

Expanding Broadband Access in Underserved Areas

Proposals for increased access to high-speed telecommunications services, commonly referred to as broadband Internet technology, have gained significant attention nationally and locally in recent months. In a speech delivered in Albuquerque, New Mexico on March 24, 2004, President Bush outlined his vision for “universal, affordable access for broadband technology by the year 2007,” arguing that such access would keep the nation on the cutting edge of technology and world trade while offering families “new ways to receive doctors’ advice in their homes.”

The topic also has gained the attention of elected officials in Texas. During testimony before the House Regulated Industries Committee on March 30, 2004, Texas Agriculture Commissioner Susan Combs suggested that lack of access to “affordable and competitive telecommunications services” has impeded rural economic development in the state. Noting that high-speed Internet access increasingly has become a business necessity, the commissioner touted broadband expansion as a way of promoting growth in commerce and tourism and expanding health-care options for medically underserved regions of the state.

Based on a belief that advanced telecommunications services improve quality of life and economic opportunities for citizens, broadband advocates share the goal of expanding access to those services. Some consensus exists regarding certain strategies, such as the benefits of encouraging public exposure to broadband at school and in the workplace. However, differences arise regarding options for promoting broadband availability. Some favor an active role for the state in developing a broadband policy to eliminate unequal access by managing the deployment of advanced services. Others favor a

“market-based” approach incorporating tax relief for broadband companies and consumers, reducing regulatory burdens on providers, and other incentives.

Data on broadband and internet use

A number of data reports released in Texas and elsewhere show that rural residents have less access to the Internet in general and to broadband services in particular than do their

(See Broadband, page 2)

HHS Reorganization: Medicaid and CHIP Policy Changes

This article is the second in a series about the changes made during the 78th Legislature in HB 2292 by Wohlgenuth, an omnibus health and human services reorganization bill.

The health and human services reorganization that resulted from HB 2292 also made changes to the state programs under the purview of HHS agencies, including Medicaid and the

Children’s Health Insurance Program (CHIP), the state’s two primary health insurance programs for low-income adults and children. Taken together, Medicaid and CHIP represent about 10 percent of the all-funds state budget and serve nearly 3 million adults and children. The legislation made a number of changes to Medicaid, including changes in the areas of cost-

(See HHS, page 7)

(Broadband, from page 1)

urban and suburban counterparts. According to a February 2004 report titled “Rural Areas and the Internet” by the Pew Internet and American Life Project, just 52 percent of rural residents nationwide used the Internet on a regular basis in 2003, compared to 67 percent of urban residents and 66 percent of suburban residents. Further, a quarter of rural residents, compared to some 10 percent of urban and suburban residents, reported that broadband access was unavailable to them. In addition, 80 percent of rural Internet

users in 2003 reported using slow dial-up Internet connections, while 63 percent of urban users and 67 percent of suburban users connected through dial-up. From 2000 to 2003, the proportion of urban Internet consumers who used broadband grew from 8 percent to 36 percent, while suburban use during this period grew from 7 percent to 32 percent. By contrast, use of broadband in rural areas grew from 3 percent in 2000 to just 19 percent in 2004. Thus, while high-speed Internet use is increasing throughout the nation, it appears to be growing at a slower rate in rural America.

What is broadband?

“Broadband” is a term synonymous with “advanced telecommunications capability,” which the Federal Communications Commission defines as communications infrastructure capable of transferring data at a speed of at least 200 kilobits per second (Kbps). Such capabilities allow an Internet user to download large files in seconds or browse rapidly through Web pages. There are several broadband platforms, each with different characteristics and possibilities for expanding Internet access:

Cable modem. This is the most popular form of advanced telecommunications service for residential users. Cable broadband is provided through the same network that brings cable television to homes and businesses, although substantial equipment upgrades are necessary before cable lines are capable of transmitting high-speed data. Cable-service providers operate in a deregulated marketplace, as state oversight of cable modem providers is very limited.

