

## **BILL ANALYSIS**

C.S.H.B. 3048  
By: Deshotel  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recently, Texas pursued a Medicaid waiver that empowers local communities to transform the delivery of health care by establishing local projects tailored to meet the communities' unique health care needs. However, this waiver requires local government funds to support waiver payments. Interested parties assert that communities without hospital districts are at a disadvantage because they lack a mechanism to generate funds for intergovernmental transfers to draw down federal dollars. The parties contend that the solution to this problem lies in local provider participation funds through which a municipality or county could allow local providers to access more funds under the waiver and help ensure access to care and reduce the level of uncompensated care in these communities. C.S.H.B. 3048 seeks to provide a mechanism through which certain disadvantaged municipalities can solve local problems via a local solution, without burdening local taxpayers or requiring state general revenue.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3048 amends the Health and Safety Code to set out provisions relating to municipal health care provider participation programs applicable to a municipality that is not served by a hospital district or a public hospital, that is located on the Gulf of Mexico or on a channel, canal, bay, or inlet connected to the Gulf of Mexico, and that has a population of more than 117,000 and less than 145,000. The bill establishes that such a program authorizes a municipality to collect a mandatory payment from each institutional health care provider located in the municipality to be deposited in a local provider participation fund established by the municipality and authorizes money in the fund to be used by the municipality to fund certain intergovernmental transfers and indigent care programs. The bill authorizes the governing body of the municipality to adopt an ordinance authorizing a municipality to participate in the program, subject to certain limitations. The bill defines "institutional health care provider" as a nonpublic hospital that provides inpatient hospital services.

C.S.H.B. 3048 authorizes the governing body of a municipality to require a mandatory payment by an institutional health care provider in the municipality only in the manner provided by the bill's provisions, requires an affirmative vote of a majority of the members of the governing body for the municipality to be authorized to collect that payment, and authorizes the governing body of a municipality that has voted to require a mandatory payment to adopt related administrative

rules. The bill requires the governing body of a municipality that collects the mandatory payment to require each institutional health care provider to submit to the municipality a copy of any financial and utilization data required by and reported to the Department of State Health Services under applicable statutes and any rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC). The bill authorizes the governing body of a municipality to inspect an institutional health care provider's records to the extent necessary to ensure compliance with such requirements.

C.S.H.B. 3048 requires the governing body of a municipality that collects a mandatory payment to hold an annual public hearing on the amounts of any mandatory payments that the governing body intends to require during the year and how the revenue derived from those payments is to be spent. The bill provides for notice of the hearing, entitles a representative of a paying hospital to be heard at the hearing regarding any matter related to the mandatory payments, requires the designation of one or more local banks as a depository for such mandatory payments, requires the deposit of all of the municipality's income derived from such mandatory payments with that depository in the municipality's local provider participation fund, and requires all funds to be secured in the manner provided for securing municipal funds.

C.S.H.B. 3048 requires each municipality that collects the mandatory payment to create a local provider participation fund that consists of all revenue received by the municipality attributable to mandatory payments; money received from HHSC as a refund of an intergovernmental transfer from the municipality to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and the earnings of the fund.

C.S.H.B. 3048 restricts the use of money deposited to the local provider participation fund to the funding of intergovernmental transfers from the municipality to the state to provide the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under federal law, or a successor waiver program authorizing similar Medicaid supplemental payment programs; the subsidizing of indigent programs; the payment of the administrative expenses of the municipality solely for activities under the bill's provisions; the refunding of a portion of a mandatory payment collected in error from a paying hospital; and the refunding to paying hospitals of the proportionate share of money received by the municipality from HHSC that is not used to fund the nonfederal share of Medicaid supplemental payment program payments. The bill prohibits such an intergovernmental transfer of funds and any funds received by the municipality as a result of the intergovernmental transfer from being used by the municipality or any other entity to expand Medicaid eligibility under the federal Patient Protection and Affordable Care Act as amended by the federal Health Care and Education Reconciliation Act of 2010. The bill prohibits money in the local provider participation fund from being commingled with other municipal funds.

