

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

1 participation program authorized by this chapter.

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

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

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

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

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

23 Sec. 300.0053. INSTITUTIONAL HEALTH CARE PROVIDER
24 REPORTING. If the governing body of a local jurisdiction
25 authorizes the local jurisdiction to participate in a health care
26 provider participation program under this chapter, the governing
27 body shall require each institutional health care provider to

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

6 SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

7 Sec. 300.0101. HEARING. (a) In each year that the
8 governing body of a local jurisdiction authorizes a health care
9 provider participation program under this chapter, the governing
10 body shall hold a public hearing on the amounts of any mandatory
11 payments that the governing body intends to require during the year
12 and how the revenue derived from those payments is to be spent.

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

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

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

27 (b) If a governing body of a local jurisdiction creates a

1 local provider participation fund, the governing body shall
2 designate one or more banks as a depository for the mandatory
3 payments received by the local jurisdiction.

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

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

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

12 (2) money received from the Health and Human Services
13 Commission as a refund of an intergovernmental transfer from the
14 local jurisdiction to the state for the purpose of providing the
15 nonfederal share of Medicaid supplemental payment program
16 payments, provided that the intergovernmental transfer does not
17 receive a federal matching payment; and

18 (3) the earnings of the fund.

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

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

24 (A) uncompensated care payments to nonpublic
25 hospitals, if those payments are authorized under the Texas
26 Healthcare Transformation and Quality Improvement Program waiver
27 issued under Section 1115 of the federal Social Security Act (42

1 U.S.C. Section 1315);

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

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

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

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

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

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

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

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

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

25 (6) transfer funds to the Health and Human Services
26 Commission if the local jurisdiction is legally required to
27 transfer the funds to address a disallowance of federal matching

1 funds with respect to programs for which the local jurisdiction
2 made intergovernmental transfers described in Subdivision (1); and
3 (7) reimburse the local jurisdiction if the local
4 jurisdiction is required by the rules governing the uniform rate
5 enhancement program described by Subdivision (1)(B) to incur an
6 expense or forego Medicaid reimbursements from the state because
7 the balance of the local provider participation fund is not
8 sufficient to fund that rate enhancement program.

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

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

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

22 (2) fund the nonfederal share of payments to nonpublic
23 hospitals available through the Medicaid disproportionate share
24 hospital program or the delivery system reform incentive payment
25 program.

26 SUBCHAPTER D. MANDATORY PAYMENTS

27 Sec. 300.0151. MANDATORY PAYMENTS. (a) Except as provided

1 by Subsection (e), if the governing body of a local jurisdiction
2 authorizes a health care provider participation program under this
3 chapter, the governing body shall require an annual mandatory
4 payment to be assessed on the net patient revenue of each
5 institutional health care provider located in the local
6 jurisdiction. The governing body of the local jurisdiction shall
7 provide that the mandatory payment is to be collected at least
8 annually, but not more often than quarterly. In the first year in
9 which the mandatory payment is required, the mandatory payment is
10 assessed on the net patient revenue of an institutional health care
11 provider located in the local jurisdiction as determined by the
12 data reported to the Department of State Health Services under
13 Sections 311.032 and 311.033 in the most recent fiscal year for
14 which that data was reported. If the institutional health care
15 provider did not report any data under those sections, the
16 provider's net patient revenue is the amount of that revenue as
17 contained in the provider's Medicare cost report submitted for the
18 previous fiscal year or for the closest subsequent fiscal year for
19 which the provider submitted the Medicare cost report. The local
20 jurisdiction shall update the amount of the mandatory payment on an
21 annual basis.

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

1 provider, as required under 42 U.S.C. Section 1396b(w).

2 (c) The governing body of a local jurisdiction that
3 authorizes a program under this chapter shall set the amount of the
4 mandatory payment. The aggregate amount of the mandatory payments
5 required of all paying providers in the local jurisdiction may not
6 exceed six percent of the aggregate net patient revenue from
7 hospital services provided by all paying providers in the local
8 jurisdiction.

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

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

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

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

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

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

11 Sec. 300.0153. CORRECTION OF INVALID PROVISION OR
12 PROCEDURE. (a) This chapter does not authorize a local
13 jurisdiction to collect mandatory payments for the purpose of
14 raising general revenue or any amount in excess of the amount
15 reasonably necessary to fund the nonfederal share of a Medicaid
16 supplemental payment program or Medicaid managed care rate
17 enhancements for nonpublic hospitals and to cover the
18 administrative expenses of the local jurisdiction associated with
19 activities under this chapter.

20 (b) To the extent any provision or procedure under this
21 chapter causes a mandatory payment authorized under this chapter to
22 be ineligible for federal matching funds, the local jurisdiction
23 may provide by rule or order for an alternative provision or
24 procedure that conforms to the requirements of the federal Centers
25 for Medicare and Medicaid Services. A rule or order adopted under
26 this section may not create, impose, or materially expand the legal
27 or financial liability or responsibility of the local jurisdiction

1 or an institutional health care provider in the local jurisdiction
2 beyond the provisions of this chapter. This section does not
3 require the governing body of a local jurisdiction to adopt a rule
4 or order.

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

9 SECTION 2. If before implementing any provision of this Act
10 a state agency determines that a waiver or authorization from a
11 federal agency is necessary for implementation of that provision,
12 the agency affected by the provision shall request the waiver or
13 authorization and may delay implementing that provision until the
14 waiver or authorization is granted.

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