BILL ANALYSIS

H.B. 3505
By: Harris
Intergovernmental Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Since 2013, local governments across Texas have utilized local provider participation funds (LPPFs) in lieu of state revenue to help fund Medicaid, according to the Health and Human Services Commission. However, the bill author has informed the committee that until recently, small, rural counties were unable to participate in these programs by nature of having only one hospital in their county. In 2019, the legislature passed H.B. 4289, which authorized local governmental entities located in isolated rural areas to unite to form a multi-jurisdictional LPPF. In 2023, the Northeast Health Care Provider Participation District was created under that law, as reported by the Sulphur Springs News Telegram. This district operates an LPPF program serving Henderson County, the Hopkins County Hospital District, and Lamar County, but because of sunset provisions in the applicable law, this program is set to expire on September 1, 2025, without legislative renewal. H.B. 3505 seeks to extend the operations of the district.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

Operation of Health Care Provider Participation District Created by Certain Local Governments

H.B. 3505 amends the Health and Safety Code to authorize a health care provider participation district created by a concurrent order of a local government and one or more other local governments to operate under and be governed by the bill's provisions instead of by statutory provisions governing a district created in that manner if the following conditions are met:

- each local government that jointly created the district adopts a concurrent order authorizing the district to operate under and be governed by the bill's provisions; and
- the district's board ratifies the concurrent order adopted by each participating local government.

H.B. 3505 requires a concurrent order authorizing a district to operate under the bill's provisions to, as follows:

- be approved by the governing body of each participating local government;
- contain provisions that are identical to the provisions of the concurrent order adopted by each other participating local government;
- affirm that the district's territory is the area contained within the boundaries of each participating local government; and

- provide that the district begins to operate under the bill's provisions immediately on the expiration of the district's authority to administer and operate a health care provider participation program.

Applicability

H.B. 3505 applies only to a local government that jointly created a health care provider participation district by concurrent order under applicable statutory provisions and is the following:

- a county with a population of more than 80,000 and less than 90,000 that borders the Trinity River;
- a county with a population of more than 45,000 and less than 55,000 that borders Oklahoma; or
- a hospital district located in a county that has a population of more than 30,000 and contains a portion of Jim Chapman Lake.

Purpose

The bill establishes that its purpose is to authorize a health care provider participation district created by certain local governments to administer a health care provider participation program to provide additional compensation to certain hospitals in the district by collecting mandatory payments from each of those hospitals in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under the bill's provisions.

Definitions

H.B. 3505 defines the following terms:

- "board" as the board of directors of a district;
- "director" as a member of the board;
- "district" as a health care provider participation district created under statutory provisions relating to a health care provider participation program in districts composed of certain local governments and operating under a health care provider participation district;
- "institutional health care provider" as a nonpublic hospital that provides inpatient hospital services;
- "local government" as a hospital district, county, or municipality to which the bill applies;
- "paying hospital" as an institutional health care provider required to make a mandatory payment under the bill's provisions; and
- "program" as a health care provider participation program authorized by the bill's provisions.

District Administration

H.B. 3505 authorizes a district to authorize and administer a health care provider participation program in accordance with the bill's provisions and authorizes a district that complies with the bill's provisions to administer and operate a health care provider participation program after its authority to administer and operate a health care provider participation program has expired.

Board of Directors

H.B. 3505 requires, if three or more local governments adopt concurrent orders authorizing a health care provider participation district to operate, the presiding officer of the governing body of each local government that created the district to appoint one director. The bill requires the following if two local governments adopt such concurrent orders:

- the presiding officer of the governing body of the most populous local government to appoint two directors; and
- the presiding officer of the governing body of the local government not previously described to appoint one director.

The bill further provides for the composition of the board, appointment and terms of directors, qualifications for office, and compensation of directors and officers. The bill authorizes the board to sue and be sued on behalf of the district.

H.B. 3505 authorizes a district director or board officer appointed or elected, respectively, under a health care provider participation program, to continue to serve the remainder of the director's or officer's term in accordance with that program after the district begins to operate under the bill's provisions. A director or board officer that serves on the board of directors of a health care provider participation district created under the program, is eligible for reappointment or re-election, as applicable, under the bill's provisions, unless otherwise disqualified.

