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OPINION COMMITTEE

FILE # ML-47779-15

I.D.# 47779

# Tom Green County



**RQ-0041-KP**

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July 31, 2015

The Honorable Ken Paxton  
Attention: Opinion Committee  
Attorney General of Texas  
PO Box 12548  
Austin, Texas 78711

Re: Whether there is a conflict between federal and state law under the Texas Indigent Health Care and Treatment Act; whether Tom Green County recipients of benefits under the Indigent Health Care and Treatment Act must be "qualified aliens," as defined by various federal laws to be eligible to participate in indigent health care in Tom Green County, Texas; and whether the Tom Green County Commissioner's Court has the authority to require recipients of indigent health care to be "Qualified Aliens" in order to receive benefits

Dear General Paxton,

The Honorable Dianna Spieker, Tom Green County Treasurer, has submitted a request to my office and asks whether or not Federal law and Texas Law are at odds with one another in regards to terminology: "Citizen" "Qualified Alien" and "Resident;" and whether the Commissioners' Court have the authority to require an applicant for Indigent Health Care Assistance be a Citizen of the United States in addition to being a Resident of the county to which they are applying for assistance? Attached you will find Ms. Spieker's request.

On behalf of Ms. Spieker, I respectfully ask that you provide an opinion as to whether there is a conflict between federal and state law under the Texas Indigent Health Care

and Treatment Act; whether Tom Green County recipients of benefits under the Texas Indigent Health Care and Treatment Act must be "qualified aliens," as defined by various federal laws to be eligible to participate in indigent health care in Tom Green County, Texas; and whether the Tom Green County Commissioner's Court has the authority to require recipients of indigent health care to be "Qualified Aliens" in order to receive benefits.

Various federal laws restrict access by some legal immigrants to certain programs and deny access by undocumented immigrants to many government funded programs.

Under Section 431 of the *Personal Responsibility and Work Opportunity Reconciliation Act* qualified aliens include legal permanent residents, asylees, refugees, aliens paroled into the U.S. for at least one year, aliens whose deportations are being withheld, aliens granted conditional entry (prior to April 1, 1980), battered alien spouses, battered alien children, the alien parents of battered children, and alien children of battered parents who fit certain criteria, Cuban/Haitian entrants and victims of a severe form of trafficking.

Under Section 402(a) of the Personal Responsibility and Work Opportunity Reconciliation Act, "qualified aliens" are ineligible for the Supplemental Nutrition Assistance Program for a period of 5 years beginning on the date of an alien's entry into the United States and most qualified aliens who enter the U.S. on or after August 22, 1996 are ineligible for Social Security Income until they become U.S. citizens, which generally requires at least five years of residency.

Under section 402(b) of the Personal Responsibility and Work Opportunity Reconciliation Act, states can decide the eligibility for Temporary Assistance to Needy Families and Medicaid of most "qualified aliens" who arrived in this country prior to August 22, 1996; states can decide the eligibility of most "qualified aliens" for the Social Services Block Grant (Title XX) regardless of date of entry; states can decide the eligibility for Temporary Assistance to Needy Families and Medicaid of most "qualified aliens" who arrived in this country prior to August 22, 1996; and states can decide the eligibility of most "qualified aliens" for the Social Services Block Grant (Title XX) regardless of date of entry.

Under Section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act, most "qualified aliens" entering the country on or after enactment are banned from receiving "federal means-tested public benefits" for a period of 5 years beginning on the date of the alien's entry with a qualified alien status. The Department of Health and Human Services' interpretation, published in the *Federal Register* on August 26, 1997 (62 FR 45256), designated Temporary Assistance to Needy Families and Medicaid (except assistance for an emergency medical condition under Medicaid) as the federal means-tested public benefits administered by the Department. Subsequently, the Department of Health and Human Services has communicated that the Children's Health Insurance Program is also a "federal means-tested public benefit." The Social Security Administration has stated that Supplemental Security Income is a "federal means-tested public benefit." The Department of Agriculture has also stated that

Supplemental Nutrition Assistance Program benefits are also means-tested. No other program has been determined to be a "federal means-tested public benefit" program.

Examples of aliens who are not "qualified aliens" and are ineligible for "federal public benefits" are non-immigrants, individuals here on time-limited visas to work, study, or travel; undocumented immigrants, individuals who entered as temporary residents and overstayed their visas, or are engaged in activities forbidden by their visa, or who entered without a visa; and individuals who are given temporary administrative status (e.g. stay of deportation, voluntary departure) until they can formalize permanent status, or individuals paroled for less than one year, or individuals under deportation procedures.

Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act defines "federal public benefit" as "any grant, contract, loan, professional or commercial license provided by an agency of the United States or by appropriated funds of the United States; and any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by the United States or by funds of the United States."

The Department of Health and Human Services' interpretation of the term "federal public benefit" published in the Federal Register on August 4, 1998 (63 FR 41658 – 41661) states that the following HHS programs meet the definition of "Federal Public Benefits" and are not otherwise excluded. Therefore, non-exempted providers of such benefits must verify the citizenship and immigration status of applicants in order to deny federal public benefits to non-qualified aliens.

- Adoption Assistance
- Administration on Developmental Disabilities (ADD) – State Developmental Disabilities Councils (direct services only)
- ADD – Special Projects (direct services only)
- ADD – University Affiliated Programs (clinical disability assessment services only)
- Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research Dissertation Grants
- Child Care and Development Fund
- Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low-Income Individuals (JOLI)
- Low Income Home Energy Assistance Program (LIHEAP)
- Medicare (except that an alien who is lawfully present and was authorized to be employed with respect to wages used to establish his or her Medicare Part A entitlement, is eligible for Medicare benefits)
- Medicaid (except assistance for an emergency medical condition)

- Mental Health Clinical Training Grants
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventive Health Services Program
- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program
- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)
- State Child Health Insurance Program (CHIP), and
- Temporary Assistance for Needy Families (TANF).

States have authority to determine immigrants' eligibility for state and local programs, with some conditions.

Under Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act, undocumented immigrants are not eligible for state/local public benefits unless the state passes a new law after 8/22/96 affirmatively making them eligible. No legislation is required to retain access to state and local benefits for non-immigrants or aliens paroled into the U.S. for less than 1 year.

Under Section 412 of the Personal Responsibility and Work Opportunity Reconciliation Act, States may restrict the eligibility of qualified aliens, non-immigrants, and certain parolees. They may not restrict eligibility for: refugees, asylees, or aliens whose deportation has been withheld, during their first five years from entry; members of the military, veterans, and their family members; and those who have been credited with 40 qualifying quarters.

Under Section 413 of the Personal Responsibility and Work Opportunity Reconciliation Act, states may not deny access by any alien to state or local benefits that meet the definition of excepted services described in Sec 411(b). States can now require an applicant for state or local public benefits to provide proof of eligibility.

The Texas Health and Safety Code Indigent Health Care and Treatment Act allows eligible indigent residents of Tom Green County to receive health care services. Section 61.002 of the Texas Indigent Health Care and Treatment Act defines "Eligible county resident" as "an eligible resident of a county who does not reside in the service area of a public hospital or hospital district" and "Eligible resident" as "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."

Section 61.03 of the Texas Indigent Health Care and Treatment Act addresses residence and provides

“(a) For purposes of this chapter, a person is presumed to be a resident of the governmental entity in which the person's home or fixed place of habitation to which the person intends to return after a temporary absence is located. However, if a person's home or fixed place of habitation is located in a hospital district, the person is presumed to be a resident of that hospital district.

(b) If a person does not have a residence, the person is a resident of the governmental entity or hospital district in which the person intends to reside.

(c) Intent to reside may be evidenced by any relevant information, including:

- (1) mail addressed to the person or to the person's spouse or children if the spouse or children live with the person;
- (2) voting records;
- (3) automobile registration;
- (4) Texas driver's license or other official identification;
- (5) enrollment of children in a public or private school; or
- (6) payment of property tax.

(d) A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

(e) The burden of proving intent to reside is on the person requesting assistance.

(f) For purposes of this chapter, a person who is an inmate or resident of a state school or institution operated by the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, Texas Youth Commission, Texas School for the Blind, Texas School for the Deaf, or any other state agency or who is an inmate, patient, or resident of a school or institution operated by a federal agency is not considered a resident of a hospital district or of any governmental entity except the state or federal government.”

Section 61.022 of the Texas Indigent Health Care and Treatment Act provides

“(a) A county shall provide health care assistance as prescribed by this subchapter to each of its eligible county residents.

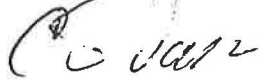
(b) The county is the payor of last resort and shall provide assistance only if other adequate public or private sources of payment are not available.”

