

# Texas

## Historic County Obligation to Support “Paupers”

One of the first laws enacted after Texas declared its independence obligated counties to provide at their expense, “for the support of the indigent, lame, and blind persons, who are unable to support themselves.”<sup>1</sup> In 1876, the statute was amended to provide for the “support of paupers,” and explicitly required counties to provide for the “indigent sick” in county public hospitals.<sup>2</sup>

In large part, the obligation to provide for the needs of indigents still rests with the counties, although the state lends some support. Currently, county hospital districts are obligated to provide medical care to county inhabitants. If the county has not established a hospital district (described below) however, its obligation for indigent care is limited.

## Hospital District Responsibility

The legislature may authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000.<sup>3</sup> Hospital Districts thus formed may support services through issuing bonds, levying property taxes up to three quarters of one percent of the value of taxable property, and upon voter approval, levying sales and use taxes of up to two percent.<sup>4</sup>

Hospital Districts, once created, “shall assume full responsibility for providing medical and hospital care for its needy inhabitants.”<sup>5</sup> If a hospital district does not meet its indigent care obligation through county/public hospitals, then it must do so by paying private providers.<sup>6</sup> Districts owning or operating a public hospital must sufficiently fund the hospital’s mandatory health care assistance obligation.<sup>7</sup>

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<sup>1</sup>Tex. Gen. Laws, 1 H. Gammel, Laws of Texas 1201, 1206, § 29 (1898); *See* Texas Practice, Social Assistance, Chapter 28.

<sup>2</sup>*Id.*, Tex. Gen. Laws, 1 H. Gammel, Laws of Texas 887, 888, 890, §§ 4, 21, (1898), *described in* Texas Practice, Social Assistance, § 28.1.

<sup>3</sup>Vernon’s Ann. Tex. Const., Art. IX, § 4; V.T.C.A. Health & Safety Code § 281.002.

<sup>4</sup>*Id.*, V.T.C.A. Health Code §§ 285.061 *et seq.*, 775.0751, 776.0751, V.T.C.A., Tax Code, ch. 324.

<sup>5</sup>Vernon’s Ann. Tex. Const., Art. IX, §§ 4, 9; V.T.C.A. Health & Safety Code §§ 281.002, 281.046, 283.045, 286.082; Op. Atty. Gen. 1988, No. JM-858.

<sup>6</sup>V.T.C.A. Health & Safety Code §§ 281.002, 281.046, 283.045, 286.082; Op. Atty. Gen. 1975, No. H-703.

<sup>7</sup>V.T.C.A. Health & Safety Code § 61.062.

### Eligibility & Scope of Coverage

Public hospitals are obligated to render care to those individuals who would qualify under the Indigent Health Care Act (described below).<sup>8</sup> The scope of care for which an eligible applicant would qualify is also described under the Indigent Health Care Act.<sup>9</sup>

The attorney general has argued for limiting the rights of county residents to the care outlined under this program. In 1987, the attorney general claimed that the statutory responsibility to provide for the support of paupers does not create a property right.<sup>10</sup> In 1988, the Attorney General argued that the determination of an applicant's eligibility for care shall be made in the first instance by the hospital district.<sup>11</sup> And, in 1987, the Attorney General argued that the level of care offered by counties should be determined on a county-by-county basis.<sup>12</sup>

### Public Hospital Transfer, Lease, or Closure

Before a public hospital may tighten its eligibility standards or reduce the scope of services offered, the county governing body must duly notify the public, hold hearings, and find that the proposed changes would not have a detrimental effect on health care access.<sup>13</sup> Further, if ten percent of the district's qualified voters petition for an election, the county may neither sell nor close its hospital until an election is held in which a majority of the qualified voters who vote in the election concur with the proposition to sell or close the hospital.<sup>14</sup>

### Continuing County Obligation after Transfer, Lease, or Closure

A governmental entity which sells, leases, transfers or closes a public hospital nonetheless must continue to provide the medical care for indigents which is outlined by the Indigent Health Care Act and related sections.<sup>15</sup>

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<sup>8</sup>V.T.C.A. Health & Safety Code § 61.062.

<sup>9</sup>V.T.C.A. Health & Safety Code § 61.054.

<sup>10</sup>Op. Atty. Gen. 1987, No. JM-815.

<sup>11</sup>Op. Atty. Gen. 1988, No. JM-858.

<sup>12</sup>Op. Atty. Gen. 1987, No. JM-815.

