

By: Kolkhorst

S.B. No. 2257

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain entities to create and operate health care provider participation programs in counties not served by a hospital district or a public hospital.

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 299 to read as follows:

CHAPTER 299. HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN

MULTI-COUNTY DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 299.0001. PURPOSE. The purpose of this chapter is to authorize certain counties not served by a hospital district or a public hospital to create a district to administer a health care provider participation program to provide additional compensation to hospitals in the district by collecting mandatory payments from each hospital in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Sec. 299.0002. DEFINITIONS. In this chapter:

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

(2) "Director" means a member of the board.

(3) "District" means a health care provider participation district created under this chapter.

1 (4) "Institutional health care provider" means a
2 nonpublic hospital that provides inpatient hospital services.

3 (5) "Paying hospital" means an institutional health
4 care provider required to make a mandatory payment under this
5 chapter.

6 (6) "Program" means a health care provider
7 participation program authorized by this chapter.

8 Sec. 299.0003. APPLICABILITY. This chapter applies only to
9 a county that:

10 (1) is not participating in a health care provider
11 participation program authorized under this subtitle;

12 (2) is not served by a hospital district or public
13 hospital; and

14 (3) has only one hospital that is located in the
15 county.

16 SUBCHAPTER B. CREATION, OPERATION, AND DISSOLUTION OF DISTRICT

17 Sec. 299.0021. CREATION BY CONCURRENT ORDERS. (a) Except
18 as provided by Subsection (b), a county and one or more other
19 counties may create a district by adopting concurrent orders.

20 (b) A county or portion of a county that is in the boundaries
21 of a hospital district may not be a party to the creation of a
22 district.

23 (c) A concurrent order to create a district must:

24 (1) be approved by the governing body of each creating
25 county;

26 (2) contain identical provisions; and

27 (3) define the boundaries of the district to be

1 coextensive with the combined boundaries of each creating county.

2 Sec. 299.0022. POWERS. A district may authorize and
3 administer a health care provider participation program in
4 accordance with this chapter.

5 Sec. 299.0023. BOARD OF DIRECTORS. (a) If three or more
6 counties create a district, the county judge of each county that
7 creates the district shall appoint one director.

8 (b) If two counties create a district:

9 (1) the county judge of the most populous county shall
10 appoint two directors; and

11 (2) the county judge of the other county shall appoint
12 one director.

13 (c) Directors serve staggered two-year terms, with as near
14 as possible to one-half of the directors' terms expiring each year.

15 (d) A vacancy in the office of director shall be filled for
16 the unexpired term in the same manner as the original appointment.

17 (e) The board shall elect from among its members a
18 president. The president may vote and may cast an additional vote
19 to break a tie.

20 (f) The board shall also elect from among its members a vice
21 president.

22 (g) The board shall appoint a secretary, who need not be a
23 director.

24 (h) Each officer of the board serves for a term of one year.

25 (i) The board shall fill a vacancy in a board office for the
26 unexpired term.

27 (j) A majority of the members of the board voting must

1 concur in a matter relating to the business of the district.

2 Sec. 299.0024. QUALIFICATIONS FOR OFFICE. (a) To be
3 eligible to serve as a director, a person must be a resident of the
4 county that appoints the person under Section 299.0023.

5 (b) An employee of the district may not serve as a director.

6 Sec. 299.0025. COMPENSATION. (a) Directors and officers
7 serve without compensation but may be reimbursed for actual
8 expenses incurred in the performance of official duties.

9 (b) Expenses reimbursed under this section must be:

10 (1) reported in the district's minute book or other
11 district records; and

12 (2) approved by the board.

13 Sec. 299.0026. AUTHORITY TO SUE AND BE SUED. The board may
14 sue and be sued on behalf of the district.

15 Sec. 299.0027. DISTRICT FINANCES. Subchapter F, Chapter
16 287, other than Sections 287.129 and 287.130, applies to the
17 district in the same manner that those provisions apply to a health
18 services district created under Chapter 287. This section does not
19 authorize the district to issue bonds.

20 Sec. 299.0028. DISSOLUTION. A district shall be dissolved
21 if the counties that created the district adopt concurrent orders
22 to dissolve the district and the concurrent orders contain
23 identical provisions.

24 Sec. 299.0029. ADMINISTRATION OF PROPERTY, DEBTS, AND
25 ASSETS AFTER DISSOLUTION. (a) After dissolution of a district
26 under Section 299.0028, the board shall continue to control and
27 administer any property, debts, and assets of the district until

1 all funds have been disposed of and all district debts have been
2 paid or settled.