Dissolution of a District

H.B. 3505 requires the following with respect to dissolving a district:

- a district must be dissolved if the local governments that created the district adopt concurrent orders to dissolve the district and the concurrent orders contain identical provisions;
- the board, after dissolution of a district must continue to control and administer any property, debts, and assets of the district until all of the district's property and assets have been disposed of and all of the district's debts have been paid or settled;
- the board, as soon as practicable after the dissolution of the district, must transfer to each institutional health care provider in the district the provider's proportionate share of any remaining money in any local provider participation fund created by the district;
- the district, if, after administering the district's property and assets, the board determines that the property and assets are insufficient to pay the debts of the district, must transfer the remaining debts to the local governments that created the district in proportion to the money contributed to the district by each local government, including a paying hospital in the local government;
- the board, after complying with that requirement, must transfer the unused money to the local governments that created the district in proportion to the money contributed to the district by each local government, including a paying hospital in the local government;
- the board, after the district has done so, must provide an accounting to each local government that created the district; and
- such accounting must show the manner in which the property, assets, and debts of the district were distributed.

Powers and Duties of the District Board

H.B. 3505 authorizes the board of a district to authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board and authorizes the board to require a mandatory payment authorized by an institutional health care provider in the district only in the manner provided by the bill's provisions. The bill prohibits the board from requiring such a mandatory payment during a period for which the board requires a mandatory payment under state law relating to a district created by concurrent orders.

H.B. 3505 authorizes the board to adopt rules relating to the administration of the health care provider participation program in the district, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program. The bill requires the board, if it authorizes the district to participate in the program, to require each institutional health care provider located in the district to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services (DSHS) under the hospital data reporting and collection system and any rules adopted by the executive

commissioner of the Health and Human Services Commission (HHSC) to implement that system.

District Finances

H.B. 3505 establishes that statutory provisions relating to district finances apply to a district in the same manner that those provisions apply to a health services district created under state law, but exempts a district from spending and investment limitations and the requirement to name at least one bank to serve as a depository for district funds specified under statutory provisions relating to district finances. The bill expressly does not authorize a district to issue bonds.

H.B. 3505 requires the board, in each year that the board authorizes a health care provider participation program, to hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent. The bill requires the board, not later than the fifth day before the date of such a required hearing, to publish notice of the hearing in a newspaper of general circulation in each local government that created the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district. The bill establishes that a representative of a paying hospital is entitled to appear at the time and place designated in the public notice and be heard regarding any matter related to the mandatory payments authorized under the bill's provisions.

H.B. 3505 requires the board to deposit all mandatory payments received by a district in the local provider participation fund created by the district under the health care provider participation program. The bill authorizes the board to designate one or more banks at which to locate that fund and restricts withdrawal and use of money in the fund only for a purpose authorized under the bill's provisions. The bill requires all funds collected to be secured in the manner provided for securing public funds and establishes that the local provider participation fund consists of the following:

- all revenue received by the district attributable to authorized mandatory payments;
- money received from HHSC as a refund of an intergovernmental transfer from the district 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;
- money received by the district and deposited to the fund in accordance with the health care provider participation program that remains in the fund on the date the district begins to operate as a health care provider participation district; and
- the earnings of the fund.

H.B. 3505 restricts authorized uses of money in the fund to the following purposes:

- to fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:
    - uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under the federal Social Security Act;
    - uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;
    - payments available under another waiver program authorizing payments that are substantially similar to such Medicaid payments to nonpublic hospitals; or
    - any reimbursement to nonpublic hospitals for which federal matching funds are available;
- subject to the bill's provisions relating to mandatory payments based on paying hospital net patient revenue, to pay the administrative expenses of the district in administering the program, including collateralization of deposits;
- to refund all or a portion of a mandatory payment collected in error from a paying hospital, regardless of whether the payment was collected under a health care provider participation district or program;

- to refund to paying hospitals a proportionate share of the money that the district either receives from HHSC that is not used to fund the nonfederal share of Medicaid supplemental payment program payments or determines cannot be used for that purpose;
- to transfer funds to HHSC if the district is required by law to transfer the funds to address a disallowance of federal matching funds with respect to payments, rate enhancements, and reimbursements for which the district made intergovernmental transfers; and
- to reimburse the district if the district is required by the rules governing the uniform rate enhancement program 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.

