

1 AN ACT

2 relating to the creation and operations of a health care provider  
3 participation program by the El Paso County Hospital District.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle D, Title 4, Health and Safety Code, is  
6 amended by adding Chapter 298G to read as follows:

7 CHAPTER 298G. EL PASO COUNTY HOSPITAL DISTRICT HEALTH CARE

8 PROVIDER PARTICIPATION PROGRAM

9 SUBCHAPTER A. GENERAL PROVISIONS

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

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

13 (2) "District" means the El Paso County Hospital  
14 District.

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

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

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

23 Sec. 298G.002. APPLICABILITY. This chapter applies only to  
24 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  
22 mandatory payment authorized under this chapter, the district shall  
23 create a 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:

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

13 (B) Medicaid payments for:

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

17 (ii) payments available under another  
18 waiver program authorizing payments that are substantially similar  
19 to Medicaid payments described by Paragraph (A) or Subparagraph (i)  
20 to nonpublic hospitals or any payments to Medicaid managed care  
21 organizations for the benefit of nonpublic hospitals; or

22 (iii) any reimbursement to nonpublic  
23 hospitals located in the district for which federal matching funds  
24 are available;

25 (2) subject to Section 298G.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 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 expand  
23 Medicaid eligibility under the Patient Protection and Affordable  
24 Care Act (Pub. L. No. 111-148) as amended by the Health Care and  
25 Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

26           SUBCHAPTER D. MANDATORY PAYMENTS

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

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

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

25 (c) If the board requires a mandatory payment authorized  
26 under this chapter, the board shall set the amount of the mandatory  
27 payment, subject to the limitations of this chapter. The aggregate

1 amount of the mandatory payments required of all paying providers  
2 in the district may not exceed six percent of the aggregate net  
3 patient revenue from hospital services provided by all paying  
4 providers in the district.

5 (d) Subject to Subsection (c), if the board requires a  
6 mandatory payment authorized under this chapter, the board shall  
7 set the mandatory payments in amounts that in the aggregate will  
8 generate sufficient revenue to cover the administrative expenses of  
9 the district for activities under this chapter and to fund an  
10 intergovernmental transfer described by Section 298G.103(c)(1).  
11 The annual amount of revenue from mandatory payments that shall be  
12 paid for administrative expenses by the district is \$150,000, plus  
13 the cost of collateralization of deposits, regardless of actual  
14 expenses.

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

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

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

24 (b) The person charged by the district with the assessment  
25 and collection of mandatory payments shall charge and deduct from  
26 the mandatory payments collected for the district a collection fee  
27 in an amount not to exceed the person's usual and customary charges

1 for like services.

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

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

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

19 (1) fund the nonfederal share of a Medicaid  
20 supplemental payment program or Medicaid managed care rate  
21 enhancements for nonpublic hospitals; and

22 (2) cover the administrative expenses of the district  
23 associated with activities under this chapter and other uses of the  
24 fund described by Section 298G.103(c).

25 (c) To the extent any provision or procedure under this  
26 chapter causes a mandatory payment authorized under this chapter to  
27 be ineligible for federal matching funds, the board may provide by



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

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

12 SECTION 2. As soon as practicable after the expiration of  
13 the authority of the El Paso County Hospital District to administer  
14 and operate a health care provider participation program under  
15 Chapter 298G, Health and Safety Code, as added by this Act, the  
16 board of hospital managers of the El Paso County Hospital District  
17 shall transfer to each institutional health care provider in the  
18 district that provider's proportionate share of any remaining funds  
19 in any local provider participation fund created by the district  
20 under Section 298G.103, Health and Safety Code, as added by this  
21 Act.

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

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

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1751 passed the Senate on April 9, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1751 passed the House on May 14, 2019, by the following vote: Yeas 126, Nays 15, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor