

Department of State Health Services
Agenda Item for State Health Services Council
August 6, 2007

Agenda Item Title: Repeal of 25 TAC, §§83.20-83.29, Rules Relating to the Community Hospital Capital Improvement Fund

Agenda Number: 3-a

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The repeal is necessary because the funding ended on August 31, 2005.

Summary: The rule pertains to the Community Hospital Capital Improvement Fund, which is a dedicated account in the general revenue fund that originated when the 76th Legislature set aside \$25 million of the tobacco settlement monies to create this fund in 1999. The Permanent Hospital Fund for Capital Improvements and the Texas Center for Infectious Disease is mandated by Government Code, §§ 403.1066 - 403.1069, which delineates DSHS' responsibility to provide grants, utilizing the earnings of the fund, to small urban hospitals for capital improvement projects. In 2005, the 79th Texas Legislature appropriated earnings from the fund only to support activities at the Texas Center for Infectious Disease. In 2007, there has been no indication that earnings from the fund will be appropriated for the small urban hospital capital improvements. The proposal complies with the four-year review of agency rules in Government Code, §2001.039

Summary of Stakeholder Input to Date (including advisory committees):

Stakeholders include the Texas Hospital Association and the Texas Association of Public and Non-Profit Hospitals. Comments from these interest groups will be received during the time the repeal is posted in the *Texas Register*.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # 3-a.

Agenda Item Approved by: _____
Susan Rougeau

Presented by: Susan Rougeau

Title: Special Assistant to the CFO

Program/Division: Chief Financial Officer

Contact Name/Phone: Susan Rougeau, 458-7111, ext.6815

Date Submitted
6/11/07

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 83. Public Health Improvement Grants
Subchapter B. Community Hospital Capital Improvement Fund
Repeal §§83.20 – 83.29

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§83.20 – 83.29, pertaining to the Community Hospital Capital Improvement Fund.

BACKGROUND AND PURPOSE

The repeal is necessary because the funding for the program ended in August 31, 2005. Chapter 83, Subchapter B, pertains to the Community Hospital Capital Improvement Fund, which is a dedicated account in the general revenue fund that originated when the 76th Legislature set aside \$25 million of the tobacco settlement monies to create this fund in 1999. The fund, now named the Permanent Hospital Fund for Capital Improvements and the Texas Center for Infectious Disease, is mandated by Government Code §§403.1066 - 403.1069, which delineates DSHS' responsibility to provide grants, utilizing the earnings of the fund, to small urban hospitals for capital improvement projects. Eligibility is limited to nonprofit hospitals licensed for 125 or fewer beds and located in counties exceeding 150,000 in population. In 2005, the 79th Texas Legislature appropriated earnings from the fund only to support activities at the Texas Center for Infectious Disease. In 2007, there has been no indication that earnings from the fund will be appropriated for the small urban hospital capital improvements.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 83.20 – 83.29 have been reviewed and the department has determined that reasons for the rules pertaining to this subject matter no longer exist, and the rules are proposed for repeal.

SECTION-BY-SECTION SUMMARY

The repeals are necessary because the funding for the program ended in August 31, 2005. By not funding the program, it cannot function and rules governing that program are unnecessary.

FISCAL NOTE

Peggy Belcher, Manager, Funds Coordination and Management Branch, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed, as the program will not exist.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

There will be no effect on small businesses or micro-businesses because the program has not existed since fiscal year 2005. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the repeal of the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

The public benefit anticipated as a result of the repeals is a more accurate alignment of the department's rules with the appropriations made by the Texas Legislature.

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 a rule 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 repeals 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 Peggy Belcher, Grant Coordination and Funds Management Unit, Office of the Chief Financial Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7520 or by email to Peggy.Belcher@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, Deputy General Counsel, Linda Wiegman, 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 proposed repeals are authorized by Government Code, §531.0055, 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.

The proposed repeal affects the Government Code, Chapter 403. Review of the sections implements Government Code, §2001.039.

Sections for repeal.

- §83.20. Purpose.
- §83.21. Definitions.
- §83.22. Sources and Allocation of Funds.
- §83.23. Eligibility for Grants.
- §83.24. Requirements for Grants.
- §83.25. Procedures for Grant Announcements.
- §83.26. Procedures for Grant Applications.
- §83.27. Competitive Review Process.
- §83.28. Selection Criteria.
- §83.29. Project Approval.

~~§83.20. Purpose.~~

~~(a) As authorized by the Government Code, §403.1066, relating to the Community Hospital Capital Improvement Fund, the department shall institute and administer grants under this subchapter.~~

~~(b) This subchapter governs the administration of grants, the submission and review of grant applications, and the award of grants.~~

~~§83.21. Definitions.~~

~~The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.~~

~~—(1) Closing date—Date specified in the request for proposals as the date on which applications must be received or postmarked.~~

~~—(2) Commissioner—Commissioner of Health or his or her designee.~~

~~—(3) Capital improvement—The acquisition, construction, or improvement of a facility, equipment (including information system hardware and software), or real property for use in providing hospital services. The term includes designing, engineering, supervising, inspecting, surveying, and other expenses incidental to the acquisition, construction, or improvement.~~

~~—(4) Debt retirement—The reduction of interest and principal owed to another party. The retirement is typically by payment of cash or in exchange for assets, equity, or other consideration.~~

~~—(5) Department—Texas Department of Health.~~

~~—(6) Essential public health services—As defined in the Health and Safety Code, §121.002, services to:~~

~~—(A) monitor the health status of individuals in the community to identify community health problems;~~

