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H.B. No. 3459

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operations of a health care provider participation program by the Harris County Hospital District.

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. HARRIS COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 299.001. DEFINITIONS. In this chapter:

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

(2) "District" means the Harris County Hospital District.

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

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

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

Sec. 299.002. APPLICABILITY. This chapter applies only to the Harris County Hospital District.

1       Sec. 299.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM;  
2 PARTICIPATION IN PROGRAM. The board may authorize the district to  
3 participate in a health care provider participation program on the  
4 affirmative vote of a majority of the board, subject to the  
5 provisions of this chapter.

6       Sec. 299.004. EXPIRATION. (a) Subject to Section  
7 299.153(d), the authority of the district to administer and operate  
8 a program under this chapter expires December 31, 2021.

9       (b) This chapter expires December 31, 2021.

10               SUBCHAPTER B. POWERS AND DUTIES OF BOARD

11       Sec. 299.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY  
12 PAYMENT. The board may require a mandatory payment authorized  
13 under this chapter by an institutional health care provider in the  
14 district only in the manner provided by this chapter.

15       Sec. 299.052. RULES AND PROCEDURES. The board may adopt  
16 rules relating to the administration of the program, including  
17 collection of the mandatory payments, expenditures, audits, and any  
18 other administrative aspects of the program.

19       Sec. 299.053. INSTITUTIONAL HEALTH CARE PROVIDER  
20 REPORTING. If the board authorizes the district to participate in a  
21 program under this chapter, the board shall require each  
22 institutional health care provider to submit to the district a copy  
23 of any financial and utilization data as reported in the provider's  
24 Medicare cost report submitted for the previous fiscal year or for  
25 the closest subsequent fiscal year for which the provider submitted  
26 the Medicare cost report.

27               SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

1       Sec. 299.101. HEARING. (a) In each year that the board  
2 authorizes a program under this chapter, the board shall hold a  
3 public hearing on the amounts of any mandatory payments that the  
4 board intends to require during the year and how the revenue derived  
5 from those payments is to be spent.

6       (b) Not later than the fifth day before the date of the  
7 hearing required under Subsection (a), the board shall publish  
8 notice of the hearing in a newspaper of general circulation in the  
9 district and provide written notice of the hearing to each  
10 institutional health care provider in the district.

11       (c) A representative of a paying provider is entitled to  
12 appear at the public hearing and be heard regarding any matter  
13 related to the mandatory payments authorized under this chapter.

14       Sec. 299.102. DEPOSITORY. (a) If the board requires a  
15 mandatory payment authorized under this chapter, the board shall  
16 designate one or more banks as a depository for the district's local  
17 provider participation fund.

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

20       Sec. 299.103. LOCAL PROVIDER PARTICIPATION FUND;  
21 AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory  
22 payment authorized under this chapter, the district shall create a  
23 local provider participation fund.

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

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

27               (2) money received from the Health and Human Services

1 Commission as a refund of an intergovernmental transfer under the  
2 program, provided that the intergovernmental transfer does not  
3 receive a federal matching payment; and

4 (3) the earnings of the fund.

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

7 (1) fund intergovernmental transfers from the  
8 district to the state to provide the nonfederal share of Medicaid  
9 payments for:

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

15 (B) uniform rate enhancements for nonpublic  
16 hospitals in the Medicaid managed care service area in which the  
17 district is located;

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

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

24 (2) subject to Section 299.151(d), pay the  
25 administrative expenses of the district in administering the  
26 program, including collateralization of deposits;

27 (3) refund a mandatory payment collected in error from

1 a paying provider;

2 (4) refund to paying providers a proportionate share  
3 of the money attributable to mandatory payments collected under  
4 this chapter that the district:

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

8 (B) determines cannot be used to fund the  
9 nonfederal share of Medicaid supplemental payment program  
10 payments; and

11 (5) transfer funds to the Health and Human Services  
12 Commission if the district is legally required to transfer the  
13 funds to address a disallowance of federal matching funds with  
14 respect to programs for which the district made intergovernmental  
15 transfers described by Subdivision (1).

16 (d) Money in the local provider participation fund may not  
17 be commingled with other district funds.

18 (e) Notwithstanding any other provision of this chapter,  
19 with respect to an intergovernmental transfer of funds described by  
20 Subsection (c)(1) made by the district, any funds received by the  
21 state, district, or other entity as a result of the transfer may not  
22 be used by the state, district, or any other entity to:

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

27 (2) fund the nonfederal share of payments to nonpublic

1 hospitals available through the Medicaid disproportionate share  
2 hospital program or the delivery system reform incentive payment  
3 program.

