

By: Hinojosa

H.B. No. 3649

Substitute the following for H.B. No. 3649:

By: Rosenthal

C.S.H.B. No. 3649

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operations of a health care provider participation program by a certain 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 298E to read as follows:

CHAPTER 298E. HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN HOSPITAL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

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

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

(2) "District" means a hospital district to which this chapter applies.

(3) "Institutional health care provider" means a hospital that is not owned and operated by a federal, state, or local government and 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 a health care provider participation program authorized by this chapter.

Sec. 298E.002. APPLICABILITY. This chapter applies only to a hospital district created in a county with a population of more

1 than 800,000 that was not included in the boundaries of a hospital  
2 district before September 1, 2003.

3 Sec. 298E.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM;  
4 PARTICIPATION IN PROGRAM. The board of a district may authorize the  
5 district to participate in a health care provider participation  
6 program on the affirmative vote of a majority of the board, subject  
7 to the provisions of this chapter.

8 Sec. 298E.004. EXPIRATION. (a) Subject to Section  
9 298E.153(d), the authority of a district to administer and operate  
10 a program under this chapter expires December 31, 2023.

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

12 SUBCHAPTER B. POWERS AND DUTIES OF BOARD

13 Sec. 298E.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY  
14 PAYMENT. The board of a district may require a mandatory payment  
15 authorized under this chapter by an institutional health care  
16 provider located in the district only in the manner provided by this  
17 chapter.

18 Sec. 298E.052. RULES AND PROCEDURES. The board of a  
19 district may adopt rules relating to the administration of the  
20 program, including collection of the mandatory payments,  
21 expenditures, audits, and any other administrative aspects of the  
22 program.

23 Sec. 298E.053. INSTITUTIONAL HEALTH CARE PROVIDER  
24 REPORTING. If the board of a district authorizes the district to  
25 participate in a program under this chapter, the board shall  
26 require each institutional health care provider located in the  
27 district to submit to the district a copy of any financial and

1 utilization data required by and reported to the Department of  
2 State Health Services under Sections 311.032 and 311.033 and any  
3 rules adopted by the executive commissioner of the Health and Human  
4 Services Commission to implement those sections.

5 SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

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

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

16 Sec. 298E.102. DEPOSITORY. (a) If the board of a district  
17 requires a mandatory payment authorized under this chapter, the  
18 board shall designate one or more banks as a depository for the  
19 district's local provider participation fund.

20 (b) All funds collected by a district under this chapter  
21 shall be secured in the manner provided for securing other funds of  
22 the district.

23 Sec. 298E.103. LOCAL PROVIDER PARTICIPATION FUND;  
24 AUTHORIZED USES OF MONEY. (a) If a district requires a mandatory  
25 payment authorized under this chapter, the district shall create a  
26 local provider participation fund.

27 (b) A district's local provider participation fund consists

1 of:

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

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

8 (3) the earnings of the fund.

9 (c) Money deposited to the local provider participation  
10 fund of a district may be used only to:

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

14 (A) uncompensated care payments to hospitals in  
15 the Medicaid managed care service area in which the district is  
16 located, if those payments are authorized under the Texas  
17 Healthcare Transformation and Quality Improvement Program waiver  
18 issued under Section 1115 of the federal Social Security Act (42  
19 U.S.C. Section 1315);

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

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

26 or

27 (D) any reimbursement to hospitals for which

1 federal matching funds are available;

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

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

7 (4) 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 supplemental payment program payments; or

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

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

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

26 (d) Money in the local provider participation fund of a  
27 district may not be commingled with other district funds.

