SUBJECT: Non-acute care for residents of a hospital district

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Capelo, Coleman, McReynolds, Naishtat, Truitt

3 nays — Laubenberg, Dawson, Zedler

1 absent — Taylor

SENATE VOTE: On final passage, May 5 — voice vote (Nelson recorded nay)

WITNESSES: For — None

Against — MerryLynn Gerstenschlager, Texas Eagle Forum; Matthew Mattox, Young Conservatives of Texas

BACKGROUND: In Opinion JC-0394, issued July 10, 2001, then-Attorney General John Cornyn determined that a Harris County Hospital District's proposed policy to permit all county residents who met eligibility standards to obtain non-acute health care — such as doctor's visits, physical therapy, and disease management services — regardless of their immigration status would violate the 1996 welfare-reform law (8 U.S.C., secs. 1601-1646) known as the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).

He also concluded that this could jeopardize the receipt of state and federal funds and could have legal consequences under state law for making an unauthorized expenditure of public funds. The opinion noted that PRWORA authorizes states to expand undocumented immigrants' eligibility for public benefits by enacting state laws, but the Texas Legislature has enacted no such law.

PRWORA states that undocumented immigrants are not eligible for any state or local public benefit, except for certain health services, including immunization, emergency medical care, and treatment for communicable

diseases. However, a state may make these immigrants eligible for additional services by enacting a statute that affirmatively authorizes their eligibility.

As a condition of receiving federal and state funds, hospital districts agree to comply with applicable federal and state laws. Thus, although PRWORA includes no penalties for violating its provisions, the question arose as to whether a violation could jeopardize Medicare and Medicaid payments to the hospital district.

Since PRWORA was enacted in 1996, the Legislature has enacted only two provisions that directly affect undocumented immigrants' eligibility for public benefits. Both measures, enacted in 1997 by the 75th Legislature in HB 1826 by Goodman, amended the Family Code to allow the use of state and federal funds to provide child protective services without regard to a child's or family's immigration status. Neither the Harris County Hospital District nor the Attorney General's Office has identified any other similar statute that specifically would apply to the receipt of publicly funded health care.

The Harris County Hospital District's policy manual stated that county residents were eligible for health care from the district according to their ability to pay. To participate in the district's medical assistance program, applicants had to demonstrate proof of identity and residency; however, the policy did not address citizenship as it pertained to residency. The policy was applied inconsistently, and some undocumented immigrants who could prove residence in the county obtained non-emergency health care while others were denied.

In response, hospital district executives proposed a formal policy that would permit all county residents who met eligibility standards to obtain non-acute health care — such as doctor's visits, physical therapy, and disease management services — regardless of their immigration status. Under the new policy, an applicant's citizenship or immigration status could not be considered in determining residency, though an applicant could be asked about that status to determine eligibility for other funding sources, such as Medicaid.

Before the hospital district implemented the new policy, the Harris County attorney asked the attorney general for an opinion on its legality under state

and federal law and on whether a potential violation of the law could jeopardize the receipt of federal or state funds.

Following the attorney general's opinion, the Harris County District Attorney's Office stated that it would not investigate the hospital district unless it received a complaint about the district's policy. Shortly thereafter, a citizen in Harris County filed a complaint, triggering a criminal investigation into whether hospital district officials violated Penal Code, sec. 32.45, relating to misapplication of fiduciary property or property of financial institutions, by authorizing the expenditure of public funds to pay for undocumented immigrants.

Harris County Attorney Michael Stafford issued an opinion supporting the position that the Texas Constitution and state laws authorize the district to pay for indigent health care without regard to immigration status. The basis for this was that a 1999 amendment to the Texas Constitution fulfilled the PRWORA requirement that states must include undocumented immigrants affirmatively in a law enacted after 1996.

The federal Emergency Medical Treatment and Active Labor Act (EMTALA), enacted in 1986, governs when and how a patient may be refused treatment or transferred from one hospital to another when in an unstable medical condition. The law requires any hospital with an emergency room to provide acute care to any patient who requires it and to stabilize any patient with an emergency condition, without regard to a patient's residency, citizenship, or ability to pay.

For additional background, see House Research Organization Focus Report Number 77-13, *Health Care for Undocumented Immigrants: Who Pays?*, October 29, 2001.

DIGEST:

CSSB 309 would amend the Health and Safety Code to authorize hospital districts to provide non-acute medical care for people who otherwise would be ineligible under PRWORA. Funding for the medical care could come only from local funds, and the district would be required to establish a cost-sharing system.