Digital subscriber lines (DSL). This form of broadband access, next to cable in popularity, is provided by phone companies and also requires network upgrades. DSL uses regular copper telephone lines and can be used simultaneously for voice and data transmission. In contrast to cable-service providers, the PUC exerts some regulatory control over over Incumbent Local Exchange Carriers (ILEC) that provide DSL service, but little or no authority over non-ILEC DSL providers

Wireless. Several types of broadband employ wireless technology, over which the state exerts little regulatory control. *Fixed wireless* links a transmitter in a home or business to a central radio antenna, allowing radio signals to substitute for a cable or wire-line network. *Wi-Fi* allows multiple users with portable connections who are within several hundred feet of a cellular transmitter simultaneously to use a single high-speed Internet connection. Another platform, *Wi-Max*, transmits its signal up to 30 miles from an antenna. Unlike Wi-Fi, Wi-Max requires a fixed network infrastructure and more powerful receiving antennas, meaning that Wi-Max essentially is an immobile technology.

Satellite. Satellite technology can facilitate broadband connectivity to virtually any location, although with installation and monthly subscription fees costing several hundred dollars, satellite currently serves only a small portion of the advanced services market. As with cable and wireless broadband providers, the state has little authority over satellite broadband operations.

Other services. Emerging technologies have the capacity to transform the unpredictable broadband market. Platforms that hold promise for the future include the ultra-fast fiber-to-the-home (FTTH), which provides fiber-optic cables with massive bandwidth directly to customers, and experimental Power Line Communications (PLC), which routes data through power distribution lines.

A report prepared in May 2004 for the Texas Department of Information Resources by the Telecommunications and Information Policy Institute at the University of Texas at Austin sheds additional light on the extent of broadband use in Texas. *E-Government Services in Texas: Results of a Public Survey* reveals higher levels of computer use and broadband access in urban and rural Texas than at the national level. In addition, it shows that metropolitan Internet users subscribe to broadband at twice the rate of rural users (50 percent versus 23 percent). Researchers also found different rates of use among demographic groups, showing, for example, that Anglo Texans use broadband at a higher rate than non-Anglos. The study indicates that ethnicity, educational attainment, and household income, in addition to geographic location, all influence a citizen's likelihood of access to advanced telecommunications services.

Measuring the demand for broadband

A key question surrounding what steps, if any, the state should take to expand access to broadband services is the extent to which demand exists for the technology in underserved areas. There is little disagreement as to the central role the Internet plays in modern life. As more economic, educational, and civic activity occurs on the World Wide Web, it becomes increasingly necessary for individuals and businesses to have Internet access. The majority of Internet users continue to use dial-up service through traditional phone lines, which may be sufficient for many users whose online activities are limited to e-mail and routine web surfing. However, high-speed access to the Internet offers vastly expanded opportunities for individual Internet use and especially for commercial use. Does the comparatively low rate in rural areas of Internet usage in general, and broadband subscription in particular, indicate that residences and businesses located there are satisfied with relatively slow and inexpensive dial-up service? Or do the data suggest the existence of unmet needs and untapped markets in underserved regions of Texas?

Telecommunications infrastructure map proposal. Despite research by the Pew project and others, there is a shortage of public data that would allow policymakers to better measure how much demand exists in Texas for the expansion of broadband services. The state

currently does not collect data that documents which communities have access to advanced services, because the Public Utilities Commission (PUC) lacks the regulatory authority to collect information on the extent of telecommunications infrastructure from service providers. Much of this information is proprietary in nature, and, for competitive and security reasons, advanced service providers are reluctant to release such data. Although the PUC does include some aggregated, county-level data on broadband availability in its [biennial report](#) to the Legislature on the scope of competition in telecommunications markets, there is little publicly collected information about the scope of broadband availability in specific communities, which areas currently are underserved, and whether companies are expanding access in rural areas.

Some observers favor the creation of a map or database cataloguing Texas' telecommunications infrastructure to help residents in underserved areas learn about the local presence and nature of broadband infrastructure. Such a map, they say, also could help local communities develop plans for acquiring advanced services and allow policymakers to determine which areas are underserved.

Opponents argue that any map should be voluntary so as not to compromise proprietary information or undermine security. They also question the usefulness of such a project and point out that rapid changes in the industry consistently would undermine the accuracy of any map or database.

Another challenge facing those who wish to expand the availability of broadband is that sparsely populated areas often are underserved because rural residents live far from the network and do not represent enough potential profit for providers to break even on investments necessary to extend access to isolated communities. In the past, government has intervened to address this problem in other utility services through subsidized or mandated access, with the Universal Service Fund for telephone service and the Rural Electrification Project for electricity standing as two successful examples. However, some observers point out that broadband access is not as essential as these utility services, and the primary barrier to broadband deployment is the low demand for the technology in underserved areas. They argue that increased demand for broadband will lead to an expanded supply.

