

COUNTY OF SACRAMENTO CALIFORNIA

For the
Agenda of:
June 15, 2009

To: Board of Supervisors

From: Sheriff's Department
Correctional Health Services Division

Subject: Report Back On Possibility Of 340b Financing For Pharmaceuticals And/Or
Medicaid For Incarcerated Individuals

Contact: AnnMarie Boylan, Chief
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Background

Per your Board's request this item reports back on the following issues:

1. Federal criteria for utilizing 340b pricing for the purchase of pharmaceuticals.
2. Impact of a change in legislation which would allow the billing of Medicaid for services provided in the County's jail facilities.

Discussion

Federal 340b Pricing for Pharmaceuticals:

The Federal Government provides a price break of approximately 30% on certain pharmaceuticals to operators of rural and local clinics that provide services to the indigent. Historically, the County as a recipient of federal funding had always been able to purchase drugs at the lower cost and passed these savings along to all of its customers (the jail systems being one of them). In 2005, the Director of Pharmacy for the Department of Health and Human Services questioned the appropriateness of these savings being passed along to the several of its customers specifically Correctional Health, Juvenile Medical and the Mental Health Treatment Center.

County Counsel was asked to review the federal regulations and make a recommendation. In September 2005, County Counsel issued an opinion (see attached) which stated that all three operations did not meet the criteria for Federal 340b pricing and a budget adjustment was done to offset the increased cost of pharmaceuticals. In September 2005, the CEO 2005-06 recommended budget included an augmentation for all three operations due to the increased cost of drugs and at that time the impact to CHS was an increase in annual drug cost of \$1.5 million of which 700K of general fund offset was provided.

In recent years CHS management has researched what the impediments to qualifications for this and other federal revenue streams and has found the critical issue to be the jail's ability to draw down Medicaid funding. Federal public health grant funding as well as 340b pricing is tied to a medical provider's eligibility to be a Medicaid provider and provide Medicaid eligible services.

Since inmates lose their eligibility for Medicaid when they are incarcerated it restricts the division's ability to bring in new revenue sources from public health grants or expense offsets such as 340b pricing.

Advocacy for Legislative Change:

After the May Board Hearings, the Legislative Advocate's office followed up with the Correctional Health Division to pursue this issue. On May 14, 2009, the California State Association of Counties sent a letter advocating legislation titled Restoring the Partnership for County Health Care Costs Act of 2009 (H.R. 2209). This legislation would re-establish the responsibility of the federal government to assist in the medical costs of inmates/wards that have not yet been adjudicated. This would apply to both adults and juveniles and would allow for continuation of benefits such as Medicaid, Medicare and Supplemental Security Income. (A copy of the letter is attached for your information.)

Financial Impact of Medicaid Availability:

It is hard to estimate with all certainty the impact of Medicaid availability throughout the system. As was reported to your Board in February 2007, a three month study was conducted of non-adjudicated inmates to determine the percentage of non-adjudicated inmates who were eligible for Medicaid prior to their incarceration. Based on that very limited snapshot a conservative estimate is that approximately \$700,000 in annual Medicaid cost recovery would be available to the Division. This is a conservative estimate as this estimate focused only on the Medicare/Medi-Cal reimbursement and did not include the expense offsets from 340b pricing (approx. \$1 million annually) and the potential availability of public health grants for illnesses such as hepatitis, AIDS and tuberculosis.

Recommendation:

A change in legislation that would allow the jail system to become a Medicaid provider and allow inmates to retain their Medicaid eligibility would allow for Medi-Cal billing, would provide eligibility for the 340b discount and also would allow the division to be eligible to compete for various public health grants.

Attachments:

1. CSAC letter dated 5/14/09 – support for legislation HR 2209
2. County Counsel opinion dated 6/17/05 – Participation in 340b Pharmacy Discount Program