that the Texas Legislature opted not to invest additional funds into the Family Planning Program and calls on legislators to revisit this appropriation during an anticipated special session on federal COVID-19 relief dollars.**

The Texas Legislature also opted not to include several budget riders in the final version of the budget that would have promoted access to sexual and reproductive healthcare. A long-standing rider related to increasing access to long-acting reversible contraception (LARC) was eliminated and a rider seeking a feasibility study on the cost effectiveness of extending postpartum Medicaid coverage to 12 months through the use of a state plan amendment, rather than through the waiver process directed by [HB 133](#), was not included. Even without this legislative direction, HHSC can and should continue prioritizing access to sexual and reproductive healthcare within the programs it administers.

We also saw several key provisions of the budget rider requiring HHSC to submit a savings and performance report on the women's health programs eliminated during the conference committee on the budget.<sup>xi</sup> Language passed by the House would have assisted legislators and advocates in answering longstanding questions about program administration, including a provision directing HHSC to report on the number of eligible clients who received Family Planning Program services after the provider exhausted the contracted Family Planning Program funds (i.e., funds gone) and the amount of funds that would have been reimbursed for these services if additional funds had been available during the fiscal year, as well as a provision requiring HHSC to report on impacts to funding resulting from procedural denials and enrollment gaps in Healthy Texas Women. As noted above, this information is critical to understanding the true need in the Family Planning Program, especially following changes to Healthy Texas Women eligibility policies and procedures that may disproportionately impact



Family Planning Program providers, and we urge legislators to continue working with HHSC to gather the data needed to make informed decisions about appropriations.

Finally, the Texas Legislature did not grant hearings on a number of bills that would have prioritized critical safety net healthcare programs, including [HB 320](#), which would have recreated the Women's Health Advisory Committee, and the Free Choice of Provider Act ([HB 3825](#) / [SB 1722](#)), which would have protected patient choice for their providers of sexual and reproductive healthcare.

## What's Next

Every Body Texas will continue to advocate for funding for and improvements to programs administered by HHSC that support sexual and reproductive healthcare providers during the legislative interim. We look forward to working closely with providers and other stakeholders to educate legislative offices and state agencies on the importance of expanding access to these critical services.

## Healthcare Coverage

Every Body Texas included healthcare coverage as one of our policy priorities this session because we believe that it is critical for state leaders to adopt policies that will reduce the number of uninsured Texans.

Below we share a summary of actions taken by the Texas Legislature to address healthcare coverage gaps by extending postpartum Medicaid coverage as well as missed opportunities to accept federal Medicaid funding to offer insurance to low-income adults in Texas.

### Extended Postpartum Medicaid Coverage

A number of bills directing HHSC to increase postpartum Medicaid coverage beyond the two months currently provided were filed during the 87<sup>th</sup> Regular Legislative Session. [HB 133](#) by Rep. Toni Rose ultimately became the legislative vehicle for extending coverage, with the support of Speaker Dade Phelan and Sen. Lois Kolkhorst.

Passage of [HB 133](#) means that HHSC will soon begin work to seek a waiver from CMS to continue providing Medicaid coverage for at least six months after a client's pregnancy ends in delivery or miscarriage.

### Missed Opportunities + New Challenges

While there was progress toward extending coverage for postpartum Medicaid clients, the Texas Legislature did not provide the full 12 months of coverage recommended by the Texas Maternal Mortality and Morbidity Review Committee<sup>xiii</sup> and sought by advocates.<sup>xiii</sup> The language of HB 133



excludes individuals from coverage whose pregnancies did not end by birth or miscarriage. Individuals may have multiple complex medical needs following the end of any pregnancy, and we encourage HHSC and the legislature to provide all postpartum people with extended Medicaid coverage.

Despite overwhelming public support for expanded Medicaid coverage,<sup>xiv</sup> bills directing Texas to accept federal Medicaid funding to offer insurance to low-income adults failed to receive hearings during the 87<sup>th</sup> Regular Legislative Session.

Finally, the direction included in [HB 133](#) for HHSC to contract with Medicaid managed care organizations to provide Healthy Texas Women services may present unknown challenges for providers and clients. To date, HHSC has not shared a summary of its findings as a result of its [Request for Information \(RFI\)](#) on providing Healthy Texas Women services through the Managed Care model with respondents, nor published a report as directed by [SB 750](#) (86<sup>th</sup> Texas Legislature, 2019). It is difficult to assess the impacts of the significant change in service model from fee-for-service to managed care directed by [HB 133](#) without this information—but HHSC was directed to consult with the state Medicaid managed care advisory committee during implementation, creating a key opportunity for stakeholder engagement.

## What's Next

Every Body Texas will closely monitor HHSC's implementation plan for [HB 133](#) and continue to advocate for significant stakeholder engagement—with a focus on engaging organizations that represent providers participating in Healthy Texas Women and traditional Healthy Texas Women providers themselves.

## Provider + Program Flexibilities

Every Body Texas included provider and program flexibilities as a policy priority this session because we believe that healthcare coverage without access is meaningless.

Below we share a summary of actions taken by the Texas Legislature to adopt policies that promote increased access to healthcare services, including telehealth, as well as missed opportunities to adopt new policies that would have increased access.