H.B. 3505 prohibits money in the local provider participation fund from being commingled with other district money or other money of a local government that created the district and prohibits, with respect to an intergovernmental transfer of funds made by the district, any funds received by the state, district, or other entity as a result of the transfer from being used by the state, district, or any other entity to expand Medicaid eligibility under the federal Patient Protection and Affordable Care Act as amended by the federal Health Care and Education Reconciliation Act of 2010. The bill requires the district to maintain an accounting of the money received from each local government that created the district, including a paying hospital located in a hospital district, county, or municipality that created the district, as applicable.

Mandatory Payments

H.B. 3505 requires the district, if the board authorizes a health care provider participation program, to require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district and requires the board to provide that the mandatory payment is to be assessed at least annually, but not more often than 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 located in the district as determined by the data reported to DSHS under the hospital data reporting and collection system in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under that system, the bill establishes that 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. The bill requires the district to annually update the amount of the mandatory payment.

H.B. 3505 sets out the following with respect to mandatory payments:

- a requirement for the amount of an authorized mandatory payment to be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the district as permitted under federal law;
- a prohibition on an authorized health care provider participation program holding harmless any institutional health care provider, as required under federal law relating to payment to states and permissible health care-related taxes;
- a requirement for the board to set the amount of a mandatory payment;
- a requirement for the board to set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under a health care provider participation district and to fund an intergovernmental transfer described under the bill's provisions;
- a prohibition on the aggregate amount of the mandatory payments of all paying hospitals in the district from exceeding six percent of the aggregate net patient revenue from hospital services provided by all those hospitals;
- a $150,000 cap, plus the cost of collateralization of deposits, regardless of actual expenses, on the annual amount of revenue from mandatory payments to be paid for administrative expenses by the district for activities under the bill's provisions;

- a prohibition on a paying hospital adding a mandatory payment as a surcharge to a patient; and
- a provision establishing that a mandatory payment is not a tax for hospital purposes under the Texas Constitution.

H.B. 3505 authorizes a district to designate an official of the district or contract with another person to assess and collect the mandatory payments and requires that person to charge and deduct a collection fee from the collected mandatory payments in an amount capped at the person's usual and customary charges for like services. The bill requires, if assessor and collector is an official of the district, any revenue from a collection fee charged to be deposited in the district's general fund and, if appropriate, to be reported as fees of the district.

Limitation on Authority; Correction of Invalid Provision or Procedure

H.B. 3505 expressly does not authorize the district to assess and collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to do the following:

- fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals; and
- cover the administrative expenses of the district associated with activities under a health care provider participation district and other authorized uses of the local provider participation fund.

H.B. 3505 authorizes the district to assess and collect a mandatory payment only if a waiver program, uniform rate enhancement, or reimbursement to nonpublic hospitals for which federal matching funds are available is available to the district and authorizes the board, to the extent any provision or procedure under the bill's provisions causes a mandatory payment 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. The bill prohibits such a rule from creating, imposing, or materially expanding the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the bill's provisions. The bill expressly does not require the board to adopt a rule.

Reporting Requirements

H.B. 3505 requires the board of a district that authorizes a health care provider participation program to report information to HHSC regarding the program on a schedule determined by HHSC and requires the information to include the following:

- the amount of the mandatory payments required and collected in each year the program is authorized;
- any expenditure of money attributable to collected mandatory payments, including:
    - any contract with an entity for the administration or operation of a health care provider participation program; or
    - a contract with a person for the assessment and collection of a mandatory payment; and
- the amount of money attributable to collected mandatory payments that is used for a purpose other than either of those purposes.

The bill requires the executive commissioner of HHSC to adopt rules to administer the bill's provisions relating to the reporting requirement.

Authority to Refuse for Violation

H.B. 3505 authorizes HHSC to refuse to accept money from a local provider participation fund if HHSC determines that acceptance of the money may violate federal law.

H.B. 3505 provides for the delayed implementation of any provisions for which an applicable state agency determines a federal waiver or authorization is necessary for implementation until the waiver or authorization is requested or granted.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.