

BILL ANALYSIS

Senate Research Center
88R20492 MPF-F

H.B. 4835
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Local Government
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Medicaid is a program that is jointly funded by the federal government and state governments. The federal government provides matching funds to states for a specific percentage of Medicaid expenditures. In Texas, some jurisdictions have chosen to implement a health care provider participation program, through which a health-care related tax is implemented on a local level. Such a program is administered by an existing unit of local government and is designed specifically to meet federal requirements regarding eligible local funds. The City of Beaumont has been authorized since 2015 to operate such a program. Local stakeholders have requested that the program's duties and operations be transferred to Jefferson County.

H.B. 4835 addresses this issue by providing for a health care provider participation program for the county and repealing provisions that provide for such a program for the city.

H.B. 4835 amends current law relating to the creation and operations of certain health care provider participation programs.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle D, Title 4, Health and Safety Code, by adding Chapter 292D, as follows:

CHAPTER 292D. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING NECHES RIVER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292D.001. DEFINITIONS. Defines "institutional health care provider," "paying hospital," and "program."

Sec. 292D.002. APPLICABILITY. Provides that this chapter applies only to a county that:

- (1) is not served by a hospital district;
- (2) has a population of more than 250,000; and
- (3) borders the Neches River.

Sec. 292D.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) Provides that 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. Authorizes money in the fund to be used by the county as provided by Section 292D.103(c).

(b) Authorizes the commissioners court to adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292D.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENTS. Authorizes the commissioners court of a county to require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Sec. 292D.052. MAJORITY VOTE REQUIRED. Prohibits the commissioners court of a county from authorizing the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Sec. 292D.053. RULES AND PROCEDURES. Authorizes the commissioners court to adopt rules relating to the administration of the program, including the collection of a mandatory payment, expenditures, an audit, and any other administrative aspect of the program.

Sec. 292D.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) Requires the commissioners court, if the commissioners court of a county authorizes the county to participate in a program under this chapter, to require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services (DSHS) under Sections 311.032 (Department Administration of Hospital Reporting and Collection System) and 311.033 (Financial and Utilization Data Required) and any rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) to implement those sections.

(b) Authorizes the commissioners court of a county that collects a mandatory payment authorized under this chapter to inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292D.101. HEARING. (a) Requires the commissioners court, in each year that the commissioners court of a county authorizes a program under this chapter, to hold a public hearing on the amounts of 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) Requires the commissioners court of the county, not later than the fifth day before the date of the hearing required under Subsection (a), to publish notice of the hearing in a newspaper of general circulation in the county and provide written notice of the hearing to each institutional health care provider located in the county.

(c) Provides that a representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Sec. 292D.102. DEPOSITORY. (a) Requires the commissioners court of each county that collects a mandatory payment authorized under this chapter to by resolution

designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) Provides that all income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, is required to be deposited with the county depository in the county's local provider participation fund and is authorized to be withdrawn only as provided by this chapter.

(c) Requires that all funds under this chapter be secured in the manner provided for securing county funds.

Sec. 292D.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Requires each county that collects a mandatory payment authorized under this chapter to create a local provider participation fund (fund).

(b) Provides that the fund of a county consists of:

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

(2) money received from HHSC as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Authorizes money deposited to the fund to be used only to:

(1) fund intergovernmental transfers from the county to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under 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;

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

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

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

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

(2) subject to Section 292D.151(d), pay the administrative expenses of the county in administering the program, including collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital;

(4) refund to paying hospitals a proportionate share of the money attributable to mandatory payments collected under this chapter that the county:

(A) receives from HHSC 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;

(5) transfer funds to HHSC if the county is legally required to transfer the funds to address a disallowance of federal matching funds with respect to payments, rate enhancements, and reimbursements for which the county made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the county if the county is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Prohibits money in the local provider participation fund from being commingled with other county funds.

(e) Prohibits any funds received by the state or county as a result of the transfer, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the county, from being used by the state, county, or any other entity, notwithstanding any other provision of this chapter, to:

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

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292D.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Authorizes the commissioners court, except as provided by Subsection (e), if the commissioners court of a county authorizes a program under this chapter, to require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. Requires that the commissioners court provide that the mandatory payment is to be assessed at least annually, but not more often than quarterly. Provides that 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 DSHS under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. Provides that if the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. Requires the commissioners court to update the amount of the mandatory payment on an annual basis.

(b) Requires the amount of a mandatory payment authorized under this chapter be uniformly proportionate with the amount of net patient revenue generated by

each paying hospital in the county. Prohibits a mandatory payment authorized under this chapter from holding harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter to set the amount of the mandatory payment. Prohibits the aggregate amount of the mandatory payment required of all paying hospitals from exceeding six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the county.

(d) Requires that the commissioners court of a county that collects a mandatory payment authorized under this chapter to 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, subject to Subsection (c), and to fund an intergovernmental transfer described by Section 292D.103(c)(1). Prohibits the annual amount of revenue from mandatory payments that is authorized to be used to pay the administrative expenses of the county for activities under this chapter from exceeding \$150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) Prohibits a paying hospital from adding a mandatory payment required under this section as a surcharge to a patient.

Sec. 292D.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) Authorizes the county to collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

(b) Requires the person charged by the county with the assessment and collection of mandatory payments to charge and deduct from the mandatory payments collected for the county a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) Provides that if the person charged with the assessment and collection of mandatory payments is an official of the county, any revenue from a collection fee charged under Subsection (b) is required to be deposited in the county general fund and, if appropriate, is required to be reported as fees of the county.

Sec. 292D.153. INTEREST, PENALTIES, AND DISCOUNTS. Provides that interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Sec. 292D.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) Provides that 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 certain Medicaid programs as described by Section 292D.103(c)(1).

(b) Authorizes the commissioners court of the county administering the program, 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, to provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. Prohibits a rule adopted under this section from creating, imposing, or materially expanding the legal or financial liability or responsibility of the county or an institutional health care provider located in the county beyond the provisions of this chapter. Provides that this section does not require the commissioners court of a county to adopt a rule.

(c) Authorizes the county to only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 292D.103(c)(1) is available to the county.

SECTION 2. Amends Section 300.0003, Health and Safety Code, as follows:

Sec. 300.0003. APPLICABILITY. (a) Provides that except as provided by Subsection (b), Chapter 300 (Health Care Provider Participation Programs in Certain Political Subdivisions in This State) applies only to certain entities.

(b) Provides that Chapter 300 does not apply to a municipality that is located in a county described by Section 292D.002.

SECTION 3. Repealer: Chapter 295 (Municipal Health Care Provider Participation Program in Certain Municipalities), Health and Safety Code.

SECTION 4. (a) Defines "paying hospital."

(b) Provides that if on the date Chapter 295, Health and Safety Code, is repealed by this Act a municipality to which that chapter applies has not transferred any remaining amount of mandatory payments assessed and collected by the municipality under that chapter before its repeal to HHSC, the municipality is required to refund to each paying hospital in the municipality that hospital's proportionate share of the remaining amount of mandatory payments.

(c) Provides that this section expires September 1, 2025.

SECTION 5. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2023.

(b) Effective date, Chapter 292D, Health and Safety Code: September 1, 2025.