Recent programs and proposals

TIF. One of the ways that the Legislature has addressed the issue of expanded access to advanced telecommunications services in recent years is through the Telecommunications Infrastructure Fund (TIF). Created in 1995 by HB 2128 by Seidlits, TIF was designed to provide telecommunications services in public schools, nonprofit hospitals, public libraries, and higher education institutions across the state, particularly in underserved areas. The fund was created and maintained through an assessment of 1.25 percent of telecommunications providers' taxable receipts. TIF was authorized to collect up to \$1.5 billion over 10 years, at which time it was set to expire. Over this period, TIF distributed more than \$1 billion to eligible entities for public access to advanced telecommunications services.

Citing the state's budget shortfall, Gov. Rick Perry froze \$224 million of the TIF board's fiscal 2003 appropriation in January 2003. The 78th Legislature subsequently eliminated the TIF board's appropriation and directed money from the fund toward other programs, including an existing technology allotment of \$30 per student that previously had been funded through general revenue. The Legislature did not appropriate any money for new grant awards for fiscal 2004-05 and instead appropriated \$2.1 million to the board to oversee existing grants prior to the board's 2005 Sunset review. Gov. Perry vetoed this appropriation and transferred all of the TIF board's remaining funds, assets, and employees to the Texas Workforce Commission, which is responsible for closing out all outstanding grants. The Legislature also raised TIF's revenue cap from \$1.5 billion to \$1.75 billion, allowing TIF to accrue revenue into 2005.

In its 2004 review of TIF, the Sunset Commission recommended that TIF be abolished, arguing that it had fulfilled its initial charge by providing more than 11,000 technology grants to eligible entities. TIF Sunset legislation is expected to be considered during the 79th legislative session in 2005.

During the fourth called session of the 78th Legislature, a provision in HB 1 by Grusendorf would have raised the TIF cap from \$1.75 billion to \$2 billion, extended the fund's expiration date until September 1, 2007, and authorized a telecommunications utility

through the monthly billing process to recover from customers the amount it paid into the fund. Supporters of the proposal said that the changes would have resulted in an additional \$250 million to be used for education spending through 2007. Opponents argued that the bill would have allowed Incumbent Local Exchange Carriers to pass their 1.25 percent assessment on to customers, further inflating taxes on telecommunications consumers.

PUC Advanced Services Rule. In 1999, the 76th Legislature enacted SB 560 by Sibley, which included a provision to allow a rural community to solicit broadband service from a telecommunications company operating in its area that also provides advanced telecommunications services in a Texas city with a population of at least 190,000. In implementing this bill, the PUC adopted administrative rule 26.143, establishing the procedure by which rural areas can solicit advanced services from companies.

To take advantage of the provision, a representative from a rural area must submit to the PUC a request made to a telecommunications provider for advanced services. This request then is posted on the PUC Web site for 60 days, during which time companies are free to submit proposals to the applicant to provide service in the area. If no company responds to the initial posting, the applicant can submit a bona fide retail request (BFRR) that identifies the need for at least 150 lines of service to specific retail customers within 14,000 feet of a central office in the area. Within 30 days of the publication of the BFRR in the *Texas Register*, each provider of local exchange service in the area that also offers advanced services in an urban area is required to submit a proposal for providing advanced services in the rural area. A company can contest its obligation to provide advanced services in an area after it has submitted its proposal. In the end, the PUC determines which company is required to serve the community.

Since the adoption of the PUC's advanced services rule in 2001, only two communities have participated in the process, leading some to question its effectiveness. Supporters of the advanced services rule as it is written argue that the provision offers a market-driven mechanism for the deployment of advanced services to underserved areas while safeguarding an economic return for firms that undertake the extensive capital investment that broadband deployment requires. The 150-line threshold requires rural

areas to demonstrate actual demand for broadband before companies upgrade their networks, protecting providers against incurring economic losses that could result from investing in communities where demand is weak and dispersed.

Critics of the advanced services rule argue that the requirement of 150 lines of service in each BFRR is unrealistic, since the low population density of rural areas means that many communities are unable to take advantage of the rule. They suggest reducing or abandoning the 150-line threshold requirement, allowing the PUC to calculate the cost and profitability of each request and award services based on more inclusive criteria.

