By:  Coleman H.B. No. 4289

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operations of health care provider participation programs in local jurisdictions in this state.

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

SECTION 1.  Subtitle D, Title 4, Health and Safety Code, is amended by adding Chapter 300 to read as follows:

CHAPTER 300. HEALTH CARE PROVIDER PARTICIPATION PROGRAMS IN CERTAIN POLITICAL SUBDIVISIONS IN THIS STATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 300.0001.  PURPOSE. The purpose of this chapter is to authorize a hospital district, county, or municipality in this state to administer a health care provider participation program to provide additional compensation to hospitals by collecting mandatory payments from each hospital in the jurisdiction.

Sec. 300.0002.  DEFINITIONS. In this chapter:

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

(2)  "Local jurisdiction" means a hospital district, county, or municipality.

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

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

Sec. 300.0003.  APPLICABILITY. This chapter applies to a local jurisdiction that is located in this state.

Sec. 300.0004.  LOCAL JURISDICTION HEALTH CARE PROVIDER PARTICIPATION PROGRAM; ORDER REQUIRED FOR PARTICIPATION. The governing body of a local jurisdiction may only adopt an order authorizing that local jurisdiction to participate in a health care provider participation program after an affirmative vote of the majority of the governing body.

SUBCHAPTER B. POWERS AND DUTIES OF A GOVERNING BODY OF A LOCAL JURISDICTION

Sec. 300.0051.  LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The governing body of a local jurisdiction may require a mandatory payment authorized under this chapter by an institutional health care provider in that local jurisdiction only in the manner provided by this chapter.

Sec. 300.0052.  RULES AND PROCEDURES. The governing body of a local jurisdiction may adopt rules relating to the administration of the health care provider participation program in the local jurisdiction, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Sec. 300.0053.  INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the governing body of a local jurisdiction authorizes the local jurisdiction to participate in a health care provider participation program under this chapter, the governing body shall require each institutional health care provider to submit to the local jurisdiction a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 300.0101.  HEARING. (a) In each year that the governing body of a local jurisdiction authorizes a health care provider participation program under this chapter, the governing body shall hold a 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.

(b)  Not later than the fifth day before the date of the hearing required under Subsection (a), the governing body shall publish notice of the hearing in a newspaper of general circulation in the county and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the local jurisdiction.

(c)  A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Sec. 300.0102.  LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) Each governing body of a local jurisdiction that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b)  If a governing body of a local jurisdiction creates a local provider participation fund, the governing body shall designate one or more banks as a depository for the mandatory payments received by the local jurisdiction.

(c)  All funds collected under this chapter shall be secured in the manner provided for securing other local jurisdiction funds.

Sec. 300.0103.  LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established by a local jurisdiction under Section 300.0102 consists of:

(1)  all revenue received by the local jurisdiction attributable to mandatory payments authorized under this chapter;

(2)  money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the local jurisdiction 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

(3)  the earnings of the fund.

(b)  Money deposited to the local provider participation fund of a local jurisdiction may be used only to:

1)  fund intergovernmental transfers from the local jurisdiction to the state to provide the nonfederal share of Medicaid payments for:

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

(B)  uniform rate enhancements for nonpublic hospitals in Medicaid managed care;

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

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

(2)  pay costs associated with indigent care provided by institutional health care providers in the local jurisdiction;

(3)  pay the administrative expenses of the local jurisdiction in administering the program, including collateralization of deposits;

(4)  refund a portion of a mandatory payment collected in error from a paying hospital;

(5)  refund to paying hospitals a proportionate share of the money that the local jurisdiction:

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

(B)  determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(6)  transfer funds to the Health and Human Services Commission if the local jurisdiction is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the local jurisdiction made intergovernmental transfers described in Subdivision (1); and

(7)  reimburse the local jurisdiction if the local jurisdiction is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(c)  Money in the local provider participation fund of a local jurisdiction may not be commingled with other local jurisdiction funds.

(d)  Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (b)(1) made by the local jurisdiction, any funds received by the state, local jurisdiction, or other entity as a result of that transfer may not be used by the state, local jurisdiction, or any other entity to:

(1)  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

(2)  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. 300.0151.  MANDATORY PAYMENTS. (a) Except as provided by Subsection (e), if the governing body of a local jurisdiction authorizes a health care provider participation program under this chapter, the governing body shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the local jurisdiction. The governing body of the local jurisdiction shall provide that the mandatory payment is to be collected at least annually, but not more often than 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 located in the local jurisdiction as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The local jurisdiction shall update the amount of the mandatory payment on an annual basis.

(b)  The amount of a mandatory payment authorized under this chapter for a local jurisdiction must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the local jurisdiction as permitted under federal law. A health care provider participation program 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 local jurisdiction that authorizes a program under this chapter shall set the amount of the mandatory payment. The aggregate amount of the mandatory payments required of all paying providers in the local jurisdiction may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the local jurisdiction.

(d)  Subject to Subsection (c), if the governing body of a local jurisdiction requires a mandatory payment authorized under this chapter, the governing body shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 300.103(b)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the local jurisdiction is not to exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

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

(f)  A mandatory payment under this chapter is not a tax for purposes of Section 5(a), Article IX, Texas Constitution.

Sec. 300.0152.  ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The local jurisdiction may designate an official of the local jurisdiction or contract with another person to assess and collect the mandatory payments authorized under this chapter.

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

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

Sec. 300.0153.  CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) This chapter does not authorize a local jurisdiction 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 the local jurisdiction associated with activities under this chapter.

(b)  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, the local jurisdiction may provide by rule or order for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule or order adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the local jurisdiction or an institutional health care provider in the local jurisdiction beyond the provisions of this chapter. This section does not require the governing body of a local jurisdiction to adopt a rule or order.

(c)  The local jurisdiction may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 300.103(b)(1) is available to the local jurisdiction.

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, 2019.