

By: Moody

H.B. No. 3640

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operations of a health care provider participation program by the El Paso 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 298G to read as follows:

CHAPTER 298G. EL PASO COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298G.001. DEFINITIONS. In this chapter:

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

(2) "District" means the El Paso 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. 298G.002. APPLICABILITY. This chapter applies only to the El Paso County Hospital District.

1       Sec. 298G.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. 298G.004. EXPIRATION. (a) Subject to Section  
7 298G.153(d), the authority of the district to administer and  
8 operate a program under this chapter expires December 31, 2023.

9       (b) This chapter expires December 31, 2023.

10               SUBCHAPTER B. POWERS AND DUTIES OF BOARD

11       Sec. 298G.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. 298G.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. 298G.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 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.

1           SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

2           Sec. 298G.101. HEARING. (a) In each year that the board  
3 authorizes a program under this chapter, the board shall hold a  
4 public hearing on the amounts of any mandatory payments that the  
5 board intends to require during the year and how the revenue derived  
6 from those payments is to be spent.

7           (b) Not later than the fifth day before the date of the  
8 hearing required under Subsection (a), the board shall publish  
9 notice of the hearing in a newspaper of general circulation in the  
10 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. 298G.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. 298G.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:

9 (A) any Medicaid payment to nonpublic hospitals  
10 or physicians contracted to provide services at the nonpublic  
11 hospitals;

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

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

19 (D) payments available under another waiver  
20 program authorizing Medicaid payments to nonpublic hospitals or any  
21 payments to Medicaid managed care organizations for the benefit of  
22 nonpublic hospitals; or

23 (E) any reimbursement to nonpublic hospitals in  
24 which the district is located for which federal matching funds are  
25 available.

26 (2) subject to Section .151(d), pay the administrative  
27 expenses of the district in administering the program, including

1 collateralization of deposits;

2 (3) payments for indigent healthcare in the El Paso  
3 community in an amount not to exceed fifteen percent (15%) of the  
4 total mandatory payment collected;

5 (4) refund a mandatory payment collected in error from  
6 a paying provider;

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

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

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

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

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

22 (e) Notwithstanding any other provision of this chapter,  
23 with respect to an intergovernmental transfer of funds described by  
24 Subsection (c)(1) made by the district, any funds received by the  
25 state, district, or other entity as a result of the transfer may not  
26 be used by the state, district, or any other entity to expand  
27 Medicaid eligibility under the Patient Protection and Affordable

1 Care Act (Pub. L. No. 111-148) as amended by the Health Care and  
2 Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

3 SUBCHAPTER D. MANDATORY PAYMENTS

4 Sec. 298G.151 MANDATORY PAYMENTS BASED ON PAYING PROVIDER

5 NET PATIENT REVENUE. (a) If the board authorizes a health care  
6 provider participation program under this chapter, the board may  
7 require a mandatory payment to be assessed on the net patient  
8 revenue of each institutional health care provider located in the  
9 district. The board may provide for the mandatory payment to be  
10 assessed periodically throughout the year; provided, however, that  
11 institutional health care providers shall have thirty (30) calendar  
12 days upon receipt of written notice from the district to make any  
13 mandatory payment. In the first year in which the mandatory payment  
14 is required, the mandatory payment is assessed on the net patient  
15 revenue of an institutional health care provider as determined by  
16 the institutional health care provider's copy of its Medicare cost  
17 report for the previous fiscal year or for the closest subsequent  
18 fiscal year for which the institutional health care provider  
19 submitted the Medicare cost report.

20 (b) The amount of a mandatory payment authorized under this  
21 chapter must be uniformly proportionate with the amount of net  
22 patient revenue generated by each paying provider in the district  
23 as permitted under federal law. A health care provider  
24 participation program authorized under this chapter may not hold  
25 harmless any paying provider, as required under 42 U.S.C. Section  
26 1396b(w).

27 (c) If the board requires a mandatory payment authorized

1 under this chapter, the board shall set the amount of the mandatory  
2 payment, subject to the limitations of this chapter. The aggregate  
3 amount of the mandatory payments required of all paying providers  
4 in the district may not exceed six percent of the aggregate net  
5 patient revenue from hospital services provided by all paying  
6 providers in the district.

7 (d) Subject to Subsection (c), if the board requires a  
8 mandatory payment authorized under this chapter, the board shall  
9 set the mandatory payments in amounts that in the aggregate will  
10 generate sufficient revenue to cover the administrative expenses of  
11 the district for activities under this chapter and to fund an  
12 intergovernmental transfer described by Section .103(c)(1). The  
13 annual amount of revenue from mandatory payments that shall be paid  
14 for administrative expenses of the program by the district may not  
15 exceed two-and-a-half percent (2.5%) of the total revenue generated  
16 from the mandatory payments, regardless of actual expense.

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

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

22 Sec. 298G.152. ASSESSMENT AND COLLECTION OF MANDATORY  
23 PAYMENTS. (a) The district may designate an official of the  
24 district or contract with another person to assess and collect the  
25 mandatory payments authorized under this chapter.

26 (b) The person charged by the district with the assessment  
27 and collection of mandatory payments shall charge and deduct from

1 the mandatory payments collected for the district a collection fee  
2 in an amount not to exceed the person's usual and customary charges  
3 for like services.

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

9 Sec. 298G.153. PURPOSE; CORRECTION OF INVALID PROVISION OR  
10 PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this  
11 chapter is to authorize the district to establish a program to  
12 enable the district to collect mandatory payments from  
13 institutional health care providers to fund the nonfederal share of  
14 a Medicaid supplemental payment program or the Medicaid managed  
15 care rate enhancements for nonpublic hospitals to support the  
16 provision of health care by institutional health care providers to  
17 district residents in need of health care.

18 (b) This chapter does not authorize the district to collect  
19 mandatory payments for the purpose of raising general revenue or  
20 any amount in excess of the amount reasonably necessary to fund the  
21 nonfederal share of a Medicaid supplemental payment program or  
22 Medicaid managed care rate enhancements for nonpublic hospitals and  
23 to cover the administrative expenses of the district associated  
24 with activities under this chapter and other amounts for which the  
25 fund may be used as described by Section 298G.103(c).

26 (c) To the extent any provision or procedure under this  
27 chapter causes a mandatory payment authorized under this chapter to



1 be ineligible for federal matching funds, the board may provide by  
2 rule for an alternative provision or procedure that conforms to the  
3 requirements of the federal Centers for Medicare and Medicaid  
4 Services. A rule adopted under this section may not create, impose,  
5 or materially expand the legal or financial liability or  
6 responsibility of the district or an institutional health care  
7 provider in the district beyond the provisions of this chapter.  
8 This section does not require the board to adopt a rule.

9 (d) The district may only assess and collect a mandatory  
10 payment authorized under this chapter if a waiver program, uniform  
11 rate enhancement, or reimbursement described by Section  
12 298G.103(c)(1) is available to the district.

13 SECTION 2. As soon as practicable after the expiration of  
14 the authority of the El Paso County Hospital District to administer  
15 and operate a health care provider participation program under  
16 Chapter 298G, Health and Safety Code, as added by this Act, the  
17 board of hospital managers of the El Paso 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 298G.103, Health and Safety Code, as added by this  
22 Act.

23 SECTION 3. If before implementing any provision of this Act  
24 a state agency determines that a waiver or authorization from a  
25 federal agency is necessary for implementation of that provision,  
26 the agency affected by the provision shall request the waiver or  
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

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