

By: Menéndez
(Martinez Fischer)

S.B. No. 1545

Substitute the following for S.B. No. 1545:

By: Dominguez

C.S.S.B. No. 1545

A BILL TO BE ENTITLED

AN ACT

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

CHAPTER 298F. BEXAR COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER

PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

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

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

(2) "District" means the Bexar 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. 298F.002. APPLICABILITY. This chapter applies only to the Bexar County Hospital District.

1 Sec. 298F.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. 298F.004. EXPIRATION. (a) Subject to Section
7 298F.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. 298F.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. 298F.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. 298F.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.

27 SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

1 Sec. 298F.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 paying
10 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. 298F.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. 298F.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) payments to nonpublic hospitals, if those
11 payments are authorized under the Texas Healthcare Transformation
12 and Quality Improvement Program waiver issued under Section 1115 of
13 the federal Social Security Act (42 U.S.C. Section 1315);

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

17 (C) payments available under another federal
18 waiver program authorizing Medicaid payments to nonpublic
19 hospitals;

20 (D) any payments to Medicaid managed care
21 organizations for the benefit of nonpublic hospitals and for which
22 federal matching funds are available; or

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

25 (2) subject to Section 298F.151(d), pay the
26 administrative expenses of the district in administering the
27 program, including collateralization of deposits;

1 (3) refund a mandatory payment collected in error from
2 a paying provider;

3 (4) refund to paying providers a proportionate share
4 of the money 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 that transfer may
22 not 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.

3 SUBCHAPTER D. MANDATORY PAYMENTS

4 Sec. 298F.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, for each year
7 the program is authorized, the board may require a mandatory
8 payment to be assessed on the net patient revenue of each
9 institutional health care provider located in the district. The
10 board may provide for the mandatory payment to be assessed
11 periodically throughout the year. The board shall provide an
12 institutional health care provider written notice of each
13 assessment under this subsection, and the provider has 30 calendar
14 days following the date of receipt of the notice to pay the
15 assessment. In the first year in which the mandatory payment is
16 required, the mandatory payment is assessed on the net patient
17 revenue of an institutional health care provider, which is the
18 amount of that revenue as reported in the provider's Medicare cost
19 report submitted for the previous fiscal year or for the closest
20 subsequent fiscal year for which the provider submitted the
21 Medicare cost report. If the mandatory payment is required, the
22 district shall update the amount of the mandatory payment on an
23 annual basis.

24 (b) The amount of a mandatory payment authorized under this
25 chapter must be uniformly proportionate with the amount of net
26 patient revenue generated by each paying provider in the district
27 as permitted under federal law. A health care provider

1 participation program authorized under this chapter may not hold
2 harmless any institutional health care provider, as required under
3 42 U.S.C. Section 1396b(w).

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

11 (d) Subject to Subsection (c), if the board requires a
12 mandatory payment authorized under this chapter, the board shall
13 set the mandatory payments in amounts that in the aggregate will
14 generate sufficient revenue to cover the administrative expenses of
15 the district for activities under this chapter and to fund an
16 intergovernmental transfer described by Section 298F.103(c)(1).
17 The amount of revenue from mandatory payments that may be used for
18 administrative expenses by the district in a year for activities
19 under this chapter may not exceed \$184,000, plus the cost of
20 collateralization of deposits. If the board demonstrates to the
21 paying providers that the costs of administering the health care
22 provider participation program under this chapter, excluding those
23 costs associated with the collateralization of deposits, exceed
24 \$184,000 in any year, on consent of all of the paying providers, the
25 district may use additional revenue from mandatory payments
26 received under this chapter to compensate the district for its
27 administrative expenses. A paying provider may not unreasonably

1 withhold consent to compensate the district for administrative
2 expenses.

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

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

8 Sec. 298F.152. ASSESSMENT AND COLLECTION OF MANDATORY
9 PAYMENTS. (a) The district may designate an official of the
10 district or contract with another person to assess and collect the
11 mandatory payments authorized under this chapter.

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

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

22 Sec. 298F.153. PURPOSE; CORRECTION OF INVALID PROVISION OR
23 PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter
24 is to authorize the district to establish a program to enable the
25 district to collect mandatory payments from institutional health
26 care providers to fund the nonfederal share of a Medicaid
27 supplemental payment program or the Medicaid managed care rate

1 enhancements for nonpublic hospitals to support the provision of
2 health care by institutional health care providers to district
3 residents in need of health care.

4 (b) This chapter does not authorize the district to collect
5 mandatory payments for the purpose of raising general revenue or
6 any amount in excess of the amount reasonably necessary to fund the
7 nonfederal share of a Medicaid supplemental payment program or
8 Medicaid managed care rate enhancements for nonpublic hospitals and
9 to cover the administrative expenses of the district associated
10 with activities under this chapter and other amounts for which the
11 fund may be used as described by Section 298F.103(c).

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

22 (d) The district may only assess and collect a mandatory
23 payment authorized under this chapter if a waiver program, uniform
24 rate enhancement, reimbursement, or other payment described by
25 Section 298F.103(c)(1) is available to nonpublic hospitals in the
26 district.

27 SECTION 2. As soon as practicable after the expiration of

1 the authority of the Bexar County Hospital District to administer
2 and operate a health care provider participation program under
3 Chapter 298F, Health and Safety Code, as added by this Act, the
4 board of hospital managers of the Bexar County Hospital District
5 shall transfer to each institutional health care provider in the
6 district that provider's proportionate share of any remaining funds
7 in any local provider participation fund created by the district
8 under Section 298F.103, Health and Safety Code, as added by this
9 Act.

10 SECTION 3. If before implementing any provision of this Act
11 a state agency determines that a waiver or authorization from a
12 federal agency is necessary for implementation of that provision,
13 the agency affected by the provision shall request the waiver or
14 authorization and may delay implementing that provision until the
15 waiver or authorization is granted.

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