

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

Agenda Item Title: Amend 25 TAC §§102.1 – 102.5, Rules Relating to the Distribution of Tobacco Settlement Proceeds to Political Subdivisions

Agenda Number: 3-c

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The rules are still needed due to the continued responsibilities for implementing Health and Safety Code, §§12.131-12.139 and the responsibilities of the agency under the Agreement Regarding Disposition of Tobacco Settlement Proceeds that was originally 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.

Summary: The amendments reflect changes in the agency's name, remove references to the Texas Board of Health, and update references to include the Executive Commissioner of the Health and Human Services Commission. The amendments also include the addition of two examples for which expenditures may or may not be counted as annual claims by a county that is not wholly within a hospital district, adds the text "or other supporting documentation" to the list of documents that a political subdivision being audited may make available to the department or its contractor, and authorizes the hearing examiner to have the authority to make findings of an overstatement and report the findings to the comptroller.

The amendments comply 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 Association of Public and Non-Profit Hospitals, the Texas Association of Counties, the Texas Conference of Urban Counties, the Texas Hospital Association, the Texas Organization of Rural and Community Hospitals, and the County Judges and Commissioners Association of Texas. The stakeholders were given the opportunity to review the draft rule revisions and had no objections. DSHS has asked the Tobacco Settlement Permanent Trust Account Administration Advisory Committee to meet in June to review the rules."

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

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 102. Distribution of Tobacco Settlement Proceeds to Political Subdivisions

Amendments §§102.1 – 102.5

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 §§102.1 – 102.5, concerning the distribution of tobacco settlement proceeds to political subdivisions.

BACKGROUND AND PURPOSE

The amendments are necessary to update the name of the agency, remove references to the former Board of Health, and make other minor text changes. The rules are still needed due to the continued responsibilities for implementing the Health and Safety Code, §§12.131 – 12.139, and the responsibilities of the department under the Agreement Regarding Disposition of Tobacco Settlement Proceeds 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.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 102.1 – 102.5 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendments to §102.1, §102.2, and §102.5 reflect changes in the agency name, remove references to the Texas Board of Health, and update references to include the Executive Commissioner of the Health and Human Services Commission. The amendment to §102.3 adds text to include two more examples for which expenditures may or may not be counted as annual claims by a county that is not wholly within a hospital district. The amendment to §102.4 adds the text “or other supporting documentation” to the list of documents that a political subdivision being audited shall make available to the department or its contractor. The additional amendment to §102.5 authorizes the hearing examiner to have the authority to make findings of an overstatement of expenditures discovered after an audit.

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.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Belcher has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. 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 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

In addition, Ms. Belcher has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated is a clear understanding of the agencies that now have oversight over the distribution of the tobacco proceeds since the consolidation of the health-related agencies in fiscal year 2005. Also, there is additional information for the public regarding the disbursements of the funds.

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 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 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 amendments 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 amendments affect Health and Safety Code Chapter 12. Review of the sections implements Government Code, §2001.039.

Legend: (Proposed Amendment(s))

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

§102.1. General.

(a) This chapter implements the Health and Safety Code, §§12.131 - 12.139 and the responsibilities of the **[Texas]** 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) (No change.)

§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 **[Texas]** 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) – (c) (No change.)

§102.3. Annual Claims.

(a) (No change.)

(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) – (F) (No change.)

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

(H) – (L) (No change.)

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

(A) – (E) (No change.)

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

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

(H)[(G)] regulatory activities such as restaurant inspection;

(I)[(H)] 911 services;

(J)[(I)] first responder services; and

(K)[(J)] 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) (No change.)

(c) – (f) (No change.)

§102.4. Regular audits.

(a) – (c) (No change.)

(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, **[or]**financial statement, or other supporting documentation at the department's or its contractor's request.

§102.5. Disputes.

(a) – (h) (No change.)

(i) If after a hearing the department's hearing examiner, on behalf of the Executive Commissioner of the Health and Human Services Commission **[Board of Health]**, 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) – (m) (No change.)