By: Hughes S.B. No. 1073

A BILL TO BE ENTITLED

AN ACT

relating to the operations of health care provider participation programs in certain counties.

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

SECTION 1. Section 291A.001, Health and Safety Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (4) to read as follows:

(1) "Institutional health care provider" means a [~~nonpublic~~] hospital that is not owned and operated by a federal or state government and provides inpatient hospital services. The term includes a hospital that is owned and operated by a municipality or county and provides inpatient hospital services.

(2) "Paying provider [~~hospital~~]" means an institutional health care provider required to make a mandatory payment under this chapter.

(4) "Qualifying assessment basis" means the health care item, health care service, or other health care-related basis consistent with 42 U.S.C. Section 1396b(w) on which a commissioners court requires mandatory payments to be assessed under this chapter.

SECTION 2. Section 291A.003(a), Health and Safety Code, is amended to read as follows:

(a) A county health care provider participation program authorizes a county to collect a mandatory payment from each

institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers [~~and indigent care programs~~] as provided by this chapter.

SECTION 3. Section 291A.054(a), Health and Safety Code, is amended to read as follows:

(a) The commissioners court of a county that collects a mandatory payment authorized under this chapter may [~~shall~~] require each institutional health care provider to submit to the county a copy of any financial and utilization data as [~~required by and~~] reported in:

(1) the provider's Medicare cost report for the most recent fiscal year for which the provider submitted the Medicare cost report; or

(2) a report other than the report described by Subdivision (1) that the commissioners court considers reliable and is submitted by or to the provider for the most recent fiscal year [~~to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections~~].

SECTION 4. Section 291A.101, Health and Safety Code, is amended to read as follows:

Sec. 291A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold at least one [~~a~~] public hearing on the

amounts of the [~~any~~] mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of a [~~the~~] hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

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

SECTION 5. Section 291A.103(c), Health and Safety Code, is amended to read as follows:

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

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

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

(2) [~~subsidize indigent programs;~~

[~~(3)~~] pay the administrative expenses of the county solely for activities under this chapter;

(3) [~~(4)~~] refund a portion of a mandatory payment collected in error from a paying provider [~~hospital~~]; and

(4) [~~(5)~~] refund to a paying provider, in an amount that is proportionate to the mandatory payments made under this chapter by the provider during the 12 months preceding the date of the refund, the [~~hospitals the proportionate share of~~] money attributable to mandatory payments collected under this chapter that the county:

(A) receives from the Health and Human Services Commission [~~received by the county~~] that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

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

SECTION 6. Section 291A.151, Health and Safety Code, is amended to read as follows:

Sec. 291A.151. MANDATORY PAYMENTS [~~BASED ON PAYING HOSPITAL NET PATIENT REVENUE~~]. (a) The [~~Except as provided by Subsection (e), the~~] commissioners court of a county that authorizes a county health care provider participation program [~~collects a mandatory payment authorized~~] under this chapter may require [~~an annual~~] mandatory payments [~~payment~~] to be assessed against [~~on the net patient revenue of~~] each institutional health care provider located in the county, either annually or periodically throughout the year

at the discretion of the commissioners court, on the basis of a health care item, health care service, or other health care-related basis that is consistent with the requirements of 42 U.S.C. Section 1396b(w). The commissioners court shall provide an institutional health care provider written notice of each assessment under this section not later than 30 days before the date the assessment is due. The qualifying assessment basis must be the same for each institutional health care provider in the county.

(a-1) Except as otherwise provided by this subsection, the qualifying assessment basis must be determined by the commissioners court using information contained in an institutional health care provider's Medicare cost report for the most recent fiscal year for which the provider submitted the report. If the provider is not required to submit a Medicare cost report, or if the Medicare cost report submitted by the provider does not contain information necessary to determine the qualifying assessment basis, the qualifying assessment basis may be determined by the commissioners court using information contained in another report the commissioners court considers reliable that is submitted by or to the provider for the most recent fiscal year. To the extent practicable, the commissioners court shall use the same type of report to determine the qualifying assessment basis for each paying provider in the county.

(a-2) If mandatory payments are required, the [~~The~~] commissioners court [~~may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net~~

~~patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county~~] shall update the amount of the mandatory payments periodically [~~payment on an annual basis~~].

(b) The amount of a mandatory payment authorized under this chapter must be determined in a manner that ensures the revenue generated qualifies for federal matching funds under federal law, consistent with [~~uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under~~] 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that authorizes a county health care provider participation program [~~collects a mandatory payment authorized~~] under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying provider [~~hospital~~] may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying providers in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying providers in the county [~~hospital's~~

~~net patient revenue~~].

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter and [~~,~~] to fund the nonfederal share of Medicaid supplemental payment program payments [~~an intergovernmental transfer described by Section 291A.103(c)(1), and to pay for indigent programs~~], except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying provider [~~hospital~~] may not add a mandatory payment required under this section as a surcharge to a patient.

SECTION 7. Section 291A.154, Health and Safety Code, is amended to read as follows:

Sec. 291A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of [~~a~~] Medicaid supplemental payment program payments.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, a [~~the~~] county that authorizes a county health care provider participation program

under this chapter may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the county or an institutional health care provider in the county beyond the provisions of this chapter. This section does not require the commissioners court to adopt a rule.

(c) This chapter does not authorize a county that authorizes a county health care provider participation program under this chapter to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary for the purposes described by Sections 291A.103(c)(1) and (2).

