

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1350
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Intergovernmental Relations
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A local provider participation fund, or "LPPF," is a fund established by hospital districts in which they pool resources to provide indigent care, activating a provision of federal law known as the 1115 waiver which draws down federal funds at roughly a 60:40 ratio.

There are currently 19 such funds created under Texas law. The funds cost no state tax dollars, only collecting federal funds and mandatory payments from member hospitals. The statute explicitly prohibits hospitals from passing mandatory payment expenses on to patients as surcharges.

C.S.S.B. 1350 create a local provider participation fund for Travis County.

C.S.S.B. 1350 amends current law relating to the creation and operations of a health care provider participation program by a certain hospital district.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of hospital managers of a hospital district in SECTION 1 (Sections 298E.052 and 298E.153, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle D, Title 4, Health and Safety Code, by adding Chapter 298E, as follows:

CHAPTER 298E. HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN HOSPITAL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298E.001. DEFINITIONS. Defines "board" to mean the hospital managers of a district (board), defines "institutional health care provider" as a hospital that is not owned and operated by a federal, state, or local government and provides inpatient hospital services and defines "district," "paying provider," and "program."

Sec. 298E.002. APPLICABILITY. Provides that this chapter applies only to a hospital district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

Sec. 298E.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. Authorizes the board to authorize the district to participate in a program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Sec. 298E.004. EXPIRATION. (a) Provides that subject to Section 298.153(d), the authority of a district to administer and operate a program under this chapter expires December 31, 2023.

(b) Provides that this chapter expires December 31, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298E.051. **LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT.** Authorizes the board to require a mandatory payment authorized under this chapter by an institutional health care provider located in the district only in the manner provided by this chapter.

Sec. 298E.052. **RULES AND PROCEDURES.** Authorizes the board to adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Sec. 298E.053. **INSTITUTIONAL HEALTH CARE PROVIDER REPORTING.** Requires the board, if the board authorizes the district to participate in a program under this chapter, 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 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.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298E.101. **HEARING.** (a) Requires the board, in each year that the board authorizes a program under this chapter, 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.

(b) Requires the board, 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 district and provide written notice of the hearing to each institutional health care provider located in the district.

Sec. 298E.102. **DEPOSITORY.** (a) Requires the board, if the board requires a mandatory payment authorized under this chapter, to designate one or more banks as a depository for the district's local provider participation fund.

(b) Requires all funds collected by a district under this chapter to be secured in the manner provided for securing other funds of the district.

Sec. 298E.103. **LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY.** (a) Requires the district, if a district requires a mandatory payment authorized under this chapter, to create a local provider participation fund.

(b) Provides that a district's local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from HHSC as a refund of an intergovernmental transfer under the program, 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 local provider participation fund of a district to be used only to:

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

(A) uncompensated care payments to hospitals in the Medicaid managed care service area in which the district is located 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);

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

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

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

(2) subject to Section 298E.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(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 district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district 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 of a district from being commingled with other district funds.

(e) Prohibits any funds received by the state, district, or other entity as a result of that transfer, notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by a district, from being used by the state, district, or any other entity 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 hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298E.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Authorizes the board, except as provided by Subsection (e), if the board 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 district. Authorizes the board to provide for the mandatory payment to be assessed 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 reported in the provider's Medicare cost report submitted for the most recent fiscal year for which the provider submitted a Medicare cost report. Requires the district, if the mandatory payment is required, to update the amount of the mandatory payment on an annual basis.

(b) Requires the amount of a mandatory payment assessed under this chapter by the board to be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. Prohibits a program authorized under this chapter from holding harmless any institutional health care provider located in the district, as required under 42 U.S.C. Section 1396b(w).

(c) Requires the board, if the board requires a mandatory payment authorized under this chapter, to set the amount of the mandatory payment, subject to the limitations of this chapter. Prohibits the aggregate amount of the mandatory payments required of all paying providers in the district from exceeding six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Requires the board, subject to Subsection (c), if the board requires 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 district for activities under this chapter and to fund an intergovernmental transfer described by Section 298E.103(c)(1). Provides that the annual amount of revenue from mandatory payments that are required is paid for administrative expenses by the district to be \$150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

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

(f) Provides that a mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4 (County-Wide Hospital Districts in Certain Large Counties), Article IX, Texas Constitution, or Section 281.045 (Limitation on Taxing Power by Governmental Entity; Disposition of Delinquent Taxes) of this code.

Sec. 298E.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS.

(a) Authorizes a district to designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

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

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

Sec. 298E.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) Provides that the purpose of this chapter is to authorize a district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for hospitals to support the provision of health care by institutional health care providers located in the district to district residents in need of health care.

(b) Provides that this chapter does not authorize a district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) Authorizes the board of a district, 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 district or an institutional health care provider in the district beyond the provisions of this chapter. Provides that this section does not require the board to adopt a rule.

(d) Authorizes a district to assess and collect a mandatory payment authorized under this chapter only if a waiver program, uniform rate enhancement, or reimbursement described by Section 298E.103(c)(1) is available to the district.

SECTION 2. Requires the board, as soon as practicable after the expiration of the authority of a hospital district to administer and operate a health care provider participation program under Chapter 298E, Health and safety Code, as added by this Act, to transfer to each institutional health care provider in the district that provider's proportionate share of any remaining funds in any local provider participation fund created by the district under Section 298E.103, Health and Safety Code, as added by this Act.

SECTION 3. Requires a state agency affected by any provision of this Act, if before implementing the provision the agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and authorizes the agency to delay implementing that provision until the waiver or authorization is granted.

SECTION 4. Effective date: upon passage or September 1, 2019.