3 (b) As soon as practicable after the dissolution of the
4 district, the board shall transfer to each institutional health
5 care provider in the district the provider's proportionate share of
6 any remaining funds in any local provider participation fund
7 created by the district under Section 299.0102.

8 (c) If, after administering any property and assets, the
9 board determines that the district's property and assets are
10 insufficient to pay the debts of the district, the district shall
11 transfer the remaining debts to the counties that created the
12 district in proportion to the funds contributed to the district by
13 each county, including a paying hospital in the county.

14 (d) If, after complying with Subsections (b) and (c) and
15 administering the property and assets, the board determines that
16 unused funds remain, the board shall transfer the unused funds to
17 the counties that created the district in proportion to the funds
18 contributed to the district by each county, including a paying
19 hospital in the county.

20 Sec. 299.0030. ACCOUNTING AFTER DISSOLUTION. After the
21 district has paid all its debts and has disposed of all its assets
22 and funds as prescribed by Section 299.0029, the board shall
23 provide an accounting to each county that created the district. The
24 accounting must show the manner in which the assets and debts of the
25 district were distributed.

1 SUBCHAPTER C. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; POWERS
2 AND DUTIES OF DISTRICT BOARD

3 Sec. 299.0051. HEALTH CARE PROVIDER PARTICIPATION PROGRAM.

4 The board may authorize the district to participate in a health care
5 provider participation program on the affirmative vote of a
6 majority of the board, subject to the provisions of this chapter.

7 Sec. 299.0052. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY
8 PAYMENT. The board may require a mandatory payment authorized
9 under this chapter by an institutional health care provider in the
10 district only in the manner provided by this chapter.

11 Sec. 299.0053. RULES AND PROCEDURES. The board may adopt
12 rules relating to the administration of the health care provider
13 participation program in the district, including collection of the
14 mandatory payments, expenditures, audits, and any other
15 administrative aspects of the program.

16 Sec. 299.0054. INSTITUTIONAL HEALTH CARE PROVIDER
17 REPORTING. If the board authorizes the district to participate in a
18 health care provider participation program under this chapter, the
19 board shall require each institutional health care provider located
20 in the district to submit to the district a copy of any financial
21 and utilization data required by and reported to the Department of
22 State Health Services under Sections [311.032](#) and [311.033](#) and any
23 rules adopted by the executive commissioner of the Health and Human
24 Services Commission to implement those sections.

25 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

26 Sec. 299.0101. HEARING. (a) In each year that the board
27 authorizes a health care provider participation program under this

1 chapter, the board shall hold a public hearing on the amounts of any
2 mandatory payments that the board intends to require during the
3 year and how the revenue derived from those payments is to be spent.

4 (b) Not later than the fifth day before the date of the
5 hearing required under Subsection (a), the board shall publish
6 notice of the hearing in a newspaper of general circulation in each
7 county that creates the district and provide written notice of the
8 hearing to the chief operating officer of each institutional health
9 care provider in the district.

10 Sec. 299.0102. LOCAL PROVIDER PARTICIPATION FUND;
11 DEPOSITORY. (a) If the board collects a mandatory payment
12 authorized under this chapter, the board shall create a local
13 provider participation fund in one or more banks designated by the
14 district as a depository for the mandatory payments received by the
15 district.

16 (b) The board may withdraw or use money in the local
17 provider participation fund of the district only for a purpose
18 authorized under this chapter.

19 (c) All funds collected under this chapter shall be secured
20 in the manner provided for securing county funds.

21 Sec. 299.0103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY.

22 (a) The local provider participation fund established under
23 Section 299.0102 consists of:

24 (1) all revenue received by the district attributable
25 to mandatory payments authorized under this chapter, including any
26 penalties and interest attributable to delinquent payments;

27 (2) money received from the Health and Human Services

1 Commission as a refund of an intergovernmental transfer from the
2 district to the state for the purpose of providing the nonfederal
3 share of Medicaid supplemental payment program payments, provided
4 that the intergovernmental transfer does not receive a federal
5 matching payment; and

6 (3) the earnings of the fund.

