

Suspending limitations on conference committee jurisdiction, S.B. No. 1462 (Hinojosa/Lucio III)

By: Hinojosa

S.R. No. 935

R E S O L U T I O N

1 BE IT RESOLVED by the Senate of the State of Texas, 85th
2 Legislature, Regular Session, 2017, That Senate Rule 12.03 be
3 suspended in part as provided by Senate Rule 12.08 to enable the
4 conference committee appointed to resolve the differences on Senate
5 Bill 1462 (the creation and operation of certain local health care
6 provider participation programs) to consider and take action on the
7 following matter:

8 Senate Rule 12.03(4) is suspended to permit the committee to
9 add text on a matter not included in either the house or senate
10 version of the bill by adding the following SECTIONS to the bill:

11 SECTION 28. Subtitle D, Title 4, Health and Safety Code, is
12 amended by adding Chapter 298B to read as follows:

13 CHAPTER 298B. TARRANT COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER

14 PARTICIPATION PROGRAM

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 298B.001. DEFINITIONS. In this chapter:

17 (1) "Board" means the board of hospital managers of
18 the district.

19 (2) "District" means the Tarrant County Hospital
20 District.

21 (3) "Institutional health care provider" means a
22 nonpublic hospital located in the district that provides inpatient
23 hospital services.

24 (4) "Paying provider" means an institutional health

1 care provider required to make a mandatory payment under this
2 chapter.

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

5 Sec. 298B.002. APPLICABILITY. This chapter applies only to
6 the Tarrant County Hospital District.

7 Sec. 298B.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM;
8 PARTICIPATION IN PROGRAM. The board may authorize the district to
9 participate in a health care provider participation program on the
10 affirmative vote of a majority of the board, subject to the
11 provisions of this chapter.

12 Sec. 298B.004. EXPIRATION OF AUTHORITY. (a) Subject to
13 Sections 298B.153(d) and 298B.154, the authority of the district to
14 administer and operate a program under this chapter expires
15 December 31, 2019.

16 (b) Subsection (a) does not affect the authority of the
17 district to require and collect a mandatory payment under Section
18 298B.154 after December 31, 2019, if necessary.

19 SUBCHAPTER B. POWERS AND DUTIES OF BOARD

20 Sec. 298B.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY
21 PAYMENT. The board may require a mandatory payment authorized
22 under this chapter by an institutional health care provider in the
23 district only in the manner provided by this chapter.

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

1 Sec. 298B.053. INSTITUTIONAL HEALTH CARE PROVIDER
2 REPORTING. If the board authorizes the district to participate in a
3 program under this chapter, the board shall require each
4 institutional health care provider to submit to the district a copy
5 of any financial and utilization data required by and reported to
6 the Department of State Health Services under Sections 311.032 and
7 311.033 and any rules adopted by the executive commissioner of the
8 Health and Human Services Commission to implement those sections.

9 SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

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

15 (b) Not later than the fifth day before the date of the
16 hearing required under Subsection (a), the board shall publish
17 notice of the hearing in a newspaper of general circulation in the
18 district and provide written notice of the hearing to each
19 institutional health care provider in the district.

20 Sec. 298B.102. DEPOSITORY. (a) If the board requires a
21 mandatory payment authorized under this chapter, the board shall
22 designate one or more banks as a depository for the district's local
23 provider participation fund.

24 (b) All funds collected under this chapter shall be secured
25 in the manner provided for securing other district funds.

26 Sec. 298B.103. LOCAL PROVIDER PARTICIPATION FUND;
27 AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory

1 payment authorized under this chapter, the district shall create a
2 local provider participation fund.

3 (b) The local provider participation fund consists of:

4 (1) all revenue received by the district attributable
5 to mandatory payments authorized under this chapter;

6 (2) money received from the Health and Human Services
7 Commission as a refund of an intergovernmental transfer under the
8 program, provided that the intergovernmental transfer does not
9 receive a federal matching payment; and

10 (3) the earnings of the fund.

