

**Department of State Health Services
Council Agenda Memo for State Health Services Council
February 23, 2012**

Agenda Item Title: Amendments to rules concerning the County Indigent Health Care Program

Agenda Number: 4.j

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The Preventive and Primary Care Unit in the Community Health Services Section, Family and Community Health Services Division, administers the County Indigent Health Care Program (CIHCP). Indigent Texas residents who do not qualify for other state or federal health care assistance programs may qualify for county-run indigent programs. The target populations are individuals with incomes at or below 21 percent of the Federal Poverty Level and are not categorically eligible for Medicaid. The typical indigent residents are young unemployed males, females between 50-62 years old, disabled persons awaiting Social Security disability decisions, county jail inmates, or adults and children who are noncitizens.

At the state level, the CIHCP provides technical assistance to 143 county-run programs, 142 hospital districts, and 18 public hospitals that have legislatively mandated responsibilities to provide health care services to eligible residents who are unable to access the same care through other funding sources or programs.

The Fiscal Year 2012 budget for CIHCP is approximately \$211,000, and is funded by General Revenue.

Summary: The purpose of the amendments is to increase clarity in the rules in order to conform to the requirements of Health and Safety Code, Chapter 61. The rules affect counties, hospital districts, and public hospitals regarding administering the program, determining eligibility, and providing services. The proposed amendments implement legislation passed by the 82nd Legislature, Regular Session, 2011, and are expected to be effective on September 1, 2012. The rule changes specifically address the following:

- Senate Bill 420 states a county may include in the income and resources of an applicant for health care services the income and resources of a person who executed an affidavit of support on behalf of the applicant, and the income and resources of the spouse of a person who executed an affidavit of support on behalf of the applicant, if applicable.
- House Bill 871 adds physical and occupational therapy services to the optional health services that counties may provide if cost-effective.

Key Health Measures: CIHCP currently receives monthly expenditure data from approximately 108 of the 143 county-run programs. The data include expenditures by type of service required by law:

- Inpatient and outpatient hospital services
- Rural health clinics
- Laboratory and X-ray services
- Family planning services
- Physician services
- Prescription drugs
- Skilled nursing facility services

The monthly reports also include total expenditure on allowable optional services the county provides as a whole. Approximately 80 counties, hospitals, and hospital districts submit annual reports to DSHS that include the above expenditure data and the top five diagnoses for that year. The rule changes are not expected to significantly impact data currently collected and reported by the program; however, the program will continue to monitor this data.

Counties, hospital districts, and public hospitals will have increased flexibility in determining eligibility for program services and in providing services to their eligible residents. The data provided by the counties will not reflect changes they make to the eligibility criteria as a result of the rule change; however, feedback is expected by the daily communication between program staff and clients, stakeholders, providers, and local indigent health care program staff.

Summary of Input from Stakeholder Groups: CIHCP sent emails to stakeholders, including counties, hospital districts, and public hospital staff who administer indigent health care programs requesting general comments during the development of rules. Five counties sent suggestions on modifying the proposed rules, such as requiring citizenship, simplified application processing for county jail inmates, and suggestions to provide medical benefits for individuals who are not categorically eligible for the program. The suggested changes that would require statutory changes were not included in the proposed amendments. However, the proposed rules were modified to include the clarification of rule language in regard to real property and resources.

CIHCP held a stakeholder meeting on July 25 and 26, 2011, with representatives from counties around the state, the Texas Association of Counties, and the Texas Indigent Health Care Association. There was concern that policy will be administered inconsistently throughout the state. DSHS did not make a change to address this concern due to the statute being permissive in allowing counties flexibility in implementing this provision.

The CIHCP presented proposed rule language at the Texas Indigent Health Care Association statewide conference on November 15 and 16, 2011. No comments were received.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #4.j

Approved by Assistant Commissioner/Director:	Evelyn Delgado	Date:	1/30/2012
Presenter:	Imelda M. Garcia	Program:	County Indigent Health Care Program
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Approved by CCEA:	Carolyn Bivens	Date:	2/09/2012

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 14. County Indigent Health Care Program
Subchapter B. Determining Eligibility
Amendments §§14.104 and 14.105
Subchapter C. Providing Services
Amendment §14.201

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§14.104, 14.105 and 14.201, concerning the County Indigent Health Care Program.

BACKGROUND AND PURPOSE

The department provides technical assistance to counties, hospital districts, and public hospitals that provide health care services to eligible residents who are unable to access the same care through other funding sources or programs in accordance with the Indigent Health Care and Treatment Act, Health and Safety Code, Chapter 61.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by the agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 14.104, 14.105, and 14.201 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. The department, contemporaneously with this proposal, provides a rule review notice for all sections of Chapter 14 of this title in the same issue of the *Texas Register* located in the Agency Review of Rules Section.