The bill also would prohibit a hospital district from considering a person a resident if the person moved to the district for the sole purpose of obtaining medical care.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY:

CSSB 309 would give hospital districts undisputed legal authority to include undocumented immigrants in their indigent health care programs and would allow hospital districts to comply with PRWORA through a state exemption.

The state should not wait for Congress to change PRWORA, but should take advantage of the option for a state exemption. The federal government permits exemptions to allow states to decide what is best for their communities. While federal circuit courts uniformly have upheld PRWORA's constitutionality, Texas should work with the federal law to permit hospital districts to create the programs that best serve their constituencies.

CSSB 309 would permit hospital districts to save money and manage their costs better. Counties would save money by paying for preventive and ongoing care in the first place so that patients would not come to emergency rooms with untreated, advanced diseases. Acute care costs more than non-acute care for a variety of reasons, including the use of more diagnostic tests in an emergency room for liability purposes, the higher recurrence rate without disease management, more acute episodes of recurrence, and the missed benefit of ongoing drug therapy.

According to the Harris County Hospital District, undocumented immigrants account for about 23 percent of visits to its facilities. The district estimates that it spent $330 million on health care for undocumented immigrants over the past three years, $105 million of which was reimbursed with federal funds. Taxpayers, insurers, and patients paid the remaining $225 million. If each of the visits had been to the emergency room, the cost would have been much higher.

Paying for ongoing health care for undocumented immigrants would alleviate some of the burden on emergency rooms. Instead of visiting emergency rooms

for non-acute health conditions, these immigrants could schedule routine visits at doctors' offices or clinics, making it easier for the entire health-care system to handle the flow of patients. This would benefit all Texans by ensuring that local emergency rooms are ready when needed.

Texas has a public health interest in treating immigrants to prevent the spread of infectious disease. In many border counties, rates of hepatitis A, chicken pox, dengue fever, and tuberculosis are more than double the national average. Health officials blame the prevalence of disease on the transience of the population between Mexico and the United States and on unsanitary, crowded living conditions. Federal exemptions to PRWORA allow undocumented immigrants to obtain vaccinations and treatment for communicable disease. However, these services alone are not sufficient to protect the public health and communities should be able to offer access to preventive health care for legal immigrants, who may have more frequent contact with recent immigrants.

The state ultimately could save on Medicaid payments for infants if county hospital districts provided access to health care for pregnant undocumented immigrants. Children born on American soil are U.S. citizens even if their parents are not, and children of undocumented immigrants are likely to be eligible for public benefits, such as Medicaid. Pregnant, undocumented immigrants who are denied access to prenatal care could experience poor birth outcomes for their infants, including low birth weights. These infants' conditions then must be treated and paid for by Medicaid.

If immigrant parents are denied access to the health-care system, they might be more reluctant to apply for benefits to which their children were entitled. According to census data, 18 percent of all Texas children belong to families with at least one noncitizen parent and at least one citizen child. Children who are citizens are eligible for all public benefits as long as they meet income or disability requirements, but their immigrant parents are not eligible. Access to health care for some, but not all, members of a family could diminish the quality of care for children with coverage. For example, a family might try to share one prescription of antibiotics, preventing the covered child from receiving the full course of treatment.

Because the majority of a hospital district's funds are supported by taxes in

which undocumented immigrants participate, these residents should be entitled to health-care benefits. Undocumented immigrants living and working in Texas contribute to sales taxes and may contribute to property taxes, which pay for indigent health care at the local level. In addition, they may participate in the taxes that support Medicaid and Medicare. While undocumented immigrants are not formally "on the books," the Washington Post reported in 2001 that many pay uncredited Social Security taxes using false numbers and have federal income taxes withheld from their salaries. Privacy laws currently restrict using confidential documents filed with the Social Security Administration and the Internal Revenue Service to trace undocumented immigrants.

Immigrants come to the United States to work, not to obtain benefits. Providing health care for undocumented immigrants would not encourage more people to cross the border. According to the 2000 census, the share of the foreign-born population that entered the United States illegally has risen to 28 percent, up from 13 percent in 1994. The Urban Institute estimates that between one-quarter and one-third of the current annual immigration flow is undocumented. These trends suggest that the enactment of PRWORA, prohibiting undocumented immigrants from receiving public benefits, has not reduced immigrants' desire to come to the United States.

CSSB 309 would permit communities to make an investment in their future health care costs. Twice in the past two decades, Congress has enacted amnesty and legalization programs in response to high numbers of undocumented immigrants. If the federal government enacted a policy that would allow Texas' undocumented immigrants to become legal residents, at least half likely would pursue citizenship within the next 20 years. This is significant from a health standpoint, because when immigrants become citizens, they become eligible for public benefits. By paying for preventive care today, communities might avoid paying for costlier treatments in the future when these immigrants were entitled to public benefits.

