

Central Health's September 18, 2018 Memo and Response
By Fred I. Lewis (September 19, 2018)

Central Health Financial Policies Memo (Sept 18, 2018) is very short on specific, binding financial controls and procedures language. We await the devil in the details, i.e., the specific language regarding its financial accountability and transparency.

The Memo also has a number of inaccurate statements regarding the law, which we will discuss in this response below:

I. Central Health (CH) Financial Policies Memo, p. 2. "What is not clear, however, is the assertion that Central Health is required to meet every obligation of Chapter 61 Texas Health and Safety Code in its entirety. There are certain provisions that apply to eligibility and provision of care at twenty-one percent of the Federal Poverty Level, e.g., Section 61.006; however, there are provisions related to specific services from which Central Health is exempt due to a limited application to hospital districts providing services prior to January 1, 1999 (See Section 61.028, made applicable to districts under Section 61.055).

Response: This is wrong. Central Health must comply with all state law requirements and any allowed exceptions, including those in Texas Health and Safety Code, Chapter 61. Period. The law, however, is not the unreasonable, unworkable law CH misconstrues it to be.

Chapter 61 does not require resident eligibility at 21% of the poverty level under Texas Health and Safety Code Section 61.006, because CH may and has raised the eligibility level. Texas Health and Safety Code 61.052.

Sec. 61.052. GENERAL ELIGIBILITY PROVISIONS. (a) A public hospital or hospital district shall provide health care assistance to each eligible resident in its service area who meets:

(1) the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; or

(2) a less restrictive income and resources standard adopted by the hospital or hospital district serving the area in which the person resides.

Nor is CH exempt from providing to eligible residents the “basic health care service requirements” required by Chapter 61 unless it is financially unable to do so. See Sections 61.028 and 61.055 below (highlighted)

Sec. 61.028. BASIC HEALTH CARE SERVICES. (a) A county shall, in accordance with department rules adopted under Section 61.006, provide the following basic health care services:(1) primary and preventative services designed to meet the needs of the community, including: (A) immunizations; (B) medical screening services; and (C) annual physical examinations;(2) inpatient and outpatient hospital services;(3) rural health clinics;(4) laboratory and X-ray services;(5) family planning services;(6) physician services;(7) payment for not more than three prescription drugs a month; and (8) skilled nursing facility services, regardless of the patient's age.
(b) The county may provide additional health care services, but may not credit the assistance toward eligibility for state assistance, except as provided by Section 61.0285.

Sec. 61.055. BASIC HEALTH CARE SERVICES PROVIDED BY HOSPITAL DISTRICTS. (a) Except as provided by Subsection (b), a hospital district shall endeavor to provide the basic health care services a county is required to provide under Section 61.028, together with any other services required under the Texas Constitution and the statute creating the district.
(b) A hospital district shall coordinate the delivery of basic health care services to eligible residents and may provide any basic health care services the district was not providing on January 1, 1999, but only to the extent the district is financially able to do so.
(c) This section may not be construed to discharge a hospital district from its obligation to provide the health care services required under the Texas Constitution and the statute creating the district.

2. CH Memo on Financial Policies (9/18/2017), p. 4. “By addressing these determinants, it is likely that the overall health of larger portions of the population might be affected, for the better, but the ability to distinguish between program eligible persons and those who are not would become ineffective and less proportionate to the large benefit to the eligible population... As another hypothetical: for population health, a case could be made for providing free, voluntary flu inoculations for the entire population of Travis County.... This strategy would provide better odds for

the population served by Central Health for not contracting the flu as immunity is gained when the entire community is inoculated. Limiting healthcare to only conventional Western or clinic-based approaches may ignore other evidence-based techniques that may be more culturally appropriate and cost-effective... meditation... mid-wives in birthing...”

This is wrong on several grounds. CH has reasonable discretion to provide medically necessary services to eligible poor residents of Travis County as defined under Chapter 61. It cannot provide free services to the non-poor or to non-residents, although it apparently has done both. Chapter 61, however, does allow them to provide services for reasonable fees to the non-poor. It also clearly allows them to provide effective, “non-traditional” medical care.

A. Central Health is restricted by law to providing free medical care only to eligible poor residents of Travis County, although it may charge others reasonable and necessary rates. Section 61.052, above, provides that “a public hospital or hospital district shall provide health care assistance to each eligible resident in its service area.” Section 61.002 (3) defines “eligible resident” to mean “a person who meets the income and resources requirements established by this chapter or by the governmental entity, public hospital, or hospital district in whose jurisdiction the person resides. Texas Attorney General Opinion No. JC-0434 explains that hospital district’s purpose is providing free indigent health care and, thus, must charge non-indigent patients reasonable and necessary costs of medical services.

Central Health serves the poor; it does not legally fund general public health, which is for the county, state or federal governments. Texas Attorney General opinions have strictly construed hospital districts’ authority to exclude funding general, public health. Numerous Texas Attorney General opinions have narrowly construed the authority of hospital districts, restricting their funding to medical care for the poor, and not for general community health benefits. See, e.g., Tex. Attorney Gen Op. No. H-31 (1973) (hospital district cannot fund city and county health departments with their missions of public health); Texas Attorney General Letter Op. No. 95-088 (December 22, 1995) (hospital district cannot fund the county medical examiner’s office).

Nothing prevents CH from providing midwifery, meditation, or other non-traditional, necessary medical care, which the statute specifically makes

clear.

Sec. 61.0285. OPTIONAL HEALTH CARE SERVICES. (a) In addition to basic health care services provided under Section 61.028, a county may, in accordance with department rules adopted under Section 61.006, provide other medically necessary services or supplies that the county determines to be cost-effective, including:

- (1) ambulatory surgical center services;
- (2) diabetic and colostomy medical supplies and equipment;
- (3) durable medical equipment;
- (4) home and community health care services;
- (5) social work services;
- (6) psychological counseling services;
- (7) services provided by physician assistants, nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists;
- (8) dental care;
- (9) vision care, including eyeglasses;
- (10) services provided by federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B);
- (11) emergency medical services;
- (12) physical and occupational therapy services; and
- (13) any other appropriate health care service identified by department rule that may be determined to be cost-effective...

(c) A county may provide health care services that are not specified in Subsection (a), or may provide the services specified in Subsection (a) without actual or constructive approval of the department, but may not credit the services toward eligibility for state assistance.

III. **Conclusion.** Central Health is a hospital district established under the Texas Constitution and state law. It must follow these laws. Thus, it must comply with the eligibility and medical service requirements in Chapter 61 of the Texas Health and Safety Code, however much it does not wish to.