SB 1783. In 2001, the 77th Legislature considered SB 1783 by Sibley, which would have allowed a community to request advanced service from a local telecommunications

provider. In response, the provider would have been required either to provide the service directly, contract with another entity to provide the service, or decline to provide the service. If the local provider declined to provide service, the community then would have been authorized to provide the service itself, which is prohibited under current law. Communities could have sought funding for such a project from TIF or other public grant programs. Although the House and Senate passed separate versions, the bill died in conference committee.

Supporters said SB 1783 would have expanded broadband access through market forces by encouraging private telecommunications providers to extend advanced services to underserved areas. If telecommunications companies declined to provide broadband, then communities would have been able to seek TIF money to deploy advanced services without regard to urban or rural

Initiatives in other states

Michigan is the leader in developing a statewide broadband policy, according to a 2003 report titled "The State Broadband Index" by the industry group TechNet. The report, which ranked Texas fourth, gave Michigan high marks for adopting comprehensive policies that encourage the deployment and promotion of advanced telecommunications.

The linchpin of Michigan's broadband policy is its LinkMichigan Initiative, a four-step plan which focuses on:

1. aggregating demand by tying together requests for broadband service among multiple public-sector and educational users in order to expand deployment for advanced services networks;
2. reforming and streamlining right-of-way access for broadband firms;
3. improving public access to information on network installation schedules and the locations served by networks; and

4. providing financial assistance and legal authority for local governments to develop their own local advanced services networks.

North Carolina offers advanced broadband access through its North Carolina Information Highway, a state partnership with private telecommunications firms for the construction of a statewide broadband network open to public access. The state also supports various decentralized programs to promote broadband use and access in local communities.

Colorado has developed a partnership with Qwest Communications and other telecommunications providers called the Colorado High Speed Digital Network (CHSDN) to leverage public-sector demand for broadband service and expand network access to all regions of the state. The state serves as the anchor tenant on the CHSDN through the Multi-Use Network, an initiative that opens the private broadband network to public and nonprofit entities. This creates sufficient demand to encourage telecommunications providers to expand their infrastructure into regions that otherwise might be underserved.

location. This would have addressed failures of the market in areas where private firms are reluctant to invest due to lower demand for their services.

Opponents said that rapid deployment of telecommunications made SB 1783 unnecessary, since the market already ensures that broadband services are deployed efficiently throughout the state. They also argued that the bill unfairly would have required urban customers, many of whom do not have broadband access in their own communities, to subsidize broadband in rural areas through the TIF assessment on telecommunications and mobile telephone bills.

Current policy proposals

Adoption of a statewide broadband policy.

Some argue that the state should adopt a policy of universal service regarding broadband access, suggesting that active involvement by the state would best ensure that all Texans enjoy access to advanced telecommunications services regardless of their geographic or demographic status. Supporters of vigorous state involvement emphasize different options that could constitute a statewide broadband policy. Such measures could include requiring broadband providers to introduce services at the same rate across the state, encouraging network extension to underserved areas through public grants and tax credits, linking private sector providers with underserved communities, opening the state-administered network to underserved areas, and requiring the deployment and use of broadband by all state government offices.

Opponents of an activist role for the state favor an unregulated marketplace, arguing that any broadband policy should rely on market forces to direct the scope and pace of broadband deployment. While these advocates support government attempts to increase demand for broadband technology, they generally oppose any direct government mandates that they say could distort the market and grant one type of technology an advantage over another. They argue that the low rate of adoption for this technology is the primary reason for patchy broadband service across the state. Thus, the state should focus on increasing exposure to the technology by encouraging the use of high-speed Internet in schools, government offices, and other public places. Many of those who oppose direct government

For more information

Those seeking to learn more about state policy toward advanced telecommunications services may be interested in the following reports:

The House State Affairs Committee's 2003 interim [report to the 78th Legislature](#) explores several aspects of broadband policy in Texas based on input from various interested parties and a review of numerous state and federal broadband issues.

The House State Affairs Committee's 2001 interim [report to the 77th Legislature](#) addresses several broadband issues, including whether broadband service providers should be required to provide open access to their networks to competitors.

