

Rules

Distribution of Tobacco Settlement Proceeds to Political Subdivisions

§102.1. General.

(a) This chapter implements the Health and Safety Code, §§12.131 – 12.139 and the responsibilities of the Department of State Health Services (department) under the Agreement Regarding Disposition of Tobacco Settlement Proceeds (agreement) filed on July 24, 1998, in United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91. The term "agreement" includes the subsequent Clarification of Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in that litigation.

(b) The term "political subdivision" means a hospital district, and other local political subdivision owning or maintaining a public hospital, or a county of the State of Texas responsible for providing indigent health care to the general public. The Texas Health and Safety Code, Chapter 61 defines which entities are responsible for providing indigent health care to the general public.

§102.2. Distributions.

(a) A political subdivision may receive a pro rata share of the annual distribution by the Comptroller of Public Accounts (comptroller) under the agreement. The Department of State Health Services (department) will certify to the comptroller the percentage of the annual distribution that each political subdivision is eligible to receive. The comptroller is responsible for transmitting the payments to the eligible political subdivisions.

(b) The income earned through investment of the permanent trust account established under the agreement will be distributed in April of each year. Only the earnings of the account will be distributed. The corpus of the fund will remain in the permanent trust account.

(c) A political subdivision that receives a pro rata share of the annual distribution has sole authority over the expenditure of those funds. The agreement does not require a political subdivision to expend any portion of the distribution for a specified purpose; however, any portion of the distribution expended for unreimbursed health care expenditures in a calendar year may be counted toward the political subdivision's pro rata share of the annual distribution in the subsequent year.

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§102.3. Annual Claims.

(a) General. A political subdivision may claim a pro rata share of the annual distribution based on its "unreimbursed health care expenditures" in the previous calendar year. These expenditures are defined in the agreement as "those actual expenditures made by a Political Subdivision which are directly attributable to the provision of health care services to the general public, either directly or by contract or agreement with a third party provider, and for which no reimbursement is made by or expected from any third party source or fund. (Lump Sum Trust Account or Permanent Trust Account payments shall not count as reimbursement.)" The term "unreimbursed expenditures" does not include contractual allowances or discounts for health care services required under a third party payor agreement.

(b) Counties not wholly within a hospital district. For a county not wholly within a hospital district, the agreement further states that unreimbursed expenditures are to be calculated as "all unreimbursed amounts, including unreimbursed jail health care, expended by such county for health care services to the general public during that year, plus 15% of that total."

(1) The following are examples for which expenditures, if unreimbursed, may be counted:

(A) services within the scope of services that hospital districts are authorized by law to provide. These will typically be diagnostic and treatment services for individuals;

(B) health care screening, laboratory, and health care case management services;

(C) oral health care services;

(D) expenditures made from funds in a trust or reserve account for the provision of health care services;

(E) health care outreach and prevention efforts, including but not limited to media campaigns, education, counseling, and production and distribution of promotional literature. Typical target areas for these efforts include teenage smoking, child safety, and health hazards affecting the general public;

(F) medical transportation, including transportation to and from medical appointments;

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(G) behavioral health care services, including a physician examination to determine if an individual is in need of mental health care;

(H) capital expenditures for direct health care services, such as construction of ambulance facilities or clinics;

(I) overhead costs for a health care facility;

(J) employee salary and benefits to the extent the employee is engaged in patient health care or other health care services such as the activities described in subparagraph (E) of this paragraph;

(K) emergency medical services; and

(L) medical supplies or equipment used for the provision of health care services to the general public.

(2) The following are examples for which expenditures may not be counted:

(A) general administrative or overhead costs of the county not directly related to the provision of health care services such as costs of the county auditor, the county attorney or county commissioner meetings. These general administrative costs are considered to be included within the 15% added to the unreimbursed expenditures;

(B) administrative supplies such as computer paper;

(C) amounts deposited in a trust or reserve account for the provision of health care services but not actually expended for such services;

(D) environmental services such as mosquito control, water testing, and septic tank inspection;

(E) rental assistance for mental health patients;

(F) court procedures such as continued mental health commitments and medication hearings;

(G) the amount of a tax abatement given in exchange for an agreement to provide health care services;

(H) regulatory activities such as restaurant inspection;

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(I) 911 services;

(J) first responder services; and

(K) services to the extent to which the county has received reimbursement or funds through federal or state programs including, but not limited to, county indigent health care, tertiary medical care, emergency medical services grants, permanent fund for children and public health grants, public health block grants, Title XVIII of the Social Security Act (Medicare), Title XIX of the Social Security Act (Medicaid), or crime victims compensation fund.