SECTION 8. Section 292.001, Health and Safety Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (4) to read as follows:

(1) "Institutional health care provider" means a [~~nonpublic~~] hospital that is not owned and operated by a federal or state government and provides inpatient hospital services. The term includes a hospital that is owned and operated by a municipality or county and provides inpatient hospital services.

(2) "Paying provider [~~hospital~~]" means an institutional health care provider required to make a mandatory payment under this chapter.

(4) "Qualifying assessment basis" means the health care item, health care service, or other health care-related basis

consistent with 42 U.S.C. Section 1396b(w) on which a commissioners court requires mandatory payments to be assessed under this chapter.

SECTION 9. Section 292.003(a), Health and Safety Code, is amended to read as follows:

(a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers [~~and indigent care programs~~] as provided by this chapter.

SECTION 10. Section 292.054(a), Health and Safety Code, is amended to read as follows:

(a) The commissioners court of a county that collects a mandatory payment authorized under this chapter may [~~shall~~] require each institutional health care provider to submit to the county a copy of any financial and utilization data as [~~required by and~~] reported in:

(1) the provider's Medicare cost report for the most recent fiscal year for which the provider submitted the Medicare cost report; or

(2) a report other than the report described by Subdivision (1) that the commissioners court considers reliable and is submitted by or to the provider for the most recent fiscal year [~~to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of~~

~~the Health and Human Services Commission to implement those sections~~].

SECTION 11. Section 292.101, Health and Safety Code, is amended to read as follows:

Sec. 292.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold at least one [~~a~~] public hearing on the amounts of the [~~any~~] mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of a [~~the~~] hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

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

SECTION 12. Section 292.103(c), Health and Safety Code, is amended to read as follows:

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of [~~a~~] Medicaid supplemental payment program payments authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality

Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

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

(2) [~~subsidize indigent programs;~~

[~~(3)~~] pay the administrative expenses of the county solely for activities under this chapter;

(3) [~~(4)~~] refund a portion of a mandatory payment collected in error from a paying provider [~~hospital~~]; and

(4) [~~(5)~~] refund to a paying provider, in an amount that is proportionate to the mandatory payments made under this chapter by the provider during the 12 months preceding the date of the refund, the [~~hospitals the proportionate share of~~] money attributable to mandatory payments collected under this chapter that the county:

(A) receives [~~received by the county~~] from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or [~~and~~]

(B) [~~(6) refund to paying hospitals the proportionate share of money that the county~~] determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

SECTION 13. Section 292.151, Health and Safety Code, is amended to read as follows:

Sec. 292.151. MANDATORY PAYMENTS [~~BASED ON PAYING HOSPITAL NET PATIENT REVENUE~~]. (a) The [~~Except as provided by Subsection (e), the~~] commissioners court of a county that authorizes a county health care provider participation program [~~collects a mandatory payment authorized~~] under this chapter may require [~~an annual~~] mandatory payments [~~payment~~] to be assessed against [~~on the net patient revenue of~~] each institutional health care provider located in the county, either annually or periodically throughout the year at the discretion of the commissioners court, on the basis of a health care item, health care service, or other health care-related basis that is consistent with the requirements of 42 U.S.C. Section 1396b(w). The commissioners court shall provide an institutional health care provider written notice of each assessment under this section not later than 30 days before the date the assessment is due. The qualifying assessment basis must be the same for each institutional health care provider in the county.

(a-1) Except as otherwise provided by this subsection, the qualifying assessment basis must be determined by the commissioners court using information contained in an institutional health care provider's Medicare cost report for the most recent fiscal year for which the provider submitted the report. If the provider is not required to submit a Medicare cost report, or if the Medicare cost report submitted by the provider does not contain information necessary to determine the qualifying assessment basis, the qualifying assessment basis may be determined by the commissioners court using information contained in another report the commissioners court considers reliable that is submitted by or to

the provider for the most recent fiscal year. To the extent practicable, the commissioners court shall use the same type of report to determine the qualifying assessment basis for each paying provider in the county.

(a-2) If mandatory payments are required, the [~~The~~] commissioners court [~~may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2013 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county~~] shall update the amount of the mandatory payments periodically [~~payment on an annual basis~~].

(b) The amount of a mandatory payment authorized under this chapter must be determined in a manner that ensures the revenue generated qualifies for federal matching funds under federal law, consistent with [~~uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under~~] 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that authorizes a

county health care provider participation program [~~collects a mandatory payment authorized~~] under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying provider [~~hospital~~] may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying providers [~~hospitals~~] in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying providers [~~hospitals~~] in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter and [~~,~~] to fund the nonfederal share of [~~a~~] Medicaid supplemental payment program payments, [~~and to pay for indigent programs,~~] except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying provider [~~hospital~~] may not add a mandatory payment required under this section as a surcharge to a patient.

SECTION 14. Section 292.154, Health and Safety Code, is amended to read as follows:

Sec. 292.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue

by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of [~~a~~] Medicaid supplemental payment program payments.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, a [~~the~~] county that authorizes a county health care provider participation program under this chapter may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the county or an institutional health care provider in the county beyond the provisions of this chapter. This section does not require the commissioners court to adopt a rule.

(c) This chapter does not authorize a county that authorizes a county health care provider participation program under this chapter to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary for the purposes described by Sections 292.103(c)(1) and (2).

SECTION 15. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.