11 (c) Money deposited to the local provider participation
12 fund of the district may be used only to:

13 (1) fund intergovernmental transfers from the
14 district to the state to provide the nonfederal share of Medicaid
15 payments for:

16 (A) uncompensated care payments to nonpublic
17 hospitals affiliated with the district, if those payments are
18 authorized under the Texas Healthcare Transformation and Quality
19 Improvement Program waiver issued under Section 1115 of the federal
20 Social Security Act (42 U.S.C. Section 1315);

21 (B) uniform rate enhancements for nonpublic
22 hospitals in the Medicaid managed care service area in which the
23 district is located;

24 (C) payments available under another waiver
25 program authorizing payments that are substantially similar to
26 Medicaid payments to nonpublic hospitals described by Paragraph (A)
27 or (B); or

1 (D) any reimbursement to nonpublic hospitals for
2 which federal matching funds are available;

3 (2) subject to Section 298B.151(d), pay the
4 administrative expenses of the district in administering the
5 program, including collateralization of deposits;

6 (3) refund a mandatory payment collected in error from
7 a paying provider;

8 (4) refund to paying providers a proportionate share
9 of the money that the district:

10 (A) receives from the Health and Human Services
11 Commission that is not used to fund the nonfederal share of Medicaid
12 supplemental payment program payments; or

13 (B) determines cannot be used to fund the
14 nonfederal share of Medicaid supplemental payment program
15 payments;

16 (5) transfer funds to the Health and Human Services
17 Commission if the district is legally required to transfer the
18 funds to address a disallowance of federal matching funds with
19 respect to programs for which the district made intergovernmental
20 transfers described by Subdivision (1); and

21 (6) reimburse the district if the district is required
22 by the rules governing the uniform rate enhancement program
23 described by Subdivision (1)(B) to incur an expense or forego
24 Medicaid reimbursements from the state because the balance of the
25 local provider participation fund is not sufficient to fund that
26 rate enhancement program.

27 (d) Money in the local provider participation fund may not

1 be commingled with other district funds.

2 (e) Notwithstanding any other provision of this chapter,
3 with respect to an intergovernmental transfer of funds described by
4 Subsection (c)(1) made by the district, any funds received by the
5 state, district, or other entity as a result of that transfer may
6 not be used by the state, district, or any other entity to:

7 (1) expand Medicaid eligibility under the Patient
8 Protection and Affordable Care Act (Pub. L. No. 111-148) as amended
9 by the Health Care and Education Reconciliation Act of 2010 (Pub. L.
10 No. 111-152); or

11 (2) fund the nonfederal share of payments to nonpublic
12 hospitals available through the Medicaid disproportionate share
13 hospital program or the delivery system reform incentive payment
14 program.

15 SUBCHAPTER D. MANDATORY PAYMENTS

16 Sec. 298B.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER
17 NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if
18 the board authorizes a health care provider participation program
19 under this chapter, the board may require an annual mandatory
20 payment to be assessed on the net patient revenue of each
21 institutional health care provider located in the district. The
22 board may provide for the mandatory payment to be assessed
23 quarterly. In the first year in which the mandatory payment is
24 required, the mandatory payment is assessed on the net patient
25 revenue of an institutional health care provider as determined by
26 the data reported to the Department of State Health Services under
27 Sections 311.032 and 311.033 in the most recent fiscal year for

1 which that data was reported. If the institutional health care
2 provider did not report any data under those sections, the
3 provider's net patient revenue is the amount of that revenue as
4 contained in the provider's Medicare cost report submitted for the
5 previous fiscal year or for the closest subsequent fiscal year for
6 which the provider submitted the Medicare cost report. If the
7 mandatory payment is required, the district shall update the amount
8 of the mandatory payment on an annual basis.

9 (b) The amount of a mandatory payment authorized under this
10 chapter must be uniformly proportionate with the amount of net
11 patient revenue generated by each paying provider in the district
12 as permitted under federal law. A health care provider
13 participation program authorized under this chapter may not hold
14 harmless any institutional health care provider, as required under
15 42 U.S.C. Section 1396b(w).

16 (c) If the board requires a mandatory payment authorized
17 under this chapter, the board shall set the amount of the mandatory
18 payment, subject to the limitations of this chapter. The aggregate
19 amount of the mandatory payments required of all paying providers
20 in the district may not exceed six percent of the aggregate net
21 patient revenue from hospital services provided by all paying
22 providers in the district.

