



**TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT  
ADMINISTRATION ADVISORY COMMITTEE MEETING**  
Thursday, November 5, 2015  
*Minutes*

The Tobacco Settlement Permanent Trust Account Administration Advisory Committee (AAC) met on Thursday, November 5, 2015 at 1:30 p.m.

**AAC Members present – in person or via conference call (cc):**

Betsy Briscoe (cc), Judge David Bird, Keri Disney–Story, King Hillier, Jonny Hipp, Carolyn Konecny, Michael Nunez; Eddie Olivarez, Commissioner Darryl Primo, Judge Woodrow Gossom (cc)

**Department of State Health Services (DSHS) Staff Members Present:**

Elaine McHard, Manager, Funds Coordination; Anne Stokey, Program Specialist, Funds Coordination

**Additional Participants present – in person or via conference call (cc):**

Windy Johnson for Donald Lee, Texas Conference of Urban Counties (CUC); Carah Beth Bass for Jim Allison, Allison Bass & Associates/Co Judges & Commissioners Association of Texas

---

---

**Opening of Meeting and Roll Call**

Ms. McHard introduced herself as the Manager of Funds Coordination and Management Branch, responsible for overseeing the Tobacco Settlement Distribution Program on behalf of DSHS, and identified other staff members present. Ms. McHard noted that the meeting was being held in accordance with the Open Meetings Act. Meeting minutes would be taken as well as digitally recorded, and a summary provided to all AAC members and stakeholders.

Roll call was taken by Ms. McHard. It was noted that Mr. Jerry Bearden was not present for roll call. A quorum of eight members was present for voting purposes.

Mr. Greg Hudson, Hudson O’Leary, LLP, was not present. Mr. Jim Allison, General Counsel for County Judges and Commissioners Association of Texas, was not present and sent Ms. Carah Beth Bass on his behalf. Don Lee, Council of Urban Counties was not present, and sent representative, Ms. Windy Johnson.

**Administrative Advisory Committee Member Updates/Introduction of New Members**

Mr. Hillier introduced and welcomed the following members to the committee: Judge Woodrow Gossom, Wichita County, new; Judge David Bird, new; Daryl Primo reappointed; Betsy Briscoe, reappointed; and Eddie Olivarez, new replacing position vacated by David Salsberry. All have a term limit of 8/31/2021, with exception of Mr. Olivarez.

## Adoption of October 22, 2014 Meeting Minutes

As Mr. Hillier was not present for the meeting in 2014, he recused himself from vote; Mr. Primo made a motion to approve the October 22, 2014 meeting minutes and motion was seconded by Jonny Hipp. Minutes were unanimously approved as written.

## 2015 Distribution

Ms. McHard outlined the timeline for the 2015 Tobacco Settlement Distribution as follows: expenditure statements were sent to all eligible political subdivisions on December 31, 2014 with instructions to return completed statements by March 31, 2015; DSHS certified to the Comptroller's office the percentage of the annual distribution to be paid to each eligible political subdivision on April 9, 2015, and the Comptroller's office distributed tobacco settlement proceeds on April 15, 2015. All 2015 audits were conducted and completed by DSHS between May and August, 2015.

A total of 303 political subdivisions were eligible for Tobacco Settlement proceeds, which were comprised of: 142 Hospital Districts, 160 Counties, and 1 City. Of these, 298 actually received tobacco settlement proceed payments in 2015, as 4 chose not to submit: Armstrong County, Loving County, Grapeland Hospital District, and Texhoma Hospital District; and one (1): Briscoe County, reported "0" expenditures. This total also included two new hospital districts: Graham Hospital District, and Somervell County Hospital District.

The net 2015 annual distribution amount was \$55,000,000, with the largest distribution going to Harris Health System at \$12,540,528.32, and the smallest of \$3.20 to King County. Ms. McHard referred members to the itemized list provided in their meeting packets.

Ms. McHard reviewed a memorandum from the *Tobacco Settlement Permanent Trust Account Investment Advisory Committee*, dated April 2, 2015 that was delivered to all political subdivisions along with their 2015 distribution. Chairman, Stuart Ford announced a 10% increase in this year's 2015 distribution, along with a significant addition to the Trust's Distribution Stabilization Account (DSA), also known as the "rainy day fund". In the interest of maintaining stable, predictable annual distributions, the IAC recommended that all political subdivisions budget to receive no more than the amount received in the 2014 distribution for 2016. Judge Gossom added further clarification as he also serves as a member of the Investment Advisory Committee.

## Review of 2015 Audits

Ms. McHard provided the committee with the results of the 2015 Tobacco Settlement statement audits, in accordance with the administrative rules requiring their annual review.

Thirty-five (35) political subdivisions were selected for audit based on the following criteria:

- Thirty-three (33) political subdivisions with 2014 expenditures exceeding their 2013 expenditures by \$500,000 or more, and not audited in the previous year;
- Two (2) political subdivisions applying for tobacco settlement proceeds for the first time

The audits resulted in six (6) of thirty-five (35) selected political subdivisions having been informed of overpayment. Those impacted are in agreement with the audit results. These funds will be recouped during the next distribution in 2016. Ms. McHard referred members to the *2015 Tobacco Settlement*

*Distribution Audit Findings*, and *2015 Audit Recoupment Summary* handouts, located in their meeting packets for further detail regarding audits.