<sup>13</sup>V.T.C.A. Health & Safety Code §§ 61.063, 285.051, 285.052.

<sup>14</sup>V.T.C.A. Health & Safety Code § 285.052.

<sup>15</sup>V.T.C.A. Health & Safety Code §§ 61.064, 61.065.

**Indigent Health Care Act**

In counties which have no public hospitals or hospital districts, the obligation to provide medical care to indigents is defined by the Indigent Health Care & Treatment Act.<sup>16</sup>

**Eligibility**

Applicants must live (meaning physical presence and intention to stay) in the Texas county to which they apply.<sup>17</sup> The applicant must not be a resident in a county served by a hospital district or public hospital, defined as a hospital “owned, operated, or leased by a governmental entity” that has a “legal obligation to serve” the area in which the indigent resides.<sup>18</sup> The applicant must not be eligible for any other form of state or federal public assistance comparable to that offered under this program.<sup>19</sup> A household’s net monthly income<sup>20</sup> may not exceed Aid to Families with Dependent Children (AFDC) income levels.<sup>21</sup> The countable household resources may not exceed \$1000.<sup>22</sup> Although there is no stated spend-down provision for applicants whose resources exceed the \$1000 limit, the code might (although not necessarily) allow for a spend-down on medical bills, so long as no resources are transferred at less than fair-market-value.<sup>23</sup>

An approved household is retroactively eligible for services beginning with the first calendar day in any one or all of the three months prior to the application submission date if : (1) the household met all eligibility requirements for the month(s) in which retroactive coverage is requested; (2) the household received medical services mandated under the Act [*see below*, “Scope of Medical Services Covered”] and; (3) the bills for these services are unpaid at the time of the application.<sup>24</sup>

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<sup>16</sup> Ch. 495, Acts of the 64th Legislature, Regular Session, 1975 (Article 4438a, Vernon’s Texas Civil Statutes); V.T.C.A., Health and Safety Code §§ 61.001 *et seq.*, 25 T.A.C. 14.1.

<sup>17</sup>25 TAC 14.102.

<sup>18</sup>V.T.C.A. Health & Safety Code §§ 61.002, 61.033.

<sup>19</sup>25 T.A.C. § 14.101(m).

<sup>20</sup>*See* 25 TAC 14.104(d)(2) for earned income deductions.

<sup>21</sup>25 T.A.C. § 14.104(d).

<sup>22</sup>25 T.A.C. §14.105(b).

<sup>23</sup>*See, generally* 25 T.A.C. § 14.105.

<sup>24</sup>25 TAC § 14.101(n).

### Scope of Medical Services Covered

Counties are required to pay qualified medical practitioners to provide those services which are medically necessary, which are ordered and provided under the direction of a physician, and which are: (1) inpatient diagnostic and treatment hospital services; (2) diagnostic, therapeutic, rehabilitative, or palliative outpatient hospital services; (3) physician services, whether inpatient, outpatient, or in-office; (4) pharmaceutical prescriptions (up to three prescriptions per recipient per month); (5) inpatient skilled nursing facilities (SNF); (6) family planning services, or; (7) laboratory and x-ray services.<sup>25</sup>

### Exclusions

The scope of covered services described above is attenuated by the following list of optional services and supplies. Although a county may provide the following services and supplies, the state is not obligated to provide the counties any state subsidization for doing so.<sup>26</sup>

- (1) Inpatient hospital or SNF care amounting to more than 30 days in one year.
- (2) Prosthetic or orthodontic devices, including dentures, hearing aids and eyeglasses.
- (3) Custodial care not rendered in a SNF.
- (4) Pneumonia and influenza immunizations, unless provided to high-risk individuals. Other immunizations and vaccines, unless directly related to the treatment of an injury or direct exposure to disease.
- (5) Cosmetic surgery and supplies, except where required for the prompt repair of an accidental injury, for improving the functioning of a malformed body member, or is otherwise authorized.
- (6) Most dental care.
- (7) Ambulation aids and other Durable Medical Equipment (DME) and supplies, unless provided in a hospital or a SNF.
- (8) Drug and alcohol abuse treatment services, unless provided in an acute care, Title XIX approved hospital.<sup>27</sup>

### Scope of County Financial Liability

Counties shall pay for care, if at all, only when the applicant has no other source of payment.<sup>28</sup> Counties are liable for payment for mandatory services unless an eligible county resident is adequately covered by another public or private health care source, is eligible for Medicaid, or receives services in a hospital that is out of compliance with its Hill-Burton Act uncompensated care obligation.<sup>29</sup>

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<sup>25</sup>25 TAC § 14.201.