(3) If the county expects to receive reimbursement or funds through federal or state programs, such as those listed in paragraph (2)(J) of this subsection, but has not received reimbursement or funds at the time the county files its annual expenditure statement with the department:

(A) the county may include those expenditures which qualify as unreimbursed expenditures under this subsection in its annual expenditure statement filed with the department; and

(B) once the county receives reimbursement or funds for the expenditures or any portion of the expenditures described in subparagraph (A) of this paragraph, the county shall subtract the amount of the reimbursement or funds from the amount of unreimbursed expenditures claimable on its next expenditure statement filed with the department.

(c) Hospital districts. For a hospital district, the agreement further states that unreimbursed expenditures are to be calculated as "the total amount of taxes collected by the hospital district, together with the unreimbursed amount expended by a county coterminous with such hospital district for jail health care."

(1) The expenditures are the amount of taxes collected in the year for which the annual expenditure statement is filed, not the amount of taxes assessed. A hospital district may count taxes that are owed from previous years if those taxes are collected in the year for which the annual expenditure statement is filed.

(2) A hospital district is entitled to claim the amount of its tax collections as unreimbursed expenditures, even if it does not own or operate a hospital.

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(d) Non-hospital district public hospitals. For a non-hospital district public hospital owned by a political subdivision, the agreement further states that unreimbursed expenditures are to be calculated as "the total unreimbursed amount of political subdivision funds paid to such public hospital by any political subdivision during that year."

(1) As stated in subsection (a) of this section, unreimbursed expenditures are defined in the agreement as "those actual expenditures made by a Political Subdivision which are directly attributable to the provision of health care services to the general public, either directly or by contract or agreement with a third party provider, and for which no reimbursement is made by or expected from any third party source or fund. (Lump Sum Trust Account or Permanent Trust Account payments shall not count as reimbursement.)"

(2) Under this subsection, a political subdivision may claim political subdivision funds actually paid to the hospital owned by the political subdivision or transferred from a general revenue account of a political subdivision into the hospital's account(s) in order to provide funds for health care services to the general public.

(3) A political subdivision may not claim political subdivision funds paid under paragraph (2) of this subsection when reimbursement is received by the hospital or political subdivision from any third party source or fund. Reimbursed funds are not "unreimbursed expenditures" under this subsection.

(4) The term "unreimbursed expenditures" does not include contractual allowances or discounts for health care services under a third party payor agreement.

(5) The annual distribution paid to a political subdivision under this subsection shall be made to the political subdivision(s) which owns the hospital, not to the hospital itself.

(6) A county eligible for a pro rata share of the annual distribution under both subsection (b) and this subsection shall file an expenditure statement for each. Such a county may receive a single warrant from the comptroller.

(7) If a county or city handles the financial transactions of its public hospital, rather than the public hospital handling those transactions directly, the county or city may count the unreimbursed expenditures it makes on behalf of the public hospital as funds paid to that hospital.

(e) Political subdivisions that have sold or leased a public health care facility.

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(1) When a political subdivision has sold or leased its public health care facility(s) and accepted an agreement from the new owner or lessee of the facility(s) to provide indigent health care services, the political subdivision is receiving contracted services in lieu of cash as consideration for the sale or lease of the facility(s). In submitting its expenditure statement for the distribution, the political subdivision may claim the value of the health care services for indigent residents of the political subdivision performed by the purchaser or lessee of the facility as if they had been reimbursed using either the Medicaid Diagnosis Related Group (DRG) for the individual patients or the Medicaid interim rate for the facility.

(2) When a political subdivision has sold or leased its public health care facility(s) and accepted profits or payments in consideration of the sale or lease, additional non-tax operating funds may result from the profits or payments attributable to the sale or lease. These profits or payments may be used to fund ongoing operations, indigent care obligations, or other statutorily authorized expenditures not otherwise funded by taxes. The profits or payments from the sale or lease that are expended on operations, indigent care, or other statutorily authorized expenditures in any given calendar year are countable, in addition to tax collections received by a hospital district, as unreimbursed expenditures under the agreement. As a result, the expenditures claimable by a political subdivision are increased by the amount of non-tax funding the political subdivision has spent from its accounts containing the profits or payments attributable to the sale or lease of the political subdivision's public health care facility(s), including the interest or investment proceeds from such profits or payments.

(f) Procedures.