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

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

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

13                   SUBCHAPTER D. MANDATORY PAYMENTS

14           Sec. 298E.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER  
15 NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if  
16 the board of a district authorizes a health care provider  
17 participation program under this chapter, the board may require an  
18 annual mandatory payment to be assessed on the net patient revenue  
19 of each institutional health care provider located in the district.  
20 The board may provide for the mandatory payment to be assessed  
21 quarterly. In the first year in which the mandatory payment is  
22 required, the mandatory payment is assessed on the net patient  
23 revenue of an institutional health care provider as reported in the  
24 provider's Medicare cost report submitted for the most recent  
25 fiscal year for which the provider submitted a Medicare cost  
26 report. If the mandatory payment is required, the district shall  
27 update the amount of the mandatory payment on an annual basis.

1       (b) The amount of a mandatory payment assessed under this  
2 chapter by the board of a district must be uniformly proportionate  
3 with the amount of net patient revenue generated by each paying  
4 provider in the district as permitted under federal law. A health  
5 care provider participation program authorized under this chapter  
6 may not hold harmless any institutional health care provider  
7 located in the district, as required under 42 U.S.C. Section  
8 1396b(w).

9       (c) If the board of a district requires a mandatory payment  
10 authorized under this chapter, the board shall set the amount of the  
11 mandatory payment, subject to the limitations of this chapter. The  
12 aggregate amount of the mandatory payments required of all paying  
13 providers in the district may not exceed six percent of the  
14 aggregate net patient revenue from hospital services provided by  
15 all paying providers in the district.

16       (d) Subject to Subsection (c), if the board of a district  
17 requires a mandatory payment authorized under this chapter, the  
18 board shall set the mandatory payments in amounts that in the  
19 aggregate will generate sufficient revenue to cover the  
20 administrative expenses of the district for activities under this  
21 chapter and to fund an intergovernmental transfer described by  
22 Section 298E.103(c)(1). The annual amount of revenue from  
23 mandatory payments that shall be paid for administrative expenses  
24 by the district is \$150,000, plus the cost of collateralization of  
25 deposits, regardless of actual expenses.

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

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

4       Sec. 298E.152. ASSESSMENT AND COLLECTION OF MANDATORY  
5 PAYMENTS. (a) A district may designate an official of the district  
6 or contract with another person to assess and collect the mandatory  
7 payments authorized under this chapter.

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

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

18       Sec. 298E.153. PURPOSE; CORRECTION OF INVALID PROVISION OR  
19 PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this  
20 chapter is to authorize a district to establish a program to enable  
21 the district to collect mandatory payments from institutional  
22 health care providers to fund the nonfederal share of a Medicaid  
23 supplemental payment program or the Medicaid managed care rate  
24 enhancements for hospitals to support the provision of health care  
25 by institutional health care providers located in the district to  
26 district residents in need of health care.

27       (b) This chapter does not authorize a district to collect



1 mandatory payments for the purpose of raising general revenue or  
2 any amount in excess of the amount reasonably necessary to fund the  
3 nonfederal share of a Medicaid supplemental payment program or  
4 Medicaid managed care rate enhancements for hospitals and to cover  
5 the administrative expenses of the district associated with  
6 activities under this chapter.

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

17 (d) A district may only assess and collect a mandatory  
18 payment authorized under this chapter if a waiver program, uniform  
19 rate enhancement, or reimbursement described by Section  
20 298E.103(c)(1) is available to the district.

21 SECTION 2. As soon as practicable after the expiration of  
22 the authority of a hospital district to administer and operate a  
23 health care provider participation program under Chapter 298E,  
24 Health and Safety Code, as added by this Act, the board of hospital  
25 managers of the hospital district shall transfer to each  
26 institutional health care provider in the district that provider's  
27 proportionate share of any remaining funds in any local provider

1 participation fund created by the district under Section 298E.103,  
2 Health and Safety Code, as added by this Act.

3 SECTION 3. If before implementing any provision of this Act  
4 a state agency determines that a waiver or authorization from a  
5 federal agency is necessary for implementation of that provision,  
6 the agency affected by the provision shall request the waiver or  
7 authorization and may delay implementing that provision until the  
8 waiver or authorization is granted.

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