

# **TOBACCO SETTLEMENT REVENUE IN ORANGE COUNTY**

**2003-2004 Orange County Grand Jury**

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## **ABSTRACT**

The purpose of this study was to identify the impact of the Tobacco Settlement Fund and determine if it is being used properly and efficiently. Following the Nationwide Tobacco Litigation Settlement in 2000, Orange County began receiving approximately \$35 million annually as its share of the settlement. With the passage of Measure H, the allocation of the fund has been divided among six different categories that include medical needs of seniors, indigents, public safety, and prevention and treatment of substance abuse and mental illness. The conclusion is that the many programs administered by the Health Care Agency and the construction program administered by the Sheriff-Coroner are in compliance with the law.

## **BACKGROUND**

Tobacco smoking is a nationwide problem affecting the welfare and health of the country. Nearly everyone is affected, either directly by suffering from a tobacco-related illness, or indirectly by caring for or bearing the medical expenses of someone with such an illness. Cigarettes kill more than 400,000 Americans every year, more deaths than from AIDS, alcohol, car accidents, murders, suicides, drugs and fires combined.

Beginning in 1997, the Attorneys General of 46 states sued all of the tobacco companies including the largest of the four companies, alleging their complicity in causing tobacco-related problems. Intense legal activity followed as the states tried to recover their costs of medically treating their residents with health problems caused by tobacco use. The litigation was finally settled in 1998 when the Master Tobacco Litigation Settlement was finalized. As part of the settlement, seven tobacco companies agreed to pay \$206 billion over 25 years, and an additional \$9 billion per year in perpetuity to 46 states, the District of Columbia and five United States territories, as long as the companies remained solvent.

On Aug. 5, 1998, several California cities and all the counties entered into an agreement with the State of California regarding how California's share of the settlement was to be allocated. That agreement was documented in a Memorandum of Understanding.

In 2001, the California Legislature passed a series of bills that established the Tobacco Settlement Fund (TSF). That legislation specified that California's portion of the settlement was to be used for:

- Smoking-cessation services
- Enforcement of tobacco-control laws
- Expansion of Medi-Cal Healthy Families and other State health-care programs
- Expansion of health clinics that primarily service low-income or under-insured citizens

Allocations of the TSF by the State of California to the various counties and cities began in Fiscal Year (FY) 1999. The \$37.7 million Orange County received that year was followed by \$27.9 million in FY 2000. In each of those years the money was allocated at the discretion of the Board of Supervisors.

In November 2000, Measure H was approved by the citizens of Orange County. It provided that 100 percent of the TSF funds allocated to the County [the County's share being called the "Tobacco Settlement Revenue" (TSR)] would be spent in conformance to State law. Specifically, Measure H limited administrative expenditures for the TSR to 1 percent of the total and stipulated that the TSR would be spent as follows:

- 19 percent to provide health-care services for seniors and persons with disabilities, including, but not limited to, community-based long-term care, transportation services and in-home support services
- 23 percent to fund emergency medical services provided by emergency-room physicians and emergency-room on-call physician specialists, to pay for non-paying patients so that emergency rooms and trauma centers would not be closed
- 12 percent to prevent and control tobacco use, including cessation services to help youth and adults reduce smoking and the consumption of tobacco, other addiction programs, and community mental-health programs and facilities
- 20 percent to non-profit community clinics, mobile health clinics and university- and hospital-affiliated clinics, so that children and families receive immunizations, primary-care, specialty-care and dental-care services
- 6 percent to Orange County hospitals that maintain basic or comprehensive emergency services or trauma services, to cover the costs of providing charity care, proportionate to each hospital's charity care and bad debts reported to the California Office of Statewide Health Planning and Development
- 20 percent to the Sheriff-Coroner for public-safety programs and services, which may include expansion of existing facilities and programs that provide mental-health, alcohol-abuse and drug-abuse treatment programs under the direction or supervision of the Sheriff

While State legislation did not prohibit any California county from determining how its own allocation of the TSF funds would be used, it is noteworthy that (according to the California State Association of Counties) Orange County is the only county to pass an initiative that specifies how the TSF money is to be spent. No other California county has passed an initiative like Orange County's Measure H, restricting the county's use of tobacco settlement revenues.

## **PURPOSE**

The purposes of this study were to identify the impact of the Tobacco Settlement Fund within Orange County, to determine if the monies allocated to Orange County (the Tobacco Settlement Revenue) are being spent in accordance with the mandates of Measure H, and to evaluate whether the programs funded by these monies are being conducted properly and efficiently.

## **METHOD OF STUDY**

The Grand Jury examined Measure H and the County contracts for those services funded by the Tobacco Settlement Revenue (TSR). The Grand Jury also analyzed the Health Care Agency's annual reports on TSR-funded programs; interviewed contractors responsible for administering and carrying out the TSR-funded programs; inspected the facility module under construction at the Theo Lacy Jail; and attended a meeting of a citizen advisory committee that evaluates and recommends programs for TSR funding. The Grand Jury interviewed staffs of three different hospital emergency departments and visited their respective emergency rooms. The Grand Jury also interviewed staffs of the Orange County Medical Association and the American Insurance Administrators.