7 (b) Money deposited to the local provider participation
8 fund may be used only to:

9 (1) fund intergovernmental transfers from the
10 district to the state to provide:

11 (A) the nonfederal share of a Medicaid
12 supplemental payment program authorized under the state Medicaid
13 plan, the Texas Healthcare Transformation and Quality Improvement
14 Program waiver issued under Section 1115 of the federal Social
15 Security Act (42 U.S.C. Section 1315), or a successor waiver
16 program authorizing similar Medicaid supplemental payment
17 programs; or

18 (B) payments to Medicaid managed care
19 organizations that are dedicated for payment to hospitals;

20 (2) subsidize indigent programs in the district;

21 (3) pay the administrative expenses of the district
22 solely for activities under this chapter;

23 (4) refund a portion of a mandatory payment collected
24 in error from a paying hospital; and

25 (5) refund to paying hospitals the proportionate share
26 of money received by the district that is not used to fund the
27 nonfederal share of Medicaid supplemental payment program

1 payments.

2 (c) Money in the local provider participation fund may not
3 be commingled with other district funds or other funds of a county
4 that creates the district.

5 (d) An intergovernmental transfer of funds described by
6 Subsection (b)(1) and any funds received by the district as a result
7 of an intergovernmental transfer described by that subsection may
8 not be used by the district, a county that created the district, or
9 any other entity to expand Medicaid eligibility under the Patient
10 Protection and Affordable Care Act (Pub. L. No. 111-148) as amended
11 by the Health Care and Education Reconciliation Act of 2010 (Pub. L.
12 No. 111-152).

13 Sec. 299.0104. ACCOUNTING OF FUNDS. The district shall
14 maintain an accounting of the funds received from each county that
15 creates the district, including a paying hospital in the county.

16 SUBCHAPTER E. MANDATORY PAYMENTS

17 Sec. 299.0151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL
18 NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if
19 the board authorizes a health care provider participation program
20 under this chapter, the district may require an annual mandatory
21 payment to be assessed on the net patient revenue of each
22 institutional health care provider located in the district. The
23 board may provide for the mandatory payment to be assessed
24 quarterly. In the first year in which the mandatory payment is
25 required, the mandatory payment is assessed on the net patient
26 revenue of an institutional health care provider located in the
27 district as determined by the data reported to the Department of

1 State Health Services under Sections 311.032 and 311.033 in the
2 fiscal year ending in 2017 or, if the institutional health care
3 provider did not report any data under those sections in that fiscal
4 year, as determined by the institutional health care provider's
5 Medicare cost report submitted for the 2017 fiscal year or for the
6 closest subsequent fiscal year for which the provider submitted the
7 Medicare cost report. The district shall update the amount of the
8 mandatory payment on an annual basis.

9 (b) The amount of a mandatory payment authorized under this
10 chapter must be uniformly proportionate with the amount of net
11 patient revenue generated by each paying hospital in the district.
12 A mandatory payment authorized under this chapter may not hold
13 harmless any institutional health care provider, as required under
14 42 U.S.C. Section 1396b(w).

15 (c) The board shall set the amount of a mandatory payment
16 authorized under this chapter. The amount of the mandatory payment
17 required of each paying hospital may not exceed six percent of the
18 paying hospital's net patient revenue.

19 (d) Subject to the maximum amount prescribed by Subsection
20 (c), the board shall set a mandatory payment authorized under this
21 chapter in amounts that in the aggregate will generate sufficient
22 revenue to cover the administrative expenses of the district for
23 activities under this chapter, to fund an intergovernmental
24 transfer described by Section 299.0103(b)(1), and to pay for
25 indigent programs in the district, except that the amount of
26 revenue from mandatory payments used for administrative expenses of
27 the district for activities under this chapter in a year may not

1 exceed four percent of the total revenue generated from the
2 mandatory payment.

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

5 Sec. 299.0152. ASSESSMENT AND COLLECTION OF MANDATORY
6 PAYMENTS. The district may collect or contract for the assessment
7 and collection of mandatory payments authorized under this chapter.

8 Sec. 299.0153. INTEREST, PENALTIES, AND DISCOUNTS.
9 Interest, penalties, and discounts on mandatory payments required
10 under this chapter are governed by the law applicable to county ad
11 valorem taxes.

12 Sec. 299.0154. CORRECTION OF INVALID PROVISION OR
13 PROCEDURE. To the extent any provision or procedure under this
14 chapter causes a mandatory payment authorized under this chapter to
15 be ineligible for federal matching funds, the board may provide by
16 rule for an alternative provision or procedure that conforms to the
17 requirements of the federal Centers for Medicare and Medicaid
18 Services.