## Expanding Access to Telehealth

With the passage of [HB 4](#), HHSC will have additional tools to ensure individuals receiving services through Medicaid, the Children's Health Insurance Program (CHIP), and other public benefits programs have the option to receive certain services through telemedicine, telehealth, or other telecommunications or information technology. HHSC must first determine whether a



service is clinically effective, cost effective, and permitted by federal law. [HB 4](#) did not address pay parity between in-person and telehealth services.

## Missed Opportunities + New Challenges

The Texas Legislature once again missed opportunities to further increase access to contraception. Bills that would have granted parenting minors the ability to consent to contraceptive care ([HB 296](#) / [SB 536](#)), provided contraceptive coverage in CHIP ([HB 835](#)), and required insurers to cover up to a 12-month contraception supply ([HB 2651](#)) were either left pending in committee or not given a hearing at all.

Also stalled were efforts to use promotoras/es and community health workers ([HB 105](#) / [SB 136](#)) and doulas ([HB 158](#) / [HB 415](#) / [HB 2685](#)) to deliver Medicaid services, which also would have increased access to critical healthcare services.

## What's Next

Every Body Texas will closely monitor HHSC's implementation plan for [HB 4](#) for impacts on sexual and reproductive healthcare providers and continue to advocate for flexibilities that promote increased access to sexual and reproductive healthcare services.

## Where Do We Go From Here?

Governor Abbott convened a special legislative session on July 8, 2021. His priority agenda for the special session focuses on bail and election reforms, and includes items related to transgender athletes, free speech in social media, and border security, among others. We will pay particular attention to the item most relevant to sexual and reproductive healthcare: legislation that further restricts medication abortion.

Additionally, legislators are expected to decide how to spend \$16B in federal coronavirus relief funds during another special legislative session later this year—and **we urge state leaders to use this opportunity to make much-needed investments in women's health funding.**

During the legislative interim, Every Body Texas will monitor and support the implementation of priority bills and will continue to advocate for improvements to programs administered by HHSC that support sexual and reproductive healthcare providers.

Every Body Texas also will continue engaging with providers of sexual and reproductive healthcare services to better understand the barriers they face in serving their clients and communities.



Visit our website ([www.everybodytexas.org](http://www.everybodytexas.org)) to learn more about our [policy and advocacy](#) work, to [sign up for our newsletter](#), and to stay informed about our critical work to increase access to safe, unbiased, high-quality sexual and reproductive healthcare services.

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<sup>i</sup> See Article II, HHSC, Strategy D.1.1.

<sup>ii</sup> Texas Health and Human Services Commission (2021, May). [Women's Health Programs Saving and Performance Report Fiscal Year 2020](#). Texas Health and Human Services. (Describing that Family Planning Program contractors are required to continue to serve existing clients after they have expended all contracted funds, that contractors continue to submit claims for the services they provide even if there are no funds available, and that if there are no funds to pay what would otherwise be a paid claim they will become a "funds gone" claim; also finding that there were 25,146 "funds gone" claims for fiscal year 2019).

<sup>iii</sup> See Article II, HHSC, Rider 64.

<sup>iv</sup> See Article II, HHSC, Rider 70.

<sup>v</sup> See Article II, HHSC, Rider 65.

<sup>vi</sup> Nehme E, Patel D, Cortez D, Gulbas L, Lakey D. (2020). [Increasing Access to Healthcare Coverage for Uninsured, Postpartum Women in Texas: A Report from the Postpartum Access to Healthcare \(PATH\) Project](#). The University of Texas System/Texas Collaborative for Healthy Mothers and Babies. (Finding that one of the most pressing challenges to utilizing available women's health programs was the limited funding for the Family Planning Program which tends to result in funds being expended well before the end of the fiscal year.)

<sup>vii</sup> Lerma, K, Carpenter E, White K. (2021). [Provider perspectives on Texas' publicly funded family planning programs](#). The University of Texas at Austin/Texas Policy Evaluation Project. (Finding that Family Planning Program funding is often insufficient to meet needs and delayed distribution of funds disrupts services.)

<sup>viii</sup> See Article II, HHSC, Strategy D.1.2.

<sup>ix</sup> Najambadi S, Astudillo C. (June 8, 2020). [An anti-abortion program will receive \\$100 million in the next Texas budget, but there's little data on what's being done with the money](#). The Texas Tribune.

<sup>x</sup> Najambadi S, Astudillo C. (June 8, 2020). [An anti-abortion program will receive \\$100 million in the next Texas budget, but there's little data on what's being done with the money](#). The Texas Tribune.

<sup>xi</sup> See Article II, HHSC, Rider 64. See also [Legislative Budget Board, Rider Comparison Packet, Conference Committee on Senate Bill 1, Article II](#).

<sup>xii</sup> Texas Department of State Health Services. (December 2020). [Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report](#). Texas Health and Human Services. <https://www.dshs.texas.gov/mch/pdf/MMMTFJointReport2018.pdf>.

<sup>xiii</sup> [Statement of Support for HB 133 Signed by Every Body Texas and 65 Other Organizations](#). (May 5, 2021).

<sup>xiv</sup> Sim SC, Marks E. (2021) [Texas Residents' Views on State Health Policy Priorities](#). Episcopal Health Foundation. (Finding that nearly seven in 10 Texans say they think the state should expand Medicaid to provide health insurance to more low-income Texans who are uninsured.)