OPPONENTS SAY:

This bill would drive up the cost of care for undocumented immigrants and increase local tax burdens. More people on the rolls equals higher cost, no matter who those people are. With health care costs soaring from year to year, local taxpayers should not be asked to pay for new populations of people.

In the case of undocumented immigrants, the perceived higher cost of emergency care versus that of ongoing care is a myth. While a single visit to an emergency room costs more than a visit to a doctor's office or clinic, the low frequency with which people use emergency rooms results in a lower overall cost. Unlike diabetes, most illnesses do not require ongoing care. People consult their doctors for colds, flu, and mild infections, and the frequency of those visits causes the cost of non-acute health care to exceed that of acute care. EMTALA, which ensures that all people, regardless of citizenship, have access to emergency care, strikes the optimal balance between health and cost.

The effect paying for ongoing health care for undocumented immigrants on emergency rooms would be negligible. The problem of patients clogging emergency rooms with non-acute conditions is due more to people's impatience than to their ability to pay. Furthermore, undocumented immigrants and other indigent patients have access to a number of private free or sliding-scale clinics in most metropolitan areas, yet emergency rooms continue to be misused.

The state's public health interests are well served by immunization programs. Vaccination campaigns are the only type of public health program that has been shown to reduce disease and that the PRWORA exemption allows the state to fulfill its responsibility to protect public health.

CSSB 309 is unlikely to have any effect on prenatal care. While prenatal care is important to birth outcomes, pregnant undocumented immigrants in particular would be unlikely to take advantage of publicly supported prenatal care for fear of possible deportation. If they were deported before giving birth, their infants would not be U.S. citizens.

Undocumented immigrants actually do not participate in all of the taxes that support indigent health care and therefore should not receive the benefits. Medicaid, the cost of which is split between state and federal funding, and Medicare are primary revenue streams for community hospitals. To avoid detection, many immigrants are paid in cash and do not pay federal income or Social Security taxes. Hospitals could not operate without federal funds, so many undocumented immigrants have not participated fully in the taxes that pay for indigent health care.

Even though the law denies most public benefits to undocumented immigrants, other factors have encouraged immigration, including educational opportunities and private businesses' demand for labor. The U.S. Supreme Court's *Plyler v. Doe* decision (457 U.S. 202 (1982)) requires public schools to accept children who are undocumented aliens without their having to pay tuition. The establishment of businesses that serve undocumented immigrants, such as check cashing businesses and day labor agencies, reflects a changing environment for undocumented immigrants. By creating a safer and more attractive environment for these immigrants, Texas would undermine the nation's immigration laws and encourage illegal activity. Texas should not reward undocumented immigrants for breaking U.S. laws by giving them health care.

OTHER OPPONENTS SAY:

This bill is not needed because the Texas Constitution and state laws authorize the district to pay for indigent health care without regard to immigration status. Proposition 3 (HJR 62 by Mowery) on the 1999 ballot was designed to eliminate duplicative or obsolete language in the Constitution. Art. 9, sec. 4 of the Constitution requires hospital districts to assume "full responsibility for providing medical and hospital care to needy inhabitants of the county." The amendment approved by voters did not change that language but deleted two other provisions in Art. 9, sec. 4 — one requiring hospital district voters to be property taxpayers, and the other an obsolete reference to anticipatory enabling legislation. Voters added the language about hospital districts' responsibilities to the Constitution in 1954. By reaffirming hospital districts' responsibilities, Texas voters affirmatively included undocumented immigrants.

Texas should not change the state law, but let the federal government decide how this issue fits into the national immigration and naturalization policies. Rep. Gene Green of Texas introduced legislation (H.R. 2635) in the 107th Congress that would have allowed state and local programs to provide preventive and primary health care to undocumented immigrants. That legislation died in committee, but Texas could memorialize Congress to change the federal law.

PRWORA itself is unconstitutional and cannot be the basis for action against a hospital district. The equal protection clause of the 14th Amendment to the U.S. Constitution prohibits states from denying any person within their

jurisdiction the equal protection of the laws. Because PRWORA treats citizens differently from immigrants, it is unconstitutional. PRWORA also might violate the 10th Amendment, which states that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." It can be interpreted to enlist state and local officials in the administration of immigration regulations, a clear federal responsibility, and that it prohibits the expenditure of state and local funds for health care, a power not delegated to the federal government by the U.S. Constitution.

NOTES:

The committee substitute added the prohibition against considering a person a resident if the person moved to the district for the sole purpose of obtaining medical care.