C.S.H.B. 3048 authorizes the governing body of a municipality that collects a mandatory payment to require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the municipality and to provide for the mandatory payment to be assessed quarterly. The bill sets out related provisions regarding the amounts to be set by the governing body for those mandatory payments and caps the amount of the mandatory payment required of each paying hospital at an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the municipality, equals an amount of revenue that does not exceed six percent of the aggregate net patient revenue of all paying hospitals in the municipality. The bill requires the governing body to set, subject to such maximum amount, the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the municipality for activities under the bill's provisions, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs but caps the amount of revenue from mandatory payments used for administrative expenses in a year at the lesser of four percent of the total

revenue generated from the mandatory payment or \$20,000. The bill prohibits a paying hospital from adding a mandatory payment as a surcharge to a patient.

C.S.H.B. 3048 provides for the assessment and collection of mandatory payments and establishes that interest, penalties, and discounts on mandatory payments are governed by the law applicable to municipal property taxes. The bill authorizes the municipality to provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services to the extent any provision or procedure under the bill's provisions causes a mandatory payment to be ineligible for federal matching funds.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3048 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

SECTION 1. Subtitle D, Title 4, Health and Safety Code, is amended by adding Chapter 295 to read as follows:

CHAPTER 295. MUNICIPAL HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 295.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital licensed under Chapter 241.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the municipal health care provider participation program authorized by this chapter.

Sec. 295.002. APPLICABILITY.

Sec. 295.003. MUNICIPAL HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM.

SUBCHAPTER B. POWERS AND DUTIES OF GOVERNING BODY OF MUNICIPALITY

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Subtitle D, Title 4, Health and Safety Code, is amended by adding Chapter 295 to read as follows:

CHAPTER 295. MUNICIPAL HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 295.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the municipal health care provider participation program authorized by this chapter.

Sec. 295.002. APPLICABILITY.

Sec. 295.003. MUNICIPAL HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM.

SUBCHAPTER B. POWERS AND DUTIES OF GOVERNING BODY OF MUNICIPALITY

Sec. 295.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT.

Sec. 295.052. MAJORITY VOTE REQUIRED.

Sec. 295.053. RULES AND PROCEDURES.

Sec. 295.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 295.101. HEARING.

Sec. 295.102. DEPOSITORY.

Sec. 295.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY.

SUBCHAPTER D. MANDATORY PAYMENT.

Sec. 295.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the governing body of a municipality that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed quarterly on the net patient revenue of each institutional health care provider located in the municipality.

In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2014.

Sec. 295.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT.

Sec. 295.052. MAJORITY VOTE REQUIRED.

Sec. 295.053. RULES AND PROCEDURES.

Sec. 295.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 295.101. HEARING.

Sec. 295.102. DEPOSITORY.

Sec. 295.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY.

SUBCHAPTER D. MANDATORY PAYMENT.

Sec. 295.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the governing body of a municipality that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the municipality. The governing body may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2013 fiscal year or for the closest subsequent fiscal year for which the provider submitted the

The municipality shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the municipality. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The governing body of a municipality that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the municipality, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the municipality.

(d) Subject to the maximum amount prescribed by Subsection (c), the governing body of a municipality that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the municipality for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the municipality for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or \$20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Sec. 295.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS.

Sec. 295.153. INTEREST, PENALTIES, AND DISCOUNTS.

Medicare cost report. The municipality shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the municipality. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The governing body of a municipality that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the municipality, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the municipality.

(d) Subject to the maximum amount prescribed by Subsection (c), the governing body of a municipality that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the municipality for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the municipality for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or \$20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Sec. 295.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS.

Sec. 295.153. INTEREST, PENALTIES, AND DISCOUNTS.

Sec. 295.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Sec. 295.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.