19 SECTION 2. Subtitle D, Title 4, Health and Safety Code, is
20 amended by adding Chapter 299A to read as follows:

21 CHAPTER 299A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN
22 COUNTY NOT SERVED BY HOSPITAL DISTRICT OR PUBLIC HOSPITAL

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 299A.0001. PURPOSE. The purpose of this chapter is to
25 authorize a county not served by a hospital district or a public
26 hospital to administer a county health care provider participation
27 program to provide additional compensation to hospitals in the

1 county by collecting mandatory payments from each hospital in the
2 county to be used to provide the nonfederal share of a Medicaid
3 supplemental payment program and for other purposes as authorized
4 under this chapter.

5 Sec. 299A.0002. DEFINITIONS. In this chapter:

6 (1) "Institutional health care provider" means a
7 nonpublic hospital that provides inpatient hospital services.

8 (2) "Paying hospital" means an institutional health
9 care provider required to make a mandatory payment under this
10 chapter.

11 (3) "Program" means a county health care provider
12 participation program authorized by this chapter.

13 Sec. 299A.0003. APPLICABILITY. This chapter applies only
14 to a county that is not served by a hospital district or a public
15 hospital.

16 Sec. 299A.0004. COUNTY HEALTH CARE PROVIDER PARTICIPATION
17 PROGRAM; COUNTY ORDER REQUIRED FOR PARTICIPATION. The
18 commissioners court of a county may adopt an order authorizing the
19 county to participate in a health care provider participation
20 program, subject to the limitations provided by this chapter.

21 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

22 Sec. 299A.0051. LIMITATION ON AUTHORITY TO REQUIRE
23 MANDATORY PAYMENT. The commissioners court of a county may require
24 a mandatory payment authorized under this chapter by an
25 institutional health care provider in the county only in the manner
26 provided by this chapter.

27 Sec. 299A.0052. RULES AND PROCEDURES. The commissioners

1 court of a county may adopt rules relating to the administration of
2 the health care provider participation program in the county,
3 including collection of the mandatory payments, expenditures,
4 audits, and any other administrative aspects of the program.

5 Sec. 299A.0053. INSTITUTIONAL HEALTH CARE PROVIDER
6 REPORTING. If the commissioners court of a county authorizes the
7 county to participate in a health care provider participation
8 program under this chapter, the commissioners court shall require
9 each institutional health care provider to submit to the county a
10 copy of any financial and utilization data required by and reported
11 to the Department of State Health Services under Sections [311.032](#)
12 and [311.033](#) and any rules adopted by the executive commissioner of
13 the Health and Human Services Commission to implement those
14 sections.

15 SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

16 Sec. 299A.0101. HEARING. (a) In each year that the
17 commissioners court of a county authorizes a health care provider
18 participation program under this chapter, the commissioners court
19 shall hold a public hearing on the amounts of any mandatory payments
20 that the commissioners court intends to require during the year and
21 how the revenue derived from those payments is to be spent.

22 (b) Not later than the fifth day before the date of the
23 hearing required under Subsection (a), the commissioners court
24 shall publish notice of the hearing in a newspaper of general
25 circulation in the county and provide written notice of the hearing
26 to the chief operating officer of each institutional health care
27 provider in the county.

1 Sec. 299A.0102. LOCAL PROVIDER PARTICIPATION FUND;
2 DEPOSITORY. (a) Each commissioners court of a county that collects
3 a mandatory payment authorized under this chapter shall create a
4 local provider participation fund in one or more banks designated
5 by the county as a depository for the mandatory payments received by
6 the county.

7 (b) The commissioners court of a county may withdraw or use
8 money in the local provider participation fund of the county only
9 for a purpose authorized under this chapter.

10 (c) All funds collected under this chapter shall be secured
11 in the manner provided for securing other county funds.

12 Sec. 299A.0103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY.

13 (a) The local provider participation fund established by a county
14 under Section 299A.0102 consists of:

15 (1) all revenue received by the county attributable to
16 mandatory payments authorized under this chapter, including any
17 penalties and interest attributable to delinquent payments;

18 (2) money received from the Health and Human Services
19 Commission as a refund of an intergovernmental transfer from the
20 county to the state for the purpose of providing the nonfederal
21 share of Medicaid supplemental payment program payments, provided
22 that the intergovernmental transfer does not receive a federal
23 matching payment; and

24 (3) the earnings of the fund.