While federal law specifically and narrowly restricts access to programs and resources for non-citizens, the Texas Indigent Health Care and Treatment Act is very broad.

It is unclear whether there is a conflict between federal and state law in this instance. If there is a conflict, the question becomes which law controls? And if there is a conflict between the two laws, must Tom Green County recipients of benefits under the Indigent Health Care and Treatment Act be "qualified aliens" as defined by various federal laws to be eligible to participate in indigent health care in Tom Green County, Texas? Finally, if there is not a conflict, does the Tom Green County Commissioner's Court have the authority to require Tom Green County recipients of indigent health care be "Qualified Aliens" in order to receive benefits under the Texas Indigent Health Care and Treatment Act?

Thank you for your consideration in this matter and thank you for your service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Chris G. Taylor". The signature is written in a cursive style with a large initial "C".

Chris G. Taylor  
County Attorney





*Dianna Spieker*  
"Your" Tom Green County Treasurer

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July 27, 2015

Chris Taylor  
Tom Green County Attorney

Ginger Treadwell  
Assistant County Attorney – Civil

Ref: Opinion Request

I am confused and requesting direction on whether or not Federal law and Texas Law are at odds with one another in regards to terminology: "Citizen" "Qualified Alien" and "Resident". Do Commissioners' Court have the authority to require an applicant for Indigent Health Care Assistance be a Citizen of the United States in addition to being a Resident of the county to which they are applying for assistance?

**Point #1**

Indigent Health Care clients are referred to as "Residents" in Health and Safety Code Chapter 61

*Sec. 61.003. RESIDENCE. (a) For purposes of this chapter, a person is presumed to be a resident of the governmental entity in which the person's home or fixed place of habitation to which the person intends to return after a temporary absence is located. However, if a person's home or fixed place of habitation is located in a hospital district, the person is presumed to be a resident of that hospital district.*

*Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.*

*Amended by: Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.091, eff. September 1, 2009.*

**Point #2**

The County obligation is payor of last resort. Procedurally this means that we must verify that the applicant does not qualify for other benefits.

*Sec. 61.022. COUNTY OBLIGATION. (a) A county shall provide health care assistance as prescribed by this subchapter to each of its eligible county residents.*

*(b) The county is the payor of last resort and shall provide assistance only if other adequate public or private sources of payment are not available.*

*Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.*

### Point #3

In reviewing US Department of Health & Human Services State and Local public benefits is limited to Citizens and Qualified Aliens

#### *IV. State and Local Programs*

<http://aspe.hhs.gov/hsp/immigration/restrictions-sum.shtml#TOC>

*States have authority to determine immigrants' eligibility for state and local programs, with some conditions. (Sec 411, 412)*

**A. Eligibility for state/local public benefits** *Undocumented immigrants are not eligible for state/local public benefits unless the state passes a new law after 8/22/96 affirmatively making them eligible. No legislation is required to retain access to state and local benefits for non-immigrants or aliens paroled into the U.S. for less than 1 year. (Sec 411(a))*

**B. States may restrict eligibility** *States may restrict the eligibility of qualified aliens, non-immigrants, and certain parolees. They may not restrict eligibility for: refugees, asylees, or aliens whose deportation has been withheld, during their first five years from entry; members of the military, veterans, and their family members; and those who have been credited with 40 qualifying quarters. (Sec 412)*

*States may not deny access by any alien to state or local benefits that meet the definition of excepted services described in Sec 411(b). States can now require an applicant for state or local public benefits to provide proof of eligibility. (Sec 413)*

### Point #4

Further review of the Social Security Rules, determine that only "Qualified Aliens" are eligible for benefits.

Do Non-Citizens Qualify for SSI?

When applying for ssi, your monthly income must not exceed the federal benefit rate (FBR), which is set by law. Can Non-Citizens Receive SSI Benefits? Non-US citizens or aliens can still receive Supplemental Security Income benefits, provided they meet the alien eligibility criteria under the 1996 legislation and its amendments. For a non-citizen to become eligible for SSI benefits, he/she must meet some important requirements:

- The person must be in the qualified alien category
- The person must meet certain conditions that would allow qualified aliens to receive benefits after completing the ssi form.
- A non-citizen must also meet all of the other requirements for SSI eligibility, including the limits on income, resources, etc.

I appreciate you time and await your answer.

Sincerely,



Dianna Spieker  
Tom Green County Treasurer