

## **BILL ANALYSIS**

Senate Research Center

S.B. 1462  
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Intergovernmental Relations  
7/7/2017  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

During the 83rd and 84th legislative sessions, the Texas Legislature overwhelmingly passed legislation that granted 11 counties and the City of Beaumont the flexibility to create local provider participation funds (LPPFs). Though the legislation did not mandate the creation of LPPFs, all 12 local governments exercised the option to create an LPPF. As result of the LPPFs, the private hospitals in these communities received millions of additional dollars in Medicaid payments; dollars that otherwise would have gone elsewhere. S.B. 1462 increases flexibility and further strengthens the LPPFs through the following:

#### Notice of Hearing

Each year, the 11 counties and the City of Beaumont hold a public hearing on the amounts of any mandatory payments to be collected during the year and how the revenue derived from those payments is to be spent. S.B. 1462 amends the notice of hearing requirement to require that notice of the annual hearing be provided not later than the fifth day before the date of the hearing. Requiring five days' notice rather than 10 days' notice provides the local governments greater flexibility in scheduling annual hearings while maintaining the openness and transparency contemplated under the original legislation.

#### Authorized Uses of Money

Section 353.1305, Administrative Code, establishes the Uniform Hospital Rate Increase Program (UHRIP), under which the Texas Health and Human Services Commission (HHSC) may direct managed care organizations (MCOs) in a service delivery area to provide a uniform percentage rate increase to all hospitals within a particular class of hospitals. To ensure that eligible hospitals benefit from the recent implementation of UHRIP, S.B. 1462 amends the LPPFs' authorized use of funds to provide that the LPPF may also be used to fund intergovernmental transfers to the state to provide payments to Medicaid MCOs that are dedicated for payment to hospitals.

#### Assessment and Collection of Mandatory Payments

S.B. 1462 amends the existing LPPF assessment and collection process to provide that the county, funding district, or city may collect or contract for the assessment and collection of mandatory payments. Providing the local governmental entity, rather than a tax collector, with the authority to assess and collect the mandatory payments is intended to provide greater flexibility for the county, funding district, or city. S.B. 1462 does not prohibit a county from continuing to use the county tax collector, but provides the county with the flexibility to implement an assessment and collection process best suited to the LPPF. (Original Author's / Sponsor's Statement of Intent)

S.B. 1462 amends current law relating to the creation and operation of certain local health care provider participation programs.

## **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of hospital managers of the Tarrant County Hospital District in SECTION 28 (Sections 298B.052 and 298B.153, Health and Safety Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 288.151(b), Health and Safety Code, to decrease from not later than the 10th day before the date of a hearing to not later than the fifth day before the hearing the date by which the commission of a district created by Chapter 288 (Health Care Funding Districts in Certain Counties Located on Texas-Mexico Border) (commission) is required to publish a certain notice.

SECTION 2. Amends Section 288.155(c), Health and Safety Code, to authorize money deposited to the local provider participation fund to be used only for certain purposes, including: to fund intergovernmental transfers from the county health care funding district (district) to the state for certain provisions, including payments to Medicaid managed care organizations (MCOs) that are dedicated for payment to hospitals; and to refund to paying hospitals the proportionate share of money that the district determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments. Makes nonsubstantive changes.

SECTION 3. Amends Section 288.202, Health and Safety Code, as follows:

Sec. 288.202. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the district to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments required under this chapter. Deletes existing text of this section relating to collecting a payment, deducting a collection fee from the payment, contracting for the assessment and collection of the payment, and depositing the payment in the county general fund by the county tax assessor-collector.

SECTION 4. Amends Section 291.101(b), Health and Safety Code, to decrease from not later than the 10th day before the date of a hearing required under Subsection (a) (relating to a public hearing on the amounts of certain mandatory payments) to not later than the fifth day before the hearing required under Subsection (a) the date by which the commissioners court of the county is required to publish certain notice.

SECTION 5. Amends Section 291.103(c), Health and Safety Code, to authorize money deposited to the local provider participation fund to be used only to fund certain intergovernmental transfers from the county to the state, including to refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

SECTION 6. Amends Section 291.152, Health and Safety Code, as follows:

Sec. 291.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter (County Health Care Provider Participation Program in Certain Counties in the Texas-Louisiana Border Region). Deletes existing text of this section relating to collecting a payment, deducting a collection fee from the payment, contracting for the assessment and collection of the payment, and depositing the payment in the county general fund by the county tax assessor-collector.