## **DISCUSSION**

The Chief Executive Officer (CEO) of Orange County controls the TSR, which is currently about \$30 million per year. Eighty percent of the TSR is administered by the Health Care Agency (HCA). The other 20 percent is administered by the Sheriff-Coroner for public safety. Each fiscal year, the HCA and community advocates develop and recommend prioritized allocations for the HCA's portion of the TSR. These allocations fund programs for segments of the County populace not previously served.

The 20 percent of the TSR allocated to the Sheriff-Coroner amounts to \$7 million per year. These funds are helping to finance the six-story jail module presently being constructed on the Theo Lacy Jail site. When the building is completed in September 2004, it will provide facilities for drug and alcohol rehabilitation programs.

The Grand Jury's evaluations of the six categories of expenditures authorized by Measure H were conducted after the HCA's outcome report for fiscal year 2002 was reviewed. The Grand Jury interviewed the HCA staff members who are responsible for implementing programs to prevent and treat substance abuse and to promote mental health. HCA staff reported that TSR funds prevented reductions in services and actually improved program efficiency at all of the contracted clinics.

The Grand Jury visited an alcohol-treatment facility for new mothers, housed in a motel-like setting. This program, funded by TSR, offers mothers and their infants a safe environment during their six-month stay. The HCA staff stated that other TSR-funded programs are likewise being conducted effectively. The Grand Jury also visited a clinic where drug addiction and mental illnesses were being treated. HCA staff reported that TSR funding permitted hiring two qualified psychiatrists and a nurse coordinator, resulting in greatly improved clinic efficiency and patient care.

Non-emergency medical transportation for the elderly, administered by the Housing and Community Services Department's Office on Aging, has eight TSR-funded programs, six of which are in operation. Under the programs, rides for senior citizens are being provided in multiple cities of Orange County.

The Grand Jury visited three of the largest emergency rooms in Orange County and found that the emergency-room physicians and specialists, as well as their affiliated hospitals, were receiving TSR-funded compensation (per Medicare Relative Value Scale) for treating uninsured patients. One of those emergency rooms, prior to TSR, was treating approximately 16,100 uninsured patients annually without any compensation. Now with TSR, compensation is being received for nearly all of the qualified uninsured patients. All of the emergency rooms in Orange County that treat uninsured patients have been receiving the same benefits.

## **FINDINGS**

Under *California Penal Code* §933 and §933.5, responses are required to all findings. The 2003-2004 Orange County Grand Jury has arrived at the following findings:

1. The impact of the Tobacco Settlement Revenue (TSR) in Orange County on the categories of medical services specified in Measure H has been immense, particularly to the emergency-room physicians and specialists who have been treating uninsured patients without compensation.
2. The construction of the new drug-rehabilitation module at the Theo Lacy Jail has been aided by TSR funds.

3. TSR funds have improved the broad range of services and programs to the medically needy and the senior citizens of Orange County.
4. Programs and services funded by Tobacco Settlement Revenues are being administered properly and efficiently by the Health Care Agency and the Sheriff-Coroner.
5. No other California county has passed an initiative like Orange County's Measure H that restricts the county's use of the Tobacco Settlement Funds.

Responses to Findings 1, 3 and 4 are requested from the Health Care Agency.

A response to Finding 2 is required from the Sheriff-Coroner.

A response to Finding 5 is required from the Board of Supervisors.

### **RECOMMENDATIONS**

In accordance with *California Penal Code* §933 and §933.5, each recommendation must be responded to by the government entity to which it is addressed. These responses are to be submitted to the Presiding Judge of the Superior Court. Based on the findings, the 2003-2004 Orange County Grand Jury recommends that:

1. The Health Care Agency continue to follow the provisions outlined in Measure H, and ensure that the programs and services continue to be carried out properly and efficiently. (Findings 1, 3 and 4)
2. The Sheriff-Coroner complete the construction of the new drug-rehabilitation module at the Theo Lacy Jail, aided by TSR funds, and apply TSR funds for the operation of the new facility. (Finding 2)
3. The Board of Supervisors continue to ensure that Orange County's share of the Tobacco Settlement Funds are applied in accordance with the provisions of Measure H, for the benefit of, and with input from, the people of Orange County. (Finding 5)

A response to Recommendation 1 is requested from the Health Care Agency.

A response to Recommendation 2 is required from the Sheriff-Coroner.

A response to Recommendation 3 is required from the Board of Supervisors.

**COMMENDATION**

The Health Care Agency and the Sheriff-Coroner are commended for executing the provisions of Measure H properly and efficiently.