

1-1 By: Springer, et al. (Senate Sponsor - Kolkhorst) H.B. No. 651
1-2 (In the Senate - Received from the House April 11, 2019;
1-3 April 15, 2019, read first time and referred to Committee on Health
1-4 & Human Services; May 20, 2019, reported favorably by the following
1-5 vote: Yeas 9, Nays 0; May 20, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Kolkhorst	X			
1-8 Perry	X			
1-9 Buckingham	X			
1-10 Campbell	X			
1-11 Flores	X			
1-12 Johnson	X			
1-13 Miles	X			
1-14 Powell	X			
1-15 Seliger	X			
1-16				

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the creation and operations of health care provider
1-20 participation programs in counties not served by a hospital
1-21 district or a public hospital.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subtitle D, Title 4, Health and Safety Code, is
1-24 amended by adding Chapter 299 to read as follows:

1-25 CHAPTER 299. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN
1-26 COUNTY NOT SERVED BY HOSPITAL DISTRICT OR PUBLIC HOSPITAL

1-27 SUBCHAPTER A. GENERAL PROVISIONS

1-28 Sec. 299.0001. PURPOSE. The purpose of this chapter is to
1-29 authorize a county not served by a hospital district or a public
1-30 hospital to administer a county health care provider participation
1-31 program to provide additional compensation to hospitals in the
1-32 county by collecting mandatory payments from each hospital in the
1-33 county to be used to provide the nonfederal share of a Medicaid
1-34 supplemental payment program and for other purposes as authorized
1-35 under this chapter.

1-36 Sec. 299.0002. DEFINITIONS. In this chapter:

1-37 (1) "Institutional health care provider" means a
1-38 nonpublic hospital that provides inpatient hospital services.

1-39 (2) "Paying hospital" means an institutional health
1-40 care provider required to make a mandatory payment under this
1-41 chapter.

1-42 (3) "Program" means a county health care provider
1-43 participation program authorized by this chapter.

1-44 Sec. 299.0003. APPLICABILITY. This chapter applies only to
1-45 a county that is not served by a hospital district or a public
1-46 hospital.

1-47 Sec. 299.0004. COUNTY HEALTH CARE PROVIDER PARTICIPATION
1-48 PROGRAM; COUNTY ORDER REQUIRED FOR PARTICIPATION. The
1-49 commissioners court of a county may adopt an order authorizing the
1-50 county to participate in a health care provider participation
1-51 program, subject to the limitations provided by this chapter.

1-52 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

1-53 Sec. 299.0051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY
1-54 PAYMENT. The commissioners court of a county may require a
1-55 mandatory payment authorized under this chapter by an institutional
1-56 health care provider in the county only in the manner provided by
1-57 this chapter.

1-58 Sec. 299.0052. RULES AND PROCEDURES. The commissioners
1-59 court of a county may adopt rules relating to the administration of
1-60 the health care provider participation program in the county,
1-61 including collection of the mandatory payments, expenditures,

2-1 audits, and any other administrative aspects of the program.

2-2 Sec. 299.0053. INSTITUTIONAL HEALTH CARE PROVIDER
 2-3 REPORTING. If the commissioners court of a county authorizes the
 2-4 county to participate in a health care provider participation
 2-5 program under this chapter, the commissioners court shall require
 2-6 each institutional health care provider to submit to the county a
 2-7 copy of any financial and utilization data required by and reported
 2-8 to the Department of State Health Services under Sections **311.032**
 2-9 and **311.033** and any rules adopted by the executive commissioner of
 2-10 the Health and Human Services Commission to implement those
 2-11 sections.

2-12 SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

2-13 Sec. 299.0101. HEARING. (a) In each year that the
 2-14 commissioners court of a county authorizes a health care provider
 2-15 participation program under this chapter, the commissioners court
 2-16 shall hold a public hearing on the amounts of any mandatory payments
 2-17 that the commissioners court intends to require during the year and
 2-18 how the revenue derived from those payments is to be spent.

2-19 (b) Not later than the fifth day before the date of the
 2-20 hearing required under Subsection (a), the commissioners court
 2-21 shall publish notice of the hearing in a newspaper of general
 2-22 circulation in the county and provide written notice of the hearing
 2-23 to the chief operating officer of each institutional health care
 2-24 provider in the county.

