86R5582 JCG-D

By:  Kolkhorst S.B. No. 2257

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain entities to create and operate health care provider participation programs in counties not served by a hospital district or a public hospital.

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 299 to read as follows:

CHAPTER 299. HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN MULTI-COUNTY DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 299.0001.  PURPOSE. The purpose of this chapter is to authorize certain counties not served by a hospital district or a public hospital to create a district to administer a health care provider participation program to provide additional compensation to hospitals in the district by collecting mandatory payments from each hospital in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Sec. 299.0002.  DEFINITIONS. In this chapter:

(1)  "Board" means the board of directors of a district.

(2)  "Director" means a member of the board.

(3)  "District" means a health care provider participation district created under this chapter.

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

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

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

Sec. 299.0003.  APPLICABILITY. This chapter applies only to a county that:

(1)  is not participating in a health care provider participation program authorized under this subtitle;

(2)  is not served by a hospital district or public hospital; and

(3)  has only one hospital that is located in the county.

SUBCHAPTER B. CREATION, OPERATION, AND DISSOLUTION OF DISTRICT

Sec. 299.0021.  CREATION BY CONCURRENT ORDERS. (a) Except as provided by Subsection (b), a county and one or more other counties may create a district by adopting concurrent orders.

(b)  A county or portion of a county that is in the boundaries of a hospital district may not be a party to the creation of a district.

(c)  A concurrent order to create a district must:

(1)  be approved by the governing body of each creating county;

(2)  contain identical provisions; and

(3)  define the boundaries of the district to be coextensive with the combined boundaries of each creating county.

Sec. 299.0022.  POWERS. A district may authorize and administer a health care provider participation program in accordance with this chapter.

Sec. 299.0023.  BOARD OF DIRECTORS. (a) If three or more counties create a district, the county judge of each county that creates the district shall appoint one director.

(b)  If two counties create a district:

(1)  the county judge of the most populous county shall appoint two directors; and

(2)  the county judge of the other county shall appoint one director.

(c)  Directors serve staggered two-year terms, with as near as possible to one-half of the directors' terms expiring each year.

(d)  A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

(e)  The board shall elect from among its members a president. The president may vote and may cast an additional vote to break a tie.

(f)  The board shall also elect from among its members a vice president.

(g)  The board shall appoint a secretary, who need not be a director.

(h)  Each officer of the board serves for a term of one year.

(i)  The board shall fill a vacancy in a board office for the unexpired term.

(j)  A majority of the members of the board voting must concur in a matter relating to the business of the district.

Sec. 299.0024.  QUALIFICATIONS FOR OFFICE. (a) To be eligible to serve as a director, a person must be a resident of the county that appoints the person under Section 299.0023.

(b)  An employee of the district may not serve as a director.

Sec. 299.0025.  COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b)  Expenses reimbursed under this section must be:

(1)  reported in the district's minute book or other district records; and

(2)  approved by the board.

Sec. 299.0026.  AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Sec. 299.0027.  DISTRICT FINANCES. Subchapter F, Chapter 287, other than Sections 287.129 and 287.130, applies to the district in the same manner that those provisions apply to a health services district created under Chapter 287. This section does not authorize the district to issue bonds.

Sec. 299.0028.  DISSOLUTION. A district shall be dissolved if the counties that created the district adopt concurrent orders to dissolve the district and the concurrent orders contain identical provisions.

Sec. 299.0029.  ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After dissolution of a district under Section 299.0028, the board shall continue to control and administer any property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b)  As soon as practicable after the dissolution of the district, the board shall transfer to each institutional health care provider in the district the provider's proportionate share of any remaining funds in any local provider participation fund created by the district under Section 299.0102.

(c)  If, after administering any property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the counties that created the district in proportion to the funds contributed to the district by each county, including a paying hospital in the county.

(d)  If, after complying with Subsections (b) and (c) and administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the counties that created the district in proportion to the funds contributed to the district by each county, including a paying hospital in the county.

Sec. 299.0030.  ACCOUNTING AFTER DISSOLUTION. After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Section 299.0029, the board shall provide an accounting to each county that created the district. The accounting must show the manner in which the assets and debts of the district were distributed.

SUBCHAPTER C. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; POWERS AND DUTIES OF DISTRICT BOARD

Sec. 299.0051.  HEALTH CARE PROVIDER PARTICIPATION PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Sec. 299.0052.  LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Sec. 299.0053.  RULES AND PROCEDURES. The board may adopt rules relating to the administration of the health care provider participation program in the district, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Sec. 299.0054.  INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a health care provider participation program under this chapter, the board shall require each institutional health care provider located in the district to submit to the district 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 D. GENERAL FINANCIAL PROVISIONS

Sec. 299.0101.  HEARING. (a) In each year that the board authorizes a health care provider participation program under this chapter, the board shall 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)  Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in each county that creates the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district.