23 (d) Subject to Subsection (c), if the board requires a
24 mandatory payment authorized under this chapter, the board shall
25 set the mandatory payments in amounts that in the aggregate will
26 generate sufficient revenue to cover the administrative expenses of
27 the district for activities under this chapter and to fund an

1 intergovernmental transfer described by Section 298B.103(c)(1).
2 The annual amount of revenue from mandatory payments that shall be
3 paid for administrative expenses by the district is \$150,000, plus
4 the cost of collateralization of deposits, regardless of actual
5 expenses.

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

8 (f) A mandatory payment assessed under this chapter is not a
9 tax for hospital purposes for purposes of Section 4, Article IX,
10 Texas Constitution, or Section 281.045.

11 Sec. 298B.152. ASSESSMENT AND COLLECTION OF MANDATORY
12 PAYMENTS. (a) The district may designate an official of the
13 district or contract with another person to assess and collect the
14 mandatory payments authorized under this chapter.

15 (b) The person charged by the district with the assessment
16 and collection of mandatory payments shall charge and deduct from
17 the mandatory payments collected for the district a collection fee
18 in an amount not to exceed the person's usual and customary charges
19 for like services.

20 (c) If the person charged with the assessment and collection
21 of mandatory payments is an official of the district, any revenue
22 from a collection fee charged under Subsection (b) shall be
23 deposited in the district general fund and, if appropriate, shall
24 be reported as fees of the district.

25 Sec. 298B.153. PURPOSE; CORRECTION OF INVALID PROVISION OR
26 PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter
27 is to authorize the district to establish a program to enable the

1 district to collect mandatory payments from institutional health
2 care providers to fund the nonfederal share of a Medicaid
3 supplemental payment program or the Medicaid managed care rate
4 enhancements for nonpublic hospitals to support the provision of
5 health care by institutional health care providers to district
6 residents in need of health care.

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

14 (c) To the extent any provision or procedure under this
15 chapter causes a mandatory payment authorized under this chapter to
16 be ineligible for federal matching funds, the board may provide by
17 rule for an alternative provision or procedure that conforms to the
18 requirements of the federal Centers for Medicare and Medicaid
19 Services. A rule adopted under this section may not create, impose,
20 or materially expand the legal or financial liability or
21 responsibility of the district or an institutional health care
22 provider in the district beyond the provisions of this chapter.
23 This section does not require the board to adopt a rule.

24 (d) The district may only assess and collect a mandatory
25 payment authorized under this chapter if a waiver program, uniform
26 rate enhancement, or reimbursement described by Section
27 298B.103(c)(1) is available to the district.

1 Sec. 298B.154. FEDERAL DISALLOWANCE. Notwithstanding any
2 other provision of this chapter, if the Centers for Medicare and
3 Medicaid Services issues a disallowance of federal matching funds
4 for a purpose for which intergovernmental transfers described by
5 Section 298B.103(c)(1) were made and the Health and Human Services
6 Commission demands repayment from the district of federal funds
7 paid to the district for that purpose, the district may require and
8 collect mandatory payments from each paying provider that received
9 those federal funds in an amount sufficient to satisfy the
10 repayment demand made by the commission. The percentage limitation
11 prescribed by Section 298B.151(c) does not apply to a mandatory
12 payment required under this section.

13 SECTION 29. As soon as practicable after the expiration of
14 the authority of the Tarrant County Hospital District to administer
15 and operate a health care provider participation program under
16 Chapter 298B, Health and Safety Code, as added by this Act, the
17 board of hospital managers of the Tarrant County Hospital District
18 shall transfer to each institutional health care provider in the
19 district that provider's proportionate share of any remaining funds
20 in any local provider participation fund created by the district
21 under Section 298B.103, Health and Safety Code, as added by this
22 Act.

23 SECTION 30. If before implementing any provision of Chapter
24 298B, Health and Safety Code, as added by this Act, a state agency
25 determines that a waiver or authorization from a federal agency is
26 necessary for implementation of that provision, the agency affected
27 by the provision shall request the waiver or authorization and may

1 delay implementing that provision until the waiver or authorization
2 is granted.

3 Explanation: The added language is necessary to allow the
4 Tarrant County Hospital District to create and operate a health
5 care provider participation program in Tarrant County.