<sup>26</sup>V.T.C.A. Health & Safety Code § 61.028(b).

<sup>27</sup>25 TAC § 14.202.

<sup>28</sup>25 TAC § 14.204(b).

<sup>29</sup>25 TAC § 14.204(a).

The county is not responsible for paying more than \$30,000, or alternatively, more than thirty days of inpatient SNF or hospital care for any particular beneficiary in its fiscal year for mandatory services. In the aggregate, the county is not liable for expenses exceeding ten percent of its General Revenue Tax Levy (GRTL) if state assistance funds are not available, or ten percent of the GRTL, and twenty percent of the program's expenses exceeding that if state assistance funds are available.<sup>30</sup>

Subject to the availability of appropriated funds, the Texas Department of Health shall pay for eighty percent of county indigent health care expenses once the county has met the basic financial liabilities outlined above.<sup>31</sup>

County expenditures under this program do not have to exceed ten percent if the Texas Department of Health fails to meet its obligation to pay for eighty percent of the cost of services which exceed the county's ten percent expenditure obligations.<sup>32</sup>

### County Health Districts

The commissioners court<sup>33</sup> of a county may appropriate and spend money for the county population's public health.<sup>34</sup> To that end, counties may impose a property tax of one-half of one percent in counties whose populations amount to less than 22,000, or a property tax of one tenth of one percent in those counties whose populations amount to more than 22,000.<sup>35</sup>

The tax proceeds shall be for the provision of county health services, including vaccinations and medical services for school children and indigent persons, and medical treatment for indigent persons not entitled to treatment under the Indigent Health Care and Treatment Act.<sup>36</sup> The commissioners court may not pay, however, more than half of the costs of medical treatment and immunization for an indigent person not entitled to treatment under the Indigent Health Care and Treatment Act.<sup>37</sup>

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<sup>30</sup>V.T.C.A. Health & Safety Code § 61.037

<sup>31</sup>V.T.C.A. Health & Safety Code § 61.038.

<sup>32</sup>V.T.C.A. Health & Safety Code § 61.039.

<sup>33</sup>The members of the commissioners court are the county judge and the county commissioners. V.T.C.A., Local Government Code § 81.001. The commissioners court shall issue the notices, citations, writs, and process necessary for the proper execution of its powers and duties, and the enforcement of its jurisdiction. V.T.C.A., Local Government Code § 81.022.

<sup>34</sup>V.T.C.A., Health and Safety Code § 122.001.

<sup>35</sup>V.T.C.A., Health and Safety Code §§ 122.002, 122.003.

<sup>36</sup>V.T.C.A. Health and Safety Code §§ 122.002, 122.003.

<sup>37</sup>*Id.*

Each commissioners court may provide for the support of those paupers who are residents of its county and who are unable to support themselves.<sup>38</sup> A county is obligated to provide health care assistance to eligible residents only to the extent prescribed by the Indigent Health Care Act.<sup>39</sup> The Commissioners Court is not bound to the Indigent Health Care Act's requirements, however, when it provides program or service benefits not within the scope of the Indigent Health Care Act.<sup>40</sup>

### **Public Health**

The commissioners court of any county shall have the authority to appropriate and expend money from the general revenues of its county for and on behalf of public health and sanitation within its county."<sup>41</sup>

Although the Texas Board of Health may charge cost-based fees to those who directly receive its services, it may not deny services to those who are unable to pay for them.<sup>42</sup>

### **Immunizations**

The Texas Board of Health may charge fees for the distribution and administration of vaccines.<sup>43</sup> However, the board may not deny vaccines to individuals unable to pay for them, and in fact may waive fees altogether if the commissioner finds that vaccine distribution is needed to address a public health emergency.<sup>44</sup>

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<sup>38</sup>V.T.C.A. Local Government Code § 81.028.

<sup>39</sup>*Id.*

<sup>40</sup>V.T.C.A. Local Government Code § 81.028.

<sup>41</sup>V.T.C.A. Government Code §§ 81.028(6), 130.905.

<sup>42</sup>V.T.C.A. Health & Safety § 12.032.

<sup>43</sup>T.C.A. Health & Safety Code § 12.033.

<sup>44</sup>*Id.*