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The Senate of the State of Texas

Jane Nelson

Senate District 12

February 4, 2004

Committees:
 HEALTH AND HUMAN SERVICES, CHAIR
 FINANCE
 INTERNATIONAL RELATIONS & TRADE
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OPINION COMMITTEE

The Honorable Greg Abbott
 Attorney General of Texas
 P.O. Box 12548
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FILE # ML-43477-0
 I.D. # 43477

RQ-0178-GA

Dear General Abbott:

As chair of the Senate Health and Human Services Committee, I request your opinion in regard to an issue that arises under Section 285.201, Health and Safety Code, as added by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003. Additional clarification is needed for application of this section.

Federal law, in 8 U.S.C. Section 1621(a), states that an alien who is not a member of a category described by that subsection is not eligible for state or local public benefits, including health benefits, unless certain exceptions apply. Section 1621(d) provides an exception to Section 1621(a). Section 1621(d) states that "[a] State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." A previous attorney general determined that Texas did not have a statute adopted after August 22, 1996, that affirmatively provided that residents of hospital districts were eligible for public benefits without regard to immigration status and, therefore, 8 U.S.C. Section 1621(a) prohibited providing nonemergency health benefits to aliens who were not lawfully present in the United States. Op. Tex. Att'y Gen. No. JC-0394 (2001).

In response to the 2001 opinion, the 78th Legislature enacted Section 285.201, Health and Safety Code, as added by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003. The language of that section was offered by Representative Noriega and adopted as Floor Amendment No. 126 to House Bill No. 2292, a comprehensive bill with respect to the provision of health and human services in this state. Section 285.201 states, in applicable part: "As authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively establishes eligibility for a person who would otherwise be ineligible under 8 U.S.C. Section 1621(a), provided that only local funds are utilized for the

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provision of nonemergency public health benefits." Section 285.201 obviously tracks the text of the federal law authorizing the state law exception to the prohibition on providing public health benefits to a person who would otherwise be ineligible under federal law for those benefits by stating that Chapter 285, Health and Safety Code, "affirmatively establishes eligibility" for a person who would otherwise be ineligible. Section 1621(d) requires the state law exception to "affirmatively provide for such eligibility."

In offering Floor Amendment No. 126 to House Bill No. 2292, Representative Noriega stated that "this amendment allows local hospital districts to use their local monies, not state dollars, in accordance with federal law" (emphasis added). Debate on Tex. H.B. 2292 on the Floor of the House, 78th Leg., R.S. (Apr. 25, 2003) (transcript available from Office of the House Committee Coordinator). Despite this clear statement of legislative intent, at least one hospital district has interpreted Section 285.201, Health and Safety Code, as added by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, as requiring hospital districts to use money from local sources to provide public health benefits to aliens not lawfully present in the United States. An interpretation of Section 285.201 as a mandate, rather than an authorization, to provide these services using local money is clearly not consistent with legislative intent and would be financially burdensome to hospital districts in this state.

Because of these concerns, please provide me with your opinion in regard to the following question:

Does Section 285.201, Health and Safety Code, as added by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, mandate that a hospital district provide nonemergency public health benefits to illegal aliens who would otherwise be ineligible for those benefits under 8 U.S.C. Section 1621(a), or does it simply allow a hospital district to provide those services?

Thank you for your consideration of this matter.

Sincerely,



Senator Jane Nelson

cc: Harold Samuels, Chair, JPS Health Network Board of Managers
Tarrant County Legislative Delegation