4 SUBCHAPTER D. MANDATORY PAYMENTS

5 Sec. 299.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER  
6 NET PATIENT REVENUE. (a) If the board authorizes a health care  
7 provider participation program under this chapter, the board may  
8 require a mandatory payment to be assessed, either annually or  
9 periodically throughout the year at the discretion of the board, on  
10 the net patient revenue of each institutional health care provider  
11 located in the district. The board shall provide an institutional  
12 health care provider written notice of each assessment under this  
13 subsection, and the provider has 30 calendar days following the  
14 date of receipt of the notice to pay the assessment. In the first  
15 year in which the mandatory payment is required, the mandatory  
16 payment is assessed on the net patient revenue of an institutional  
17 health care provider, as determined by the provider's Medicare cost  
18 report submitted for the previous fiscal year or for the closest  
19 subsequent fiscal year for which the provider submitted the  
20 Medicare cost report. If the mandatory payment is required, the  
21 district shall update the amount of the mandatory payment on an  
22 annual basis and may update the amount on a more frequent basis.

23 (b) The amount of a mandatory payment authorized under this  
24 chapter must be uniformly proportionate with the amount of net  
25 patient revenue generated by each paying provider in the district  
26 as permitted under federal law. A health care provider  
27 participation program authorized under this chapter may not hold

1 harmless any institutional health care provider, as required under  
2 42 U.S.C. Section 1396b(w).

3 (c) If the board requires a mandatory payment authorized  
4 under this chapter, the board shall set the amount of the mandatory  
5 payment, subject to the limitations of this chapter. The aggregate  
6 amount of the mandatory payments required of all paying providers  
7 in the district may not exceed four percent of the aggregate net  
8 patient revenue from hospital services provided by all paying  
9 providers in the district.

10 (d) Subject to Subsection (c), if the board requires a  
11 mandatory payment authorized under this chapter, the board shall  
12 set the mandatory payments in amounts that in the aggregate will  
13 generate sufficient revenue to cover the administrative expenses of  
14 the district for activities under this chapter and to fund an  
15 intergovernmental transfer described by Section 299.103(c)(1).  
16 The annual amount of revenue from mandatory payments used for  
17 administrative expenses by the district for activities under this  
18 chapter is \$600,000, plus the cost of collateralization of  
19 deposits, regardless of actual expenses.

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

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

25 Sec. 299.152. ASSESSMENT AND COLLECTION OF MANDATORY  
26 PAYMENTS. (a) The district may designate an official of the  
27 district or contract with another person to assess and collect the

1 mandatory payments authorized under this chapter.

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

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

12 Sec. 299.153. PURPOSE; CORRECTION OF INVALID PROVISION OR  
13 PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter  
14 is to authorize the district to establish a program to enable the  
15 district to collect mandatory payments from institutional health  
16 care providers to fund the nonfederal share of a Medicaid  
17 supplemental payment program or the Medicaid managed care rate  
18 enhancements for nonpublic hospitals to support the provision of  
19 health care by institutional health care providers to district  
20 residents in need of health care.

21 (b) This chapter does not authorize the district to collect  
22 mandatory payments for the purpose of raising general revenue or  
23 any amount in excess of the amount reasonably necessary to:

24 (1) fund the nonfederal share of a Medicaid  
25 supplemental payment program or Medicaid managed care rate  
26 enhancements for nonpublic hospitals; and

27 (2) cover the administrative expenses of the district



1 associated with activities under this chapter and other uses of the  
2 fund described by Section 299.103(c).

3 (c) To the extent any provision or procedure under this  
4 chapter causes a mandatory payment authorized under this chapter to  
5 be ineligible for federal matching funds, the board may provide by  
6 rule for an alternative provision or procedure that conforms to the  
7 requirements of the federal Centers for Medicare and Medicaid  
8 Services. A rule adopted under this section may not create, impose,  
9 or materially expand the legal or financial liability or  
10 responsibility of the district or an institutional health care  
11 provider in the district beyond the provisions of this chapter.  
12 This section does not require the board to adopt a rule.

13 (d) The district may only assess and collect a mandatory  
14 payment authorized under this chapter if a waiver program, uniform  
15 rate enhancement, or reimbursement described by Section  
16 299.103(c)(1) is available to the district.

17 SECTION 2. As soon as practicable after the expiration of  
18 the authority of the Harris County Hospital District to administer  
19 and operate a health care provider participation program under  
20 Chapter 299, Health and Safety Code, as added by this Act, the board  
21 of hospital managers of the Harris County Hospital District shall  
22 transfer to each institutional health care provider in the district  
23 that provider's proportionate share of any remaining funds in any  
24 local provider participation fund created by the district under  
25 Section 299.103, Health and Safety Code, as added by this Act.

26 SECTION 3. If before implementing any provision of this Act  
27 a state agency determines that a waiver or authorization from a

1 federal agency is necessary for implementation of that provision,  
2 the agency affected by the provision shall request the waiver or  
3 authorization and may delay implementing that provision until the  
4 waiver or authorization is granted.

5 SECTION 4. This Act takes effect immediately if it receives  
6 a vote of two-thirds of all the members elected to each house, as  
7 provided by Section 39, Article III, Texas Constitution. If this  
8 Act does not receive the vote necessary for immediate effect, this  
9 Act takes effect September 1, 2019.