2-25 Sec. 299.0102. LOCAL PROVIDER PARTICIPATION FUND;
 2-26 DEPOSITORY. (a) Each commissioners court of a county that collects
 2-27 a mandatory payment authorized under this chapter shall create a
 2-28 local provider participation fund in one or more banks designated
 2-29 by the county as a depository for the mandatory payments received by
 2-30 the county.

2-31 (b) The commissioners court of a county may withdraw or use
 2-32 money in the local provider participation fund of the county only
 2-33 for a purpose authorized under this chapter.

2-34 (c) All funds collected under this chapter shall be secured
 2-35 in the manner provided for securing other county funds.

2-36 Sec. 299.0103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY.
 2-37 (a) The local provider participation fund established by a county
 2-38 under Section 299.0102 consists of:

2-39 (1) all mandatory payments authorized under this
 2-40 chapter and received by the county;

2-41 (2) money received from the Health and Human Services
 2-42 Commission as a refund of an intergovernmental transfer from the
 2-43 county to the state for the purpose of providing the nonfederal
 2-44 share of Medicaid supplemental payment program payments, provided
 2-45 that the intergovernmental transfer does not receive a federal
 2-46 matching payment; and

2-47 (3) the earnings of the fund.

2-48 (b) Money deposited to the local provider participation
 2-49 fund of a county may be used only to:

2-50 (1) fund intergovernmental transfers from the county
 2-51 to the state to provide:

2-52 (A) the nonfederal share of a Medicaid
 2-53 supplemental payment program authorized under the state Medicaid
 2-54 plan, the Texas Healthcare Transformation and Quality Improvement
 2-55 Program waiver issued under Section 1115 of the federal Social
 2-56 Security Act (42 U.S.C. Section 1315), or a successor waiver
 2-57 program authorizing similar Medicaid supplemental payment
 2-58 programs; or

2-59 (B) payments to Medicaid managed care
 2-60 organizations that are dedicated for payment to hospitals;

2-61 (2) pay costs associated with indigent care provided
 2-62 by institutional health care providers in the county;

2-63 (3) pay the administrative expenses of the county in
 2-64 administering the program, including collateralization of
 2-65 deposits;

2-66 (4) refund a portion of a mandatory payment collected
 2-67 in error from a paying hospital; and

2-68 (5) refund to paying hospitals a proportionate share
 2-69 of the money that the county:

(A) receives from the Health and Human Services Commission 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.

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

(d) An intergovernmental transfer of funds described by Subsection (b)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to 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).

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 299.0151. MANDATORY PAYMENTS. (a) Except as provided by Subsection (e), if the commissioners court of a county authorizes a health care provider participation program under this chapter, the commissioners court shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court shall provide that the mandatory payment is to be collected 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 county as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. 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. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter for a county must be 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 program under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital in the county may not exceed six percent of the hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that authorizes a program 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, fund an intergovernmental transfer described by Section 299.0103(b)(1), or make other payments authorized under this chapter. The amount of revenue from mandatory payments that may be used for administrative expenses by the county in a year may not exceed \$25,000, plus the cost of collateralization of deposits. If the commissioners court demonstrates to the paying hospitals in the county that the costs of administering the health care provider participation program under this chapter, excluding those costs associated with the collateralization of deposits, exceed \$25,000 in any year, on consent of all of the paying hospitals in the county, the county may use additional revenue from mandatory payments received under this chapter to compensate the county for its administrative expenses. A paying hospital may not unreasonably withhold consent to compensate the county for administrative expenses.

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

(f) A mandatory payment under this chapter is not a tax for

4-1 purposes of Section 5(a), Article IX, Texas Constitution.
4-2 Sec. 299.0152. ASSESSMENT AND COLLECTION OF MANDATORY
4-3 PAYMENTS. A county may collect or contract for the assessment and
4-4 collection of mandatory payments authorized under this chapter.
4-5 Sec. 299.0153. CORRECTION OF INVALID PROVISION OR
4-6 PROCEDURE. To the extent any provision or procedure under this