~~—(B) diagnose and investigate community health problems and community health hazards;~~

~~—(C) inform, educate, and empower the community with respect to health issues;~~

~~—(D) mobilize community partnerships in identifying and solving community health problems;~~

~~—(E) develop policies and plans that support individual and community efforts to improve health;~~

~~—(F) enforce laws and rules that protect the public health and ensure safety in accordance with those laws and rules;~~

~~—(G) link individuals who have a need for community and personal health services to appropriate community and private providers;~~

~~—(H) ensure a competent workforce for the provision of essential public health services;~~

~~—(I) research new insights and innovative solutions to community health problems; and~~

~~—(J) evaluate the effectiveness, accessibility, and quality of personal and population-based health services in a community.~~

~~-(7) Operating expense—An expense, including an administrative expense, incurred in the daily operation of the grantee hospital. The costs of capital medical equipment leases are not operating expenses.~~

~~-(8) Rural area—A county that has a population of 150,000 or less or, with respect to a county that has a population of more than 150,000 and that contains a geographic area that is not delineated as urbanized by the federal census bureau, that part of the county that is not delineated as urbanized.~~

~~-(9) Urban area—A county or part of a county that is not a rural area.~~

~~§83.22. Sources and Allocation of Funds.~~

~~(a) Funds for the grants shall be provided in accordance with the Government Code, §403.1066, relating to the Community Hospital Capital Improvement Fund.~~

~~(b) All grants shall be awarded competitively according to the provisions of this subchapter.~~

~~(c) Grants shall be made only to the extent that funds are appropriated and available.~~

~~(d) The department shall have the authority and discretion to:~~

~~-(1) determine the purpose(s) of grants pursuant to law and this subchapter;~~

~~-(2) approve or deny grant applications;~~

~~-(3) determine the number, size, and duration of grants; and~~

~~-(4) modify or terminate grants.~~

~~(e) The department shall not be liable, nor shall grant funds be used, for any costs incurred by applicants in the development, preparation, submission, or review of applications.~~

~~§83.23. Eligibility for Grants.~~

~~(a) A public or private nonprofit community hospital licensed for 125 beds or fewer located in an urban area is eligible to apply for a grant. A hospital applying for a grant must be licensed as a general hospital under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241.~~

~~(b) A hospital eligible to receive a rural health facility capital improvement grant, loan, or loan guarantee from the Office of Rural Community Affairs under the Government Code, Chapter 487, Subchapter H, is not eligible to receive a grant under this subchapter.~~

~~§83.24. Requirements for Grants.~~

~~(a) The department shall specify reasonable requirements for grant applications.~~

~~(b) Use of grant funds shall be restricted to capital improvements and shall not be used for operating expenses or debt retirement of the hospital or the owner of the hospital.~~

~~§83.25. Procedures for Grant Announcements.~~

~~(a) Before applications are requested, the department shall publish one or more notices of grant availability in the Texas Register. These notices shall also be distributed throughout the state through mail and electronic means. The notices will include details about the grants, instructions for obtaining a request for proposals, and the names of persons to contact in the department for further information.~~

~~(b) The department shall maintain a list of persons to be notified of requests for proposals. Any person wanting to be placed on the list should contact: Grant Coordination Office, Attention: Community Hospital Capital Improvement Grants, 1100 West 49th Street, Austin, Texas, 78756.~~

~~(c) The department shall develop and publish a request for proposals, which shall contain details concerning, but not limited to, the following:~~

- ~~–(1) the nature and purpose(s) of the grant;~~
- ~~–(2) the total amount of funds available for the grants;~~
- ~~–(3) the maximum and minimum dollar amounts that will be awarded for individual grantees;~~
- ~~–(4) the information and format required for grant applications;~~
- ~~–(5) information about the criteria used to judge grant applications; and~~
- ~~–(6) the closing date.~~

~~§83.26. Procedures for Grant Applications.~~

~~(a) The department may specify any reasonable requirements for grant applications, including, but not limited to, length, format, authentication, and supporting documentation.~~

~~(b) Applications that are substantially incomplete according to the requirements of this subchapter may be rejected without further consideration at the discretion of the department.~~

~~(c) Applications received after the closing date will not be considered, unless the closing date is extended by the department.~~

~~(d) Applications must be received by the department on or before the closing date specified in the request for proposals.~~

~~§83.27. Competitive Review Process.~~

~~(a) Each application shall be reviewed by the department for completeness, relevance to the published request for proposals, adherence to department policies, general quality, technical merit, and budget appropriateness.~~

~~(b) The department may invite an advisor or advisors to provide review and make recommendations concerning the grant process. Such advisor(s) may include any number of members from inside or outside the department, at the discretion of the commissioner. Advisor(s) from outside the department shall receive no compensation or reimbursement for expenses. No advisor(s) shall be a current or potential applicant for a grant on which the advisor(s) would be making recommendations.~~

~~§83.28. Selection Criteria.~~

~~(a) No grant shall be approved unless, in the opinion of the department, it addresses only capital improvements and does not propose to expend funds for debt retirement or operating expenses with the exception of capital medical equipment leases.~~

~~(b) A grant application will be given preference if the capital improvement(s) funded by the proposal are related to an essential public health service.~~

~~§83.29. Project Approval.~~

~~(a) Grant recipients shall execute a contract with the department. The contract shall detail items including a budget, reporting requirements, general provisions for department grant contracts, and any other specifics that might apply to the award.~~

~~(b) Grant recipients shall cooperate with the department in preparing reports to the Legislature as required by the Government Code, §403.1069.~~