Availability of Advanced Services in Rural and High Cost Areas, published in 2001 by the PUC, deals specifically with broadband deployment.

intervention support a broadband policy that would expand the use of e-government services, identify and lower regulatory barriers that impede broadband rollout, and facilitate rights-of-way acquisition for firms expanding their broadband facilities.

Allow communities to develop and own networks.

According to some observers, underserved cities and counties should be allowed to provide telecommunications services themselves. Supporters say that in instances where the market has failed to deliver advanced services in sparsely populated areas, publicly operated broadband networks would enable citizens to subsidize advanced services that otherwise would be absent from their communities.

Opponents argue that public ownership of broadband infrastructure inevitably would compete with private firms and could deter private investment and competition across the state. Public dollars should be used for basic services, they say, and rural taxpayers should not have to subsidize services that private companies can provide themselves.

— by **Tedd Holladay**

(HHS, from page 1)

sharing, estate recovery, prescription drugs, and enrollment for children. The primary changes in the CHIP program were a lowering of the family-income level for eligibility and changes in the enrollment process.

Medicaid policy changes

The Texas Medicaid program serves low-income families and disabled or elderly people, with federal funds paying 60 cents and state funds paying 40 cents of every dollar spent on services. Medicaid is a federal entitlement program, which means that states cannot limit enrollment in or use of the program by those who are eligible, although Texas generally allows only the minimum eligibility required by federal law. Within certain limits, federal law allows states to require Medicaid recipients to share the cost of the medical care delivered to them.

Cost sharing. HB 2292 directs HHSC to adopt the maximum cost sharing allowed under federal law. The commission has completed a preliminary policy analysis and is evaluating whether the administrative costs would make a cost-sharing program worthwhile.

In 2002, the commission partially implemented cost-sharing requirements to fulfill a cost-cutting mandate in the general appropriations act for fiscal 2002-03. In December 2002, HHSC implemented cost sharing for Medicaid recipients over age 19 in the form of copayments. Recipients were asked to pay 50 cents for generic prescription medications and \$3 for each brand-name prescription medication. In addition, non-emergency services provided in an emergency room required a copayment of \$3. Copayments were limited to \$8 per person per month, and recipients had to keep receipts to prove they had met this limit. Providers could not deny services to recipients who could not pay, but they could bill recipients. Pregnant women and institutionalized people were exempt from the copayment.

HHSC also would have reduced the amount of the reimbursement to a pharmacy for prescriptions provided to Medicaid recipients who had to make copayments.

However, in the same month, a state district court ordered HHSC to halt the program on the basis of a temporary restraining order sought by Texas pharmacists.

While HHSC has not yet proposed the rules that would re-implement cost sharing in the Medicaid program, advocates for low-income families and other recipients say that HHSC should take into account the pitfalls identified during the last evaluation of cost-sharing in 2002. One of the concerns at that time was the burden for families of tracking how much they had paid in copayments so that they could show when they had reached the monthly limit. They say that HHSC should consider using smart-card technology, if it proves effective, to track copayments. Recipients would present a Medicaid card with an embedded chip that contained biometric information verifying that the patient was the recipient. It is expected to reduce vendor fraud by eliminating so-called "ghost visits" that occur when a doctor's office bills Medicaid for a visit that never took place. This technology currently is being evaluated by HHSC at six sites as a pilot program to reduce fraud and abuse. (For more information about cost-sharing considerations, [click here](#) to see "HHSC Work Group Presents Options for Cost Sharing by Medicaid Clients," HRO *Interim News* Number 77-7, April 30, 2002.)

Estate recovery. The Medicaid program pays for a portion of nursing-home care for low-income elderly adults. Federal law, under 42 U.S.C., Section 1396p(b)(1), requires states to recover the cost of nursing-home services from the estates of deceased patients older than age 55. Even if they own a home, older adults with low incomes may be eligible for Medicaid because the value of that asset is not counted when applying for Medicaid-funded nursing-home care. While the federal law has been in place for many years, Texas is one of two states that has not yet implemented an estate recovery program.

HB 2292 directs HHSC to establish an estate recovery program and requires that funds recovered through the program be deposited in the Medicaid account to fund long-term care services. The federal law requires notice to recipients and has protections against undue hardship under certain circumstances; for example, if a surviving spouse or an adult disabled child lives in the homestead that is part of the deceased's estate. Texas law prevents some recovery

because of state homestead-protection laws and the Probate Code, which ranks Medicaid payment recovery behind other claims, such as mortgage liens, child support, and taxes.

