

By: Shapiro

S.B. No. 1739

A BILL TO BE ENTITLED

1 AN ACT

2 relating to charity care and unreimbursed costs of certain
3 hospitals.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subdivision (16), Section 311.031, Health and
6 Safety Code, is amended to read as follows:

7 (16) "Unreimbursed costs" means the costs a hospital
8 incurs for providing services after subtracting payments received
9 from any source for such services including but not limited to the
10 following: third-party insurance payments; Medicare payments;
11 Medicaid payments; Medicare education reimbursements; state
12 reimbursements for education; payments from drug companies to
13 pursue research; grant funds for research; and disproportionate
14 share payments. For purposes of this definition, the term "costs"
15 shall be calculated by applying the cost to charge ratios in the
16 hospital's most recently filed Medicare cost report [~~derived in~~
17 ~~accordance with generally accepted accounting principles for~~
18 ~~hospitals~~] to billed charges. [~~The calculation of the cost to~~
19 ~~charge ratios shall be based on the most recently completed and~~
20 ~~audited prior fiscal year of the hospital or hospital system.~~]
21 Prior to January 1, 1996, for purposes of this definition,
22 charitable contributions and grants to a hospital, including
23 transfers from endowment or other funds controlled by the hospital
24 or its nonprofit supporting entities, shall not be subtracted from

1 the costs of providing services for purposes of determining
2 unreimbursed costs. After January 1, 1996, for purposes of this
3 definition, charitable contributions and grants to a hospital,
4 including transfers from endowment or other funds controlled by the
5 hospital or its nonprofit supporting entities, shall not be
6 subtracted from the costs of providing services for purposes of
7 determining the unreimbursed costs of charity care and
8 government-sponsored indigent health care.

9 SECTION 2. Section 311.045, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 311.045. COMMUNITY BENEFITS AND CHARITY CARE
12 REQUIREMENTS. (a) A nonprofit hospital or hospital system shall
13 annually satisfy the requirements of this subchapter and of
14 Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1),
15 Tax Code, to provide community benefits which include charity care
16 and government-sponsored indigent health care by complying with the
17 requirements of [~~one or more of the standards set forth in~~]
18 Subsection (b)(1) [~~(b)~~]. The hospital or hospital system shall
19 file a statement with the Bureau of State Health Data and Policy
20 Analysis at the department and the chief appraiser of the local
21 appraisal district no later than the 120th day after the hospital's
22 or hospital system's fiscal year ends, stating that the
23 requirements of [~~which of the standards in~~] Subsection (b)(1) [~~(b)~~]
24 have been satisfied, provided, however, that the first report shall
25 be filed no later than the 120th day after the end of the hospital's
26 or hospital system's fiscal year ending during 1994. For hospitals
27 in a hospital system, the corporate parent may elect to satisfy the

1 charity care requirements of this subchapter for each of the
2 hospitals within the system on a consolidated basis.

3 (b)(1) A nonprofit hospital or hospital system shall [~~may~~
4 ~~elect to~~] provide community benefits, which include charity care
5 and government-sponsored indigent health care, [~~according to any of~~
6 ~~the following standards:~~

7 [~~(A) charity care and government-sponsored~~
8 ~~indigent health care are provided at a level which is reasonable in~~
9 ~~relation to the community needs, as determined through the~~
10 ~~community needs assessment, the available resources of the hospital~~
11 ~~or hospital system, and the tax-exempt benefits received by the~~
12 ~~hospital or hospital system;~~

13 [~~(B) charity care and government-sponsored~~
14 ~~indigent health care are provided in an amount equal to at least 100~~
15 ~~percent of the hospital's or hospital system's tax-exempt benefits,~~
16 ~~excluding federal income tax; or~~

17 [~~(C) charity care and community benefits are~~
18 ~~provided~~] in a combined amount equal to at least seven [~~five~~]
19 percent of the hospital's or hospital system's net patient revenue,
20 provided that charity care and government-sponsored indigent
21 health care are provided in an amount equal to at least six [~~four~~]
22 percent of net patient revenue.

23 (2) For purposes of satisfying the requirements of
24 Subdivision (1) [~~(1)(C)~~], a hospital or hospital system may not
25 change its existing fiscal year unless the hospital or hospital
26 system changes its ownership or corporate structure as a result of a
27 sale or merger.

1 (3) A nonprofit hospital that has been designated as a
2 disproportionate share hospital under the state Medicaid program in
3 the current fiscal year or in either of the previous two fiscal
4 years shall be [~~considered to have provided a reasonable amount of~~
5 ~~charity care and government-sponsored indigent health care and~~
6 ~~shall be~~] deemed in compliance with Subdivision (1) [~~the standards~~
7 ~~in this subsection~~].