25 (b) Money deposited to the local provider participation
26 fund of a county may be used only to:

27 (1) fund intergovernmental transfers from the county

1 to the state to provide:

2 (A) the nonfederal share of a Medicaid
3 supplemental payment program authorized under the state Medicaid
4 plan, the Texas Healthcare Transformation and Quality Improvement
5 Program waiver issued under Section 1115 of the federal Social
6 Security Act (42 U.S.C. Section 1315), or a successor waiver
7 program authorizing similar Medicaid supplemental payment
8 programs; or

9 (B) payments to Medicaid managed care
10 organizations that are dedicated for payment to hospitals;

11 (2) subsidize indigent programs in the county;

12 (3) pay the administrative expenses of the county
13 solely for activities under this chapter;

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

16 (5) refund to paying hospitals the proportionate share
17 of money received by the county that is not used to fund the
18 nonfederal share of Medicaid supplemental payment program
19 payments.

20 (c) Money in the local provider participation fund of a
21 county may not be commingled with other county funds.

22 (d) An intergovernmental transfer of funds described by
23 Subsection (b)(1) and any funds received by the county as a result
24 of an intergovernmental transfer described by that subsection may
25 not be used by the county or any other entity to expand Medicaid
26 eligibility under the Patient Protection and Affordable Care Act
27 (Pub. L. No. 111-148) as amended by the Health Care and Education

1 Reconciliation Act of 2010 (Pub. L. No. 111-152).

2 SUBCHAPTER D. MANDATORY PAYMENTS

3 Sec. 299A.0151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL
4 NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if
5 the commissioners court of a county authorizes a health care
6 provider participation program under this chapter, the
7 commissioners court may require an annual mandatory payment to be
8 assessed on the net patient revenue of each institutional health
9 care provider located in the county. The commissioners court may
10 provide for the mandatory payment to be assessed quarterly. In the
11 first year in which the mandatory payment is required, the
12 mandatory payment is assessed on the net patient revenue of an
13 institutional health care provider located in the county as
14 determined by the data reported to the Department of State Health
15 Services under Sections [311.032](#) and [311.033](#) in the fiscal year
16 ending in 2017 or, if the institutional health care provider did not
17 report any data under those sections in that fiscal year, as
18 determined by the institutional health care provider's Medicare
19 cost report submitted for the 2017 fiscal year or for the closest
20 subsequent fiscal year for which the provider submitted the
21 Medicare cost report. The county shall update the amount of the
22 mandatory payment on an annual basis.

23 (b) The amount of a mandatory payment authorized under this
24 chapter must be uniformly proportionate with the amount of net
25 patient revenue generated by each paying hospital in the county. A
26 mandatory payment authorized under this chapter may not hold
27 harmless any institutional health care provider, as required under

1 42 U.S.C. Section 1396b(w).

2 (c) The commissioners court of a county that collects a
3 mandatory payment authorized under this chapter shall set the
4 amount of the mandatory payment. The amount of the mandatory
5 payment required of each paying hospital in the county may not
6 exceed six percent of the paying hospital's net patient revenue.

7 (d) Subject to the maximum amount prescribed by Subsection
8 (c), the commissioners court of a county that collects a mandatory
9 payment authorized under this chapter shall set the mandatory
10 payments in amounts that in the aggregate will generate sufficient
11 revenue to cover the administrative expenses of the county for
12 activities under this chapter, to fund an intergovernmental
13 transfer described by Section 299A.103(b)(1), and to pay for
14 indigent programs in the county, except that the amount of revenue
15 from mandatory payments used for administrative expenses of the
16 county for activities under this chapter in a year may not exceed
17 the lesser of four percent of the total revenue generated from the
18 mandatory payment or \$20,000.

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

21 Sec. 299A.0152. ASSESSMENT AND COLLECTION OF MANDATORY
22 PAYMENTS. A county may collect or contract for the assessment and
23 collection of mandatory payments authorized under this chapter.

24 Sec. 299A.0153. INTEREST, PENALTIES, AND DISCOUNTS.
25 Interest, penalties, and discounts on mandatory payments required
26 under this chapter are governed by the law applicable to county ad
27 valorem taxes.

1 Sec. 299A.0154. CORRECTION OF INVALID PROVISION OR
2 PROCEDURE. To the extent any provision or procedure under this
3 chapter causes a mandatory payment authorized under this chapter to
4 be ineligible for federal matching funds, the county may provide by
5 rule for an alternative provision or procedure that conforms to the
6 requirements of the federal Centers for Medicare and Medicaid
7 Services.

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

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