HHSC has drafted a proposed rule after considering public input on estate recovery. Under the proposal, the recovery process would begin only after the death of the recipient, when the state would file a claim against the estate if it were cost effective to pursue it. The state would not file a claim if there were a surviving spouse, a child under age 21, or a disabled child of any age living at home. Relatives also could apply to exempt \$50,000 of the value of a homestead that is part of an estate, and the state could grant a hardship waiver if the estate property were a family farm or a family business, if beneficiaries of the estate would become eligible for public assistance if a recovery claim were made, or if a relative would be able to

discontinue public assistance by receiving the estate. The rule would apply only to people applying for Medicaid after the rule took effect on September 1, 2004, assuming the federal Centers for Medicare and Medicaid Services (CMS) approves the state's plan.

Some opponents of the plan say that the state is under no real pressure to implement an estate-recovery program because CMS is no more likely to implement sanctions now for noncompliance than it was previously. During each special session of the 78th Legislature, Rep. Ruth Jones McClendon has filed legislation to repeal the estate-recovery provision in Texas law. The Legislature in 1987, then under no federal requirement, adopted an estate recovery program requiring a reimbursement lien on the estates of deceased Medicaid recipients, but repealed it in 1989.

The \$1.2 billion question

Many of the policy changes in HB 2292 that relate to eligibility for health services were a direct response to the budget shortfall the Legislature faced at the beginning of the 2003 regular legislative session. As House and Senate conferees were finalizing the state's fiscal 2004-05 budget in May 2003, the U.S. Congress appropriated \$20 billion in state fiscal relief funds and sent Texas \$1.3 billion, including \$553 million in Medicaid matching funds. While some of those funds were used for the fiscal 2004-05 budget, some remained unallocated.

In early April of 2004, the comptroller estimated that the state had \$583 million in unallocated funds and recommended to the governor that these funds be used to restore funding for CHIP. At the beginning of the fourth called session at the end of April, the comptroller updated the constitutionally required biennial revenue estimate to include greater-than-expected sales tax receipts. Including the \$583 million in unallocated funds, the state now has a total of \$1.2 billion in funds that could be appropriated.

Advocates for CHIP say that the funds should go toward restoring some of the cuts in the program and funding health services for the 120,000 children who have lost their CHIP coverage because of the policy changes. They estimate that \$93 million would restore CHIP benefits and coverage to fiscal 2003 levels, before the changes made in HB 2292 and the fiscal 2004-05 budget. Other advocates say that the money should be used to restore all health and human services cuts, at a cost of \$835 million in general revenue.

In April 2004, HHSC released its caseload and cost forecast for Medicaid and CHIP, which indicates that the monthly caseload for Medicaid, the cost per client for CHIP, and both caseload and cost for the vendor drug program all are trending higher than budgeted in the general appropriations act. As in the past, higher actual costs in these programs may require a supplemental appropriation by the end of the fiscal biennium to account for the difference between what was budgeted and what was spent. The \$1.2 billion in unallocated funds could be used by the 79th Legislature to pay for a supplemental appropriation if it was not spent before then.

Prescription drugs. HB 2292 directed HHSC to implement a preferred drug list with a prior authorization requirement for the Vendor Drug Program, which administers Medicaid and CHIP prescription drug benefits. The legislation also directed HHSC to negotiate supplemental rebates with drug manufacturers.

Texas offers prescription drug coverage to all Medicaid recipients, although it restricts the number of prescriptions for some groups. As prescription drug expenditures have risen rapidly in Texas' Medicaid program, policymakers have looked for ways to ensure that drugs are used appropriately and in a cost-effective manner. Medicaid, like private health insurance programs, has experienced growth in the number of newer and more expensive drugs prescribed, both because some newer drugs are more effective and because manufacturers market their new drugs aggressively.

HB 2292 created the Pharmaceutical and Therapeutics Committee to advise the HHSC commissioner about which drugs to include on the state's prescription drug list (PDL) and which drugs, generally newer and costlier medications, require prior authorization before a prescription can be filled. HB 2292 also requires HHSC to negotiate supplemental rebates from manufacturers in addition to the mandatory rebates that manufacturers pay for inclusion in the Medicaid program. These voluntary rebates can be negotiated with manufacturers of drugs reimbursed by Medicaid, CHIP, or any state hospital. Information about the negotiation is confidential, but inclusion on the PDL requires manufacturers to offer a supplemental rebate.

The Pharmaceutical and Therapeutics Committee convened in January 2004 to address the inclusion and prior authorization status of certain drugs and classes of drugs on the PDL. The prior authorization requirement was phased in at the beginning of 2004, and as of the end of February, all patients seeking to fill prescriptions for less preferred drugs on the PDL must have their physician obtain approval through the Texas Prior Authorization Center. (The complete Medicaid PDL for Texas is available online at <http://www.hhsc.state.tx.us/HCF/vdp/pt/TXMPDL.pdf>.)

Advocates for mental health services say that the PDL and prior authorization requirements may harm mentally ill patients, particularly new clients who did not have a

previously established history with certain drugs, by forcing them to jump through extra hoops to access the drugs they need. For example, two patients suffering from depression often respond quite differently to the same medication or class of drug. Advocates say that a patient who might benefit immediately from an "atypical" antidepressant would be required first to undertake a six-week trial of an SSRI (another class of antidepressant drugs) plus two preferred atypical antidepressants. Although a certain amount of trial and error is inevitable in determining which drugs work best for individual patients, mental health advocates say that prior authorization requirements should not present an additional hurdle to the development of an effective treatment plan.

While the new prescription drug plan saves money up front by reducing the cost of "atypical" medications, critics say it fails to account for the cost of the savings. Because the preferred list does not include one of the most popular antipsychotic agents, Zyprexa, the new PDL and prior authorization requirements could result in poor clinical management of vulnerable patients, they say. The most pressing fear is that these patients will not try a whole list of drugs before they get to the one that works because they will have dropped out of treatment by that time. Patients who drop out of treatment are likely to end up more dependent on the state, advocates say, because many wind up in emergency rooms or jail.

Other stakeholders also are concerned about access to certain drugs under the PDL. People with HIV or AIDS sufferers may not be able to get the drugs they need because the manufacturer has not offered a supplemental rebate. These drugs are in high demand, and the manufacturer has little incentive to offer the state another rebate. Unlike mentally ill patients who need to be prescribed the correct drug the first time, these patients need access to a wide range of drugs because the disease can become drug-resistant.

Medicaid enrollment for kids. In 2001, the 77th Legislature enacted a Medicaid simplification bill, SB 43 by Zaffirini, which changed the Medicaid documentation and eligibility verification processes, including those used to evaluate assets and resources, to be the same as the simpler ones used in CHIP. The act also allowed

recertification of a child's eligibility for medical assistance by telephone or mail, rather than in person, and required continuous eligibility for 12 months rather than six.

HB 2292 postpones implementation of 12-month continuous eligibility until September 1, 2005, as a cost-saving measure. It requires that recertification reviews be conducted by telephone interview or by a combination of telephone interview and mail-in applications, instead of by mail-in application alone.

Advocates for low-income and indigent families say that the change in recertification policy from mail-in allocation alone will be a further burden on the new call centers proposed by HB 2292. To process client applications, HHSC is making the transition from in-person eligibility centers to call centers. Critics say that the call center model already is based on faulty assumptions – the success of the state's new computer system (TIERS), the viability of multi-channel access using community-based organizations and the 211 phone system, and the impact of losing 4,500 eligibility determination specialists. Adding more Medicaid recertification requirements to the system,

they say, likely will result in more “rationing by inconvenience” – i.e., making the process of qualifying for Medicaid benefits so difficult that many eligible citizens will drop off the rolls or fail to apply in the first place. (For more information about the call center proposal, [click here](#) to see “Health and Human Services Reorganization: Consolidation, Call Centers, and Councils,” HRO *Interim News* Number 78-5, May 26, 2004.).

CHIP policy changes

CHIP serves children in low-income families who do not qualify for Medicaid. It is not an entitlement program, but federal funds pay 75 cents and state funds pay 25 cents of every dollar in the program. The eligibility income limit is 200 percent of the federal poverty level (FPL), or \$31,340 for a single mother with two children. Before the enactment of HB 2292, a child who left another health plan had to wait 90 days to receive services under CHIP, and children deemed eligible for CHIP remained eligible continuously for the following 12 months, regardless of changes in family income.