SECTION 7. Amends Section 292.101(b), Health and Safety Code, to decrease from not later than the 10th day before the date of a hearing required under Subsection (a) (relating to a public hearing on the amounts of certain mandatory payments) to not later than the fifth day before the hearing required under Subsection (a) the date by which the commissioners court of the county is required to publish certain notice.

SECTION 8. Amends Section 292.103(c), Health and Safety Code, to authorize money deposited to the local provider participation fund to be used only for certain purposes, including: to fund intergovernmental transfers from the county to the state for certain provisions, including payments to Medicaid MCOs that are dedicated for payment to hospitals; and to refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

SECTION 9. Amends Section 292.152, Health and Safety Code, as follows:

Sec. 292.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter (County Health Care Provider Participation Program in Certain Counties). Deletes existing text of this section relating to collecting a payment, deducting a collection fee from the payment, contracting for the assessment and collection of the payment, and depositing the payment in the county general fund by the county tax assessor-collector.

SECTION 10. Amends Section 293.001(1), Health and Safety Code, to redefine "institutional health care provider."

SECTION 11. Amends Section 293.101(b), Health and Safety Code, to decrease from not later than the 10th day before the date of a hearing required under Subsection (a) (relating to a public hearing on the amounts of certain mandatory payments) to not later than the fifth day before the hearing required under Subsection (a) the date by which the commissioners court of the county is required to publish certain notice.

SECTION 12. Amends Section 293.103(c), Health and Safety Code, to authorize money deposited to the local provider participation fund to be used only for certain purposes, including: to fund intergovernmental transfers from the county to the state for certain provisions, including payments to Medicaid MCOs that are dedicated for payment to hospitals; and to refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

SECTION 13. Amends Section 293.152, Health and Safety Code, as follows:

Sec. 293.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter (County Health Care Provider Participation Program in Certain Counties). Deletes existing text of this section relating to collecting a payment, deducting a collection fee from the payment, contracting for the assessment and collection of the payment, and depositing the payment in the county general fund by the county tax assessor-collector.

SECTION 14. Amends Section 294.001(1), Health and Safety Code, to redefine "institutional health care provider."

SECTION 15. Amends Section 294.101(b), Health and Safety Code, to decrease from not later than the 10th day before the date of a hearing required under Subsection (a) (relating to a public hearing on the amounts of certain mandatory payments) to not later than the fifth day before the hearing required under Subsection (a) the date by which the commissioners court of the county is required to publish certain notice.

SECTION 16. Amends Section 294.103(c), Health and Safety Code, to authorize money deposited to the local provider participation fund to be used only for certain purposes, including: to fund intergovernmental transfers from the county to the state for certain provisions, including payments to Medicaid MCOs that are dedicated for payment to hospitals; and to refund to paying hospitals the proportionate share of money that the district determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

SECTION 17. Amends Section 294.152, Health and Safety Code, as follows:

Sec. 294.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter (County Health Care Provider Participation Program in Certain Counties Containing a Private University). Deletes existing text of this section.

SECTION 18. Amends Section 295.101(b), Health and Safety Code, to decrease from not later than the 10th day before the date of a hearing required under Subsection (a) (relating to a public hearing on the amounts of certain mandatory payments) to not later than the fifth day before the hearing required under Subsection (a) the date by which the commissioners court of the county is required to publish certain notice.

SECTION 19. Amends Section 295.103(c), Health and Safety Code, to authorize money deposited to the local provider participation fund to be used only for certain purposes, including: to fund intergovernmental transfers from the municipality to the state for certain provisions, including payments to Medicaid MCOs that are dedicated for payment to hospitals; and to refund to paying hospitals the proportionate share of money that the governing body of the municipality determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

SECTION 20. Amends Section 295.152, Health and Safety Code, as follows:

Sec. 295.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the municipality to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter (Municipal Health Care Provider Participation Program in Certain Municipalities). Deletes existing text of this section relating to collecting a payment, deducting a collection fee from the payment, contracting for the assessment and collection of the payment, and depositing the payment in the municipal general fund by the municipal tax assessor-collector.