Mr. Hillier pointed out the minimal dollar impact (less than 1%) of audit findings. Ms. McHard cited these positive results were due in part to the experience level of the political subdivisions with expenditure statement preparation.

No other questions or comments were posed by the committee regarding 2015 audits.

Daryl Primo asked for an overall picture of uncompensated care in Texas. King Hillier advised that Commissioner Traylor has information regarding UC in his presentation. Elaine said we might try to get a slide for members.

### **Review of Program Rules 25–Texas Administrative Code**

Ms. McHard provided an introduction of the rules review process, which is held every four years by DSHS to update language and offer clarification to enhance the understanding of the Program Rules for Distribution of Tobacco Settlement Proceeds to Political Subdivisions. Rule amendments are needed due to the continued responsibilities for implementing Health and Safety Code, Sections 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 the United States District Court Eastern District of Texas. Ms. McHard then turned it over to Mr. Hillier for review, discussion and vote.

After review of all proposed changes, motion was made to approve adoption to the rules. All proposed rule changes were unanimously approved and motion carried, with the following items removed, which will be discussed further with DSHS Legal at a later date.

102.3(b)(2)(D) – Members voted to remove, and motion carried, the reference to “medical waste disposal” as an ineligible expense for reimbursement. Initially proposed by Mr. Gossom. Mr. Hillier concurred that medical waste disposal should be reconsidered as allowable expenditure as it is very much part of, and becoming more complicated. Mr. Olivarez asked that it be reconsidered as well, especially county jails and clinics, medical waste disposal and disease outbreak becoming more prevalent and Ebola adding a whole new cost dimension. Mr. Olivarez motion to remove “medical waste disposal” from list of ineligible environmental services, considering current environment regarding infectious diseases.

102.3(b)(2)(K) – Members voted to remove, and motion carried, the reference to “inmate security at healthcare facilities” as an ineligible expense for reimbursement. Discussion ensued between members regarding the additional security required at non–secure healthcare facilities. Gossom expressed concerns and protocol, and if not reimbursed suggesting it be an allowable. McHard said she would research and Stokey provided rationale by legal would have to be under guard regardless of whether they were in a healthcare facility. Eddie – premise being that they are in custody already then should be under guard already. Judge is saying really extreme circumstances, dangerous criminal in ICU needs to be under guard all the time so a unique circumstance. If mental health facility is a secure facility – no guard duties required. In a hospital, non–secured facility have to provide guards a unique.

Mr. Hipp agreed that while prisoners have to be under guard anyway transporting to a medical

facility is over and above normal protocol. Logic about this doesn't apply if there is something medically wrong, requiring surgery or medical care.

Ms. Disney requested that should (K) security at health care facilities, be considered an allowable expenditure item, that it be struck down from the FAQ's as well if Legal agrees. Motion carried.

102.3(f)(1)(A) – DSHS Staff proposal to replace “5:00 p.m.” with “midnight”, was discussed. Members preferred “11:59 p.m.” to “midnight” as it would provide better clarity. Motion made and seconded.

Mr. Hipp requested an item for future discussion regarding the global climate worldwide, for committee to consider impact a political subdivision may have for high consequence infectious disease outbreak. How would it be eligible for expenditure reporting? Mr. Hillier agreed and stated it should be looked at since the rules were written over 15 years ago. Need to define at what level, local health authority or other, would have to declare a public health emergency in order to qualify. Ms. McHard advised that she could take that discussion forward if the committee agreed. Mr. Hipp then made a motion of record that the advisory committee take the item forward to explore the additional expense of high consequence infectious disease to a city, county or hospital district. Seconded, all were in favor, and motion carried.

Hipp complemented and thanked staff for reviewing rules.

### **Annual Meeting Schedule**

Ms. McHard reminded staff of the Investment Advisory Committee meeting would be held the following day, November 6<sup>th</sup>, 2015. Agenda and map included in member packets.

Reminded new members to complete open records and open meetings training.

Members requested the Administration Advisory Committee meeting be scheduled the afternoon before Investment Advisory Committee meeting, again next year.

Discussion for next year's meeting location was discussed due to tight security at DSHS. Ms. McHard stated she was not adverse to another location, but wants to make sure we have the necessary equipment, for conference call and public access. Council of Urban Counties and Texas Association of Counties have meeting facilities that may be considered.

Mr. Hipp asked to be kept apprised on rules review status, and Elaine agreed to send information as the process commences. Mr. Hillier offered to come in and meet with DSHS Legal representatives regarding rule changes they agreed to strike for this year's publication. Other resources were also volunteered such as their own legal departments.

### **Adjourn**

Mr. Hillier asked for motion to adjourn; motion made by Darryl Primo and committee members concurred to adjourn the meeting at 2:35 p.m.