Sec. 299.0102.  LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) If the board collects a mandatory payment authorized under this chapter, the board shall create a local provider participation fund in one or more banks designated by the district as a depository for the mandatory payments received by the district.

(b)  The board may withdraw or use money in the local provider participation fund of the district only for a purpose authorized under this chapter.

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

Sec. 299.0103.  DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established under Section 299.0102 consists of:

(1)  all revenue received by the district attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2)  money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district 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 may be used only to:

(1)  fund intergovernmental transfers from the district to the state to provide:

(A)  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 Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B)  payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2)  subsidize indigent programs in the district;

(3)  pay the administrative expenses of the district solely for activities under this chapter;

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

(5)  refund to paying hospitals the proportionate share of money received by the district that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(c)  Money in the local provider participation fund may not be commingled with other district funds or other funds of a county that creates the district.

(d)  An intergovernmental transfer of funds described by Subsection (b)(1) and any funds received by the district as a result of an intergovernmental transfer described by that subsection may not be used by the district, a county that created the district, 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).

Sec. 299.0104.  ACCOUNTING OF FUNDS. The district shall maintain an accounting of the funds received from each county that creates the district, including a paying hospital in the county.

SUBCHAPTER E. MANDATORY PAYMENTS

Sec. 299.0151.  MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the district may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board 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 located in the district 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 2017 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 2017 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The district 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 district. 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 board shall set the amount of a mandatory payment authorized under this chapter. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d)  Subject to the maximum amount prescribed by Subsection (c), the board shall set a mandatory payment authorized under this chapter in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter, to fund an intergovernmental transfer described by Section 299.0103(b)(1), and to pay for indigent programs in the district, except that the amount of revenue from mandatory payments used for administrative expenses of the district for activities under this chapter in a year may not exceed four percent of the total revenue generated from the mandatory payment.

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

Sec. 299.0152.  ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The district may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Sec. 299.0153.  INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Sec. 299.0154.  CORRECTION OF INVALID PROVISION OR PROCEDURE. 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 board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

SECTION 2.  Subtitle D, Title 4, Health and Safety Code, is amended by adding Chapter 299A to read as follows:

CHAPTER 299A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN COUNTY NOT SERVED BY HOSPITAL DISTRICT OR PUBLIC HOSPITAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 299A.0001.  PURPOSE. The purpose of this chapter is to authorize a county not served by a hospital district or a public hospital to administer a county health care provider participation program to provide additional compensation to hospitals in the county by collecting mandatory payments from each hospital in the county to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Sec. 299A.0002.  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 a county health care provider participation program authorized by this chapter.

Sec. 299A.0003.  APPLICABILITY. This chapter applies only to a county that is not served by a hospital district or a public hospital.

Sec. 299A.0004.  COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; COUNTY ORDER REQUIRED FOR PARTICIPATION. The commissioners court of a county may adopt an order authorizing the county to participate in a health care provider participation program, subject to the limitations provided by this chapter.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 299A.0051.  LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Sec. 299A.0052.  RULES AND PROCEDURES. The commissioners court of a county may adopt rules relating to the administration of the health care provider participation program in the county, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Sec. 299A.0053.  INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the commissioners court of a county authorizes the county to participate in a health care provider participation program under this chapter, the commissioners court shall require each institutional health care provider to submit to the county 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. 299A.0101.  HEARING. (a) In each year that the commissioners court of a county authorizes a health care provider participation program under this chapter, the commissioners court shall hold a public hearing on the amounts of any mandatory payments that the commissioners court 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 commissioners court 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 county.

Sec. 299A.0102.  LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) Each commissioners court of a county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund in one or more banks designated by the county as a depository for the mandatory payments received by the county.

(b)  The commissioners court of a county may withdraw or use money in the local provider participation fund of the county only for a purpose authorized under this chapter.

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

Sec. 299A.0103.  DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established by a county under Section 299A.0102 consists of:

(1)  all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2)  money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county 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 county may be used only to:

(1)  fund intergovernmental transfers from the county to the state to provide:

(A)  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 Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B)  payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2)  subsidize indigent programs in the county;

(3)  pay the administrative expenses of the county solely for activities under this chapter;

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

(5)  refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

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

(d)  An intergovernmental transfer of funds described by Subsection (b)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county 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).

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 299A.0151.  MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the commissioners court of a county authorizes a health care provider participation program under this chapter, the commissioners court may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court 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 located in the county 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 2017 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 2017 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county 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 county. 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 commissioners court of a county 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 in the county may not exceed six percent of the paying hospital's net patient revenue.

(d)  Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county 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 county for activities under this chapter, to fund an intergovernmental transfer described by Section 299A.103(b)(1), and to pay for indigent programs in the county, except that the amount of revenue from mandatory payments used for administrative expenses of the county 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. 299A.0152.  ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. A county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Sec. 299A.0153.  INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Sec. 299A.0154.  CORRECTION OF INVALID PROVISION OR PROCEDURE. 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 county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

SECTION 3.  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 4.  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.