SECTION 21. Amends Section 296.101(b), Health and Safety Code, to decrease from not later than the 10th day before the date of a hearing required under Subsection (a) (relating to a public hearing on the amounts of certain mandatory payments) to not later than the fifth day before the hearing required under Subsection (a) the date by which the commissioners court of the county is required to publish certain notice.

SECTION 22. Amends Section 296.103(c), Health and Safety Code, to authorize money deposited to the local provider participation fund to be used only for certain purposes, including: to fund intergovernmental transfers from the county to the state for certain provisions, including payments to Medicaid MCOs that are dedicated for payment to hospitals; and to refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

SECTION 23. Amends Section 296.152, Health and Safety Code, as follows:

Sec. 296.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter (County Health Care Provider Participation Program in Certain Counties). Deletes existing text of this section relating to collecting a payment, deducting a collection fee from the payment, contracting for the assessment and collection of the payment, and depositing the payment in the county general fund by the county tax assessor-collector.

SECTION 24. Amends Section 297.001(1), Health and Safety Code, to redefine "institutional health care provider."

SECTION 25. Amends Section 297.101(b), Health and Safety Code, to decrease from not later than the 10th day before the date of a hearing required under Subsection (a) (relating to a public

hearing on the amounts of certain mandatory payments) to not later than the fifth day before the hearing required under Subsection (a) the date by which the commissioners court of the county is required to publish certain notice.

SECTION 26. Amends Section 297.103(c), Health and Safety Code, to authorize money deposited to the local provider participation fund to be used only for certain purposes, including: to fund intergovernmental transfers from the county to the state for certain provisions, including payments to Medicaid MCOs that are dedicated for payment to hospitals; and to refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

SECTION 27. Amends Section 297.152, Health and Safety Code, as follows:

Sec. 296.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter (County Health Care Provider Participation Program in Certain Counties Containing a Military Base). Deletes existing text of this section relating to collecting a payment, deducting a collection fee from the payment, contracting for the assessment and collection of the payment, and depositing the payment in the county general fund by the county tax assessor-collector.

SECTION 28. Amends Subtitle D, Title 4, Health and Safety Code, by adding Chapter 298B, as follows:

## CHAPTER 298B. TARRANT COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298B.001. DEFINITIONS. Defines "board," "district," "institutional health care provider," "paying provider," and "program."

Sec. 298B.002. APPLICABILITY. Provides that this chapter applies only to the Tarrant County Hospital District (TCHD).

Sec. 298B.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. Authorizes the board of hospital managers of TCHD (board) to authorize TCHD to participate in a health care provider participation program (program) on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Sec. 298B.004. EXPIRATION OF AUTHORITY. (a) Provides that, subject to Sections 298B.153(d) and 298B.154, the authority of TCHD to administer and operate a program under this chapter expires December 31, 2019.

(b) Provides that Subsection (a) does not affect the authority of TCHD to require and collect a mandatory payment under Section 298B.154 after December 31, 2019, if necessary.

### SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298B.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. Authorizes the board to require a mandatory payment authorized under this chapter by an institutional health care provider (IHCP) in TCHD only in the manner provided by this chapter.

Sec. 298B.052. RULES AND PROCEDURES. Authorizes the board to adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Sec. 298B.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. Requires the board, if the board authorizes TCHD to participate in a program under this chapter, to require each IHCP to submit to TCHD a copy of any financial and utilization data required by and reported to the Department of State Health Services (DSHS) under Sections 311.032 (Department Administration of Hospital Reporting and Collection System) and 311.033 (Financial and Utilization Data Required) and any rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC) to implement those sections.

#### SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298B.101. HEARING. (a) Requires the board, in each year that the board authorizes a program under this chapter, to hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Requires the board, not later than the fifth day before the date of the hearing required under Subsection (a), to publish notice of the hearing in a newspaper of general circulation in TCHD and provide written notice of the hearing to each IHCP in TCHD.

Sec. 298B.102. DEPOSITORY. (a) Requires the board, if the board requires a mandatory payment authorized under this chapter, to designate one or more banks as a depository for TCHD's local provider participation fund.

(b) Requires that all funds collected under this chapter be secured in the manner provided for securing other TCHD funds.

Sec. 298B.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Requires TCHD, if TCHD requires a mandatory payment authorized under this chapter, to create a local provider participation fund.

(b) Provides that the local provider participation fund consists of all revenue received by TCHD attributable to mandatory payments authorized under this chapter, money received from HHSC as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment, and the earnings of the fund.