(1) A political subdivision must submit a signed annual expenditure statement to the department, documenting its eligible expenditures for the preceding calendar year:

(A) by delivery, fax, or electronic mail received by the department no later than 5:00 p.m. on March 31 of each year; or

(B) by U.S. Postal Service mail or commercial mail carrier with a postmark reflecting a date no later than midnight on March 31 of each year. Private metered postmarks shall not be acceptable as proof of timely mailing.

(2) If a statement is not received by the department in accordance with the date and methods outlined in paragraph (1) of this subsection, the political subdivision shall not receive a pro rata share of the annual distribution.

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(3) The department will designate the required format for the documentation. There will be a separate format for hospital districts, counties not wholly in a hospital district, and public hospitals not in a hospital district.

(4) To calculate the percentage of the annual distribution to be paid to each political subdivision, the department will combine the eligible expenditures from all statements received, thus obtaining a statewide total. The department will then divide the statewide total into the amount in the expenditure statement submitted by each political subdivision.

(5) By April 15 of each year, the department will certify to the comptroller the percentage of the annual distribution to be paid to each eligible political subdivision, based on the expenditure statements.

§102.4. Regular Audits.

(a) Regular audits of randomly selected political subdivisions may be performed if the necessary funds and personnel are available to the department.

(b) The department has the discretion to decide how and when to select political subdivisions for regular audits. Regular audits may be performed for any year for which a distribution was made under the agreement.

(c) At the department's discretion, the department may perform the regular audits, contract with outside auditors to perform the regular audits, or contract with another state agency to perform the regular audits.

(d) A regular audit may include a review of any audit or financial statement of the political subdivision performed by persons other than the department. A political subdivision being audited by the department shall make available to the department or its contractor such an audit, financial statement, or other supporting documentation at the department's or its contractor's request.

§102.5. Disputes.

(a) A political subdivision or agency of this state may dispute information submitted by another political subdivision. A dispute shall be initiated by filing written notice with the department of the issue(s) disputed.

(b) A dispute may concern a political subdivision's calculation of unreimbursed expenditures, not whether a political subdivision so entitled to a share of the annual distribution.

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(c) A dispute must be filed by December 31 of the year in which the disputed information was submitted.

(d) An audit of the political subdivision that submitted the disputed information may be performed.

(1) The audit shall be initiated by the department or the comptroller. The department or the comptroller shall choose the auditor which may be the department, the comptroller, an outside auditor, or another state agency.

(2) The political subdivision shall fully cooperate in the audit. The audit may include a review of any audit or financial statement of the political subdivision.

(e) The filing of a dispute will not affect the percentage of the annual distribution to be paid to the political subdivision for the year for which the information that is the subject of the dispute was submitted.

(f) A political subdivision for which an audit indicates an overstatement may request in writing a hearing on the matter within 20 days of receiving written notice from the department of the audit findings. The notice shall state whether a monetary penalty is proposed. A monetary penalty may not exceed 10% of the overstated unreimbursed health care costs. A monetary penalty may be imposed if the political subdivision failed to exercise reasonable diligence to comply with the requirements of these rules.

(g) If a hearing is requested, the hearing shall be a contested case under the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing rules in Chapter 1 of this title (relating to the Texas Board of Health). If the department elects to impose a monetary penalty, the hearings officer shall consider from the parties evidence regarding, and issue findings of fact and conclusions of law about, whether the political subdivision failed to exercise reasonable diligence to comply with the requirements of these rules.

(h) If a political subdivision fails to timely request a hearing or to appear at a scheduled hearing, the findings of the audit and any penalty amount shall be considered final and reported to the comptroller.

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(i) If after a hearing the department's hearing examiner, on behalf of the Executive Commissioner of the Health and Human Services Commission, finds an overstatement, the findings shall be considered final and reported to the comptroller. This section delegates to the hearing examiner authority to make findings under this section.

(j) The costs of the audit shall be paid by the party to the dispute (the entity which originally invoked the dispute process or the political subdivision on which the audit was performed) which does not prevail in the dispute.

(k) After a final decision following an audit and the opportunity for a hearing, if a political subdivision has overstated unreimbursed health care expenditures in the information submitted for any year, the department shall report that fact to the comptroller and shall reduce that political subdivision's percentage of the subsequent annual distribution appropriately.

(l) If a monetary penalty is applied, the department shall also reduce the political subdivision's percentage of the subsequent annual distribution appropriately.

(m) If a political subdivision is assessed the cost of an audit, the department shall report the amount assessed to the comptroller, and the comptroller may withhold that amount from the political subdivision's subsequent annual distribution. The comptroller may use the amount withheld to reimburse the general revenue fund for the cost of the audit.