8 (c) A reduction in the amount of community benefits required
9 by Subsection (b)(1), including [~~The providing of~~] charity care and
10 government-sponsored indigent health care, may be deemed
11 reasonable under the following circumstances:

12 (1) when the financial reserves of the hospital are
13 reduced to such a level that the hospital would be in violation of
14 any applicable bond covenants;

15 (2) when necessary to prevent the hospital from
16 endangering its ability to continue operations; or

17 (3) if the hospital, as a result of a natural or other
18 disaster, is required to substantially curtail its operations [~~in~~
19 ~~accordance with Subsection (b)(1)(A) shall be guided by the prudent~~
20 ~~business judgment of the hospital which will ultimately determine~~
21 ~~the appropriate level of charity care and government-sponsored~~
22 ~~indigent health care based on the community needs, the available~~
23 ~~resources of the hospital, the tax-exempt benefits received by the~~
24 ~~hospital, and other factors that may be unique to the hospital, such~~
25 ~~as the hospital's volume of Medicare and Medicaid patients. These~~
26 ~~criteria shall not be determinative factors, but shall be~~
27 ~~guidelines contributing to the hospital's decision, along with~~

1 ~~other factors which may be unique to the hospital. The standards~~
2 ~~set forth in Subsections (b)(1)(B) and (b)(1)(C) shall also not be~~
3 ~~considered determinative of the amount of charity care and~~
4 ~~government-sponsored indigent health care that will be considered~~
5 ~~reasonable under Subsection (b)(1)(A)].~~

6 (d) A hospital that reduces required community benefits
7 under Subsection (c) must file, along with the hospital's annual
8 statement of community benefits, a certification of noncompliance
9 that must include the following:

10 (1) a detailed statement of the reasons why the
11 hospital cannot comply with Subsection (b)(1);

12 (2) a report detailing the administrative and
13 financial support for the certification of noncompliance; and

14 (3) the notarized signatures of the hospital's
15 president and chief financial officer.

16 (e) A reduction in the amount of community benefits required
17 by this section, including reductions in charity care and
18 government-sponsored indigent health care, shall not exceed the
19 lesser of the following amounts for the fiscal year for which a
20 statement of noncompliance is filed:

21 (1) two percent of the hospital's net patient revenue;
22 or

23 (2) the amount of the hospital's or hospital system's
24 tax-exempt benefits, excluding federal income tax.

25 (f) For purposes of this section, a hospital that satisfies
26 Subsection [~~(b)(1)(A) or~~] (b)(3) shall be excluded in determining a
27 hospital system's compliance with [~~the standards provided by~~]

1 Subsection (b)(1) [~~(b)(1)(B) or (b)(1)(C)~~].

2 (g) [~~(e)~~] In any fiscal year that a hospital or hospital
3 system, through unintended miscalculation, fails to comply with
4 [~~meet any of the standards in~~] Subsection (b)(1) [~~(b)~~], the
5 hospital or hospital system shall not lose its tax-exempt status
6 without the opportunity to cure the miscalculation in the fiscal
7 year following the fiscal year the failure is discovered by both
8 complying with Subsection (b)(1) [~~meeting one of the standards~~] and
9 providing an additional amount of charity care and
10 government-sponsored indigent health care that is equal to the
11 shortfall from the previous fiscal year. A hospital or hospital
12 system may apply this provision only once every five years.

13 (h) [~~(f)~~] A nonprofit hospital or hospital system under
14 contract with a local county to provide indigent health care
15 services under Chapter 61 may credit unreimbursed costs from direct
16 care provided to an eligible county resident toward meeting the
17 nonprofit hospital's or system's charity care and
18 government-sponsored indigent health care requirement.

19 SECTION 3. Subsection (b), Section 311.0455, Health and
20 Safety Code, is amended to read as follows:

21 (b) The department shall submit to the attorney general and
22 the comptroller not later than November 1 of each year a report
23 containing the following information for each nonprofit hospital or
24 hospital system during the preceding fiscal year:

25 (1) the amount of charity care, as defined by Section
26 311.031, provided;

27 (2) the amount of government-sponsored indigent

1 health care, as defined by Section 311.031, provided;

2 (3) the amount of community benefits, as defined by
3 Section 311.042, provided;

4 (4) the amount of net patient revenue, as defined by
5 Section 311.042, and the amount constituting four percent of net
6 patient revenue;

7 (5) the dollar amount of the hospital's or hospital
8 system's charity care and community benefits requirements met;

9 (6) a computation of the percentage by which the
10 amount described by Subdivision (5) is above or below the dollar
11 amount of the hospital's or hospital system's charity care and
12 community benefits requirements;

13 (7) the amount of tax-exempt benefits, as defined by
14 Section 311.042, provided, if the hospital is required to report
15 tax-exempt benefits under Section 311.045(e) [~~311.045(b)(1)(A) or~~
16 ~~(b)(1)(B)~~]; and

17 (8) the amount of charity care expenses reported in
18 the hospital's or hospital system's audited financial statement.

19 SECTION 4. Subsection (a), Section 311.046, Health and
20 Safety Code, is amended to read as follows:

21 (a) A nonprofit hospital shall prepare an annual report of
22 the community benefits plan and shall include in the report at least
23 the following information:

24 (1) the hospital's mission statement;

25 (2) a disclosure of the health care needs of the
26 community that were considered in developing the hospital's
27 community benefits plan pursuant to Section 311.044(b);

1 (3) a disclosure of the amount and types of community
2 benefits, including charity care, actually provided. Charity care
3 shall be reported as a separate item from other community benefits;

4 (4) a statement of its total operating expenses
5 computed in accordance with generally accepted accounting
6 principles for hospitals from the most recent completed and audited
7 prior fiscal year of the hospital; ~~and~~

8 (5) a completed worksheet that computes the ratio of
9 cost to charge for the fiscal year referred to in Subdivision (4)
10 and that includes the same requirements as Worksheet 1-A adopted by
11 the department in August 1994 for the 1994 "Annual Statement of
12 Community Benefits Standards"; and

13 (6) if applicable, the certificate of noncompliance
14 required by Section 311.045(d).

15 SECTION 5. Subsection (c), Section 311.043, Health and
16 Safety Code, is repealed.

17 SECTION 6. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2007.