(c) Authorizes money deposited to the local provider participation fund of TCHD to be used only for certain purposes.

(d) Prohibits money in the local provider participation fund from being commingled with other TCHD funds.

(e) Prohibits any funds received by the state, district, or other entity as a result of that transfer, notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) (relating to funding intergovernmental transfers to provide the nonfederal share of certain Medicaid payments) made by TCHD, from being used by the state, TCHD, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152) or fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

#### SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298B.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Authorizes the board, except as provided by Subsection (e), if the board authorizes a program under this chapter, to require an annual mandatory payment to be assessed on the net patient revenue of each IHCP located in TCHD. Authorizes the board to provide for the mandatory payment to be assessed quarterly. Provides that, in the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an IHCP as determined by the data reported to the DSHS under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. Provides that, if the IHCP did not report any data under those sections, the IHCP's net patient revenue is the amount of that revenue as contained in the IHCP's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which TCHD submitted the Medicare cost report. Requires TCHD, if the mandatory payment is required, to update the amount of the mandatory payment on an annual basis.

(b) Requires that the amount of a mandatory payment authorized under this chapter be uniformly proportionate with the amount of net patient revenue generated by each paying provider in TCHD as permitted under federal law. Prohibits a program authorized under this chapter from holding harmless any IHCP, as required under 42 U.S.C. Section 1396b(w).

(c) Requires the board, if the board requires a mandatory payment authorized under this chapter, to set the amount of the mandatory payment, subject to the limitations of this chapter. Prohibits the aggregate amount of the mandatory payments required of all paying providers in TCHD from exceeding six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Requires the board, subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, to set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of TCHD for activities under this chapter and to fund an intergovernmental transfer described by Section 298B.103(c)(1). Requires that the annual amount of revenue from mandatory payments that be paid for administrative expenses by the district is \$150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) Prohibits a paying provider from adding a mandatory payment required under this section as a surcharge to a patient.

(f) Provides that a mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4 (County-Wide Hospital Districts), Article IX (Counties), Texas Constitution, or Section 281.045 (Limitation on Taxing Power by Governmental Entity; Disposition of Delinquent Taxes).

Sec. 298B.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) Authorizes TCHD to designate an official of TCHD or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) Requires the person charged by TCHD with the assessment and collection of mandatory payments to charge and deduct from the mandatory payments collected for TCHD a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) Requires that any revenue from a collection fee charged under Subsection (b), if the person charged with the assessment and collection of mandatory payments is an official of TCHD, be deposited in the TCHD general fund and, if appropriate, be reported as fees of TCHD.

Sec. 298B.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) Provides that the purpose of this chapter is to authorize TCHD to establish a program to enable TCHD to collect mandatory payments from IHCPs to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by IHCPs to TCHD in need of health care.

(b) Provides that this chapter does not authorize TCHD to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of TCHD associated with activities under this chapter.

(c) Authorizes the board, to the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, to provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. Prohibits a rule adopted under this section from creating, imposing, or materially expanding the legal or financial liability or responsibility of TCHD or an IHCP in TCHD beyond the provisions of this chapter. Provides that this section does not require the board to adopt a rule.

(d) Authorizes TCHD to only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298B.103(c)(1) is available to TCHD.

Sec. 298B.154. FEDERAL DISALLOWANCE. Authorizes TCHD, notwithstanding any other provision of this chapter, if the Centers for Medicare and Medicaid Services issues a disallowance of federal matching funds for a purpose for which intergovernmental transfers described by Section 298B.103(c)(1) were made and HHSC demands repayment from TCHD of federal funds paid to TCHD for that purpose, to require and collect mandatory payments from each paying provider that received those federal funds in an amount sufficient to satisfy the repayment demand made by HHSC. Provides that the percentage limitation prescribed by Section 298B.151(c) does not apply to a mandatory payment required under this section.

SECTION 29. Requires the board, as soon as practicable after the expiration of the authority of TCHD to administer and operate a program under Chapter 298B, Health and Safety Code, as added by this Act, to transfer to each ICHP in TCHD that IHCP's proportionate share of any remaining funds in any local provider participation fund created by TCHD under Section 298B.103, Health and Safety Code, as added by this Act.

SECTION 30. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such a waiver or authorization is granted.

SECTION 31. Effective date: upon passage or September 1, 2017.