Figure 1: CHIP cost sharing

Income level	Monthly premium	Office visit	Hospital inpatient	Cap on copays
Below 100% FPL*	\$0 no change	\$3 up from \$0	\$10 up from \$0	2.5% of income increase from \$100
101% to 150% FPL	\$15 up from \$0**	\$5 up from \$2	\$25 no change	2.5% of income increase from \$100
151% to 180% FPL	\$20 up from \$15**	\$7 up from \$5	\$50 no change	5% of income*** no change
186% to 200% FPL	\$25 up from \$18**	\$10 no change	\$100 no change	5% of income*** no change

*Federal poverty level (see above)

**in tandem with the monthly premium increase, the enrollment fee (previously one month's premium) was eliminated.

***no change, but the 6-month eligibility makes it 2.5 percent per six months, or 5 percent per year.

The reorganization bill maintained the income eligibility level for CHIP, but imposed a series of policy changes. HB 2292:

- establishes an asset test for eligibility;
- eliminates “income disregards” – expenses that drop a family’s income to the eligibility level, such as child care expenses or child support payments;
- reduces continuous eligibility from 12 to six months, requiring families to become recertified every six months;
- expands the 90-day waiting period to all applicants;
- increases cost-sharing; and
- eliminates dental, vision, and other services not required under federal law.

The elimination of income disregards and certain services, increase in cost-sharing, and installation of the 90-day waiting period were implemented during the fall of 2003. The change in continuous eligibility also began incrementally that autumn, and as of June 2004, all CHIP recipients now have six months continuous eligibility. HHSC, in response to HB 2292, has implemented increases in the monthly premiums paid by some CHIP participants based on their income levels (see Fig. 1 on page 10.) HHSC has not yet removed any families from the program for failure to pay the new premiums, but sent out 75,000 notices of delinquent payments in June 2004. Families that fail to respond to the notices will be removed from the program after two more months of non-payment, as of September 2004.

As a cost-saving measure, HHSC has proposed rules modeled on those for the food stamp program to implement the asset-test requirement for families with incomes above

150 percent of FPL. The proposed limit is \$5,000 on all liquid assets, excluding a home, cars, and some types of retirement, burial, and other accounts. Limits on the value of cars would be \$15,000 for the first vehicle, then \$4,650 for any others. The final asset-test rules were published in the *Texas Register* in May 2004 and will go into effect in August 2004.

Advocates for low-income families say that the changes in CHIP are too drastic. The CHIP cuts that came into effect in September 2003 already have dropped caseloads to what the 78th Legislature envisioned for the coming biennium, from 500,000 kids in September 2003 to 370,000 kids in April 2004, and enrollment trends indicate that the caseload for fiscal 2005 will fall below the budgeted amount (340,000 kids for fiscal 2005). Since it is unnecessary to further thin the CHIP rolls, advocates say that policies such as asset testing, shorter eligibility periods, and cutting benefits serve only to make it more difficult for some of the state’s most vulnerable residents to access affordable health-care.

According to HHSC’s spring 2004 caseload forecast, however, the caseloads for the current fiscal year are running above projections, and other factors, such as higher renewal rates, are likely to bring fiscal 2005 caseloads in as projected. Their analysis of enrollment trends suggests that the reasons families fail to re-enroll are similar to those in previous years and that more frequent eligibility recertification has not discouraged families from submitting renewals. They also found that the new eligibility requirements accounted for only 12 percent of families who did not re-enroll.

— *by Kelli Soika*

HOUSE RESEARCH ORGANIZATION



Steering Committee:

Roberto Gutierrez, *Chairman*
Dianne White Delisi, *Vice Chairman*
Harold Dutton
Peggy Hamric
Bob Hunter
Carl Isett
Mike Krusee
Jim McReynolds
Geanie Morrison
Elliott Naishtat
Joe Pickett
Robert Puente
Elvira Reyna
G.E. "Buddy" West
Steve Wolens

John H. Reagan
Building
Room 420
P.O. Box 2910
Austin, Texas 78768-2910

(512) 463-0752
FAX (512) 463-1962

www.capitol.state.tx.us/hrofr/hrofr.htm

Staff:

Tom Whatley, *Director*; Ben Davis, *Editor*;
Rita Barr, *Office Manager/Analyst*;
Betsy Blair, Kellie Dworaczyk, Patrick K. Graves,
Tedd Holladay, Kelli Soika, *Research Analysts*