The amendments to §14.104 and §14.105 are pursuant to the Senate Bill 420, 82nd Legislature, Regular Session, 2011, which amended Health and Safety Code, §61.008, requiring provision that by rule a county may include in the income and resources of an applicant for health care services the income and resources of a person who executed an affidavit of support on behalf of the applicant, and the income and resources of the spouse of a person who executed an affidavit of support on behalf of the applicant, if applicable.

The amendment to §14.201, in accordance with Health and Safety Code, §61.006(c), defines optional health care services listed in Health and Safety Code, §61.0285, that counties may provide if cost-effective. Health and Safety Code, §61.0285(a), as amended by the 82nd Texas Legislature, 2011, authorizes counties to provide physical and occupational therapy services to eligible residents if determined to be cost-effective.

SECTION-BY-SECTION SUMMARY

Amendments to §14.104 add a new definition of “sponsored alien;” authorize counties to include the income of a person who executed an affidavit of support on behalf of the applicant for health

care services and the income of the person's spouse; and require that if a county chooses to include the income of a person who has executed an affidavit of support on behalf of an applicant, the county must adopt written procedures for processing the incomes of the sponsor and the sponsor's spouse when determining the applicant's eligibility for health care services.

Amendments to §14.105 authorize counties to include the resources of a person who executed an affidavit of support on behalf of the applicant for health care services and the income of the person's spouse; require that if a county chooses to include the resources of a person who has executed an affidavit of support on behalf of an applicant, the county must adopt written procedures for processing the resources of the sponsor and the sponsor's spouse when determining the applicant's eligibility for health care services; and reword subsection (d)(4) and (d)(5) to reflect the addition of new subsection (d)(6).

Amendments to §14.201 add physical and occupational therapy services as optional services counties may provide if found to be cost-efficient. Subsection (b)(13) has been renumbered to subsection (b)(15) with the addition of new subsection (b)(13) and (b)(14).

FISCAL NOTE

Jan Maberry, Program Manager, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amendments because counties are authorized, but not required, to consider the income and resources of a person who executed an affidavit of support on behalf of an applicant for health care services and the income and resources of the sponsor's spouse. The proposed amendments do not mandate changes in current program structure and implementation.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Jan Maberry has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses participate in, or are affected by, the County Indigent Health Care Program. Small business and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no fiscal impact on local employment.

PUBLIC BENEFIT

Jan Maberry has also determined that the public benefit anticipated as a result of the proposed amendments will be that counties will have a clearer and more concise understanding of the rules which will further enhance the proper implementation of the County Indigent Health Care

Program rules in order to determine eligibility for program services and provide services to their eligible residents.

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 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 amendments do 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 Carolyn Wachel, County Indigent Health Care Program, Mail Code 2831, Department of State Health Services, P. O. Box 149347, Austin, Texas 78714-9347 or by email to Carolyn.Wachel@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 General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §61.006, which directs the Executive Commissioner of the Health and Human Services Commission to establish minimum eligibility standards and to define optional health care services counties may provide if cost-effective; and Government Code, §531.0055(e), 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 Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 61 and 1001.

Legend: (Proposed Amendments)

Single Underline = Proposed new Language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§14.104. Income.

(a) Definitions. The following words and terms when used within this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Sponsored alien--A person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. §1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) - (c) (No change.)

(d) Income from non-household members and/or disqualified household members is excluded, unless a county chooses to include the income of a person who executed an affidavit of support on behalf of the applicant and the income of the person's spouse, as authorized by Health and Safety Code, §61.008(a)(6).

(e) If a county chooses to include the income of a person who executed an affidavit of support on behalf of a sponsored alien and the income of the person's spouse, the county shall adopt written procedures for processing the incomes of the sponsor and the sponsor's spouse.

§14.105. Resources.

(a) - (c) (No change.)

(d) In determining eligibility:

(1) - (3) (No change.)

(4) a county must consider as a resource real property other than a homestead and must count that property in determining eligibility; **[and]**

(5) a county may disregard the applicant's real property if the applicant agrees to the terms of an enforceable obligation negotiated with the county to reimburse the county for all or part of the benefits received under the County Indigent Health Care Program; and **[. The county and the applicant may negotiate the terms of the obligation.]**

(6) resources from non-household members and/or disqualified household members are excluded, unless a county chooses to include the resources of a person who executed an affidavit of support on behalf of a sponsored alien, as defined at §14.104(a)(4) of this title, and the resources of the person's spouse, as authorized by Health and Safety Code, §61.008(a)(6).

(e) If a county chooses to include the resources of a person who executed an affidavit of support on behalf of a sponsored alien and the resources of the person's spouse, the county shall adopt written procedures for processing the resources of the sponsor and the sponsor's spouse.

§14.201. Basic and Optional Services.

(a) (No change.)

(b) The following services are optional health care services.

(1) - (12) (No change.)

(13) Physical therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Occupations Code, Chapter 453.

(14) Occupational therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Occupations Code, Chapter 454.

(15) [13] Other medically necessary services or supplies that the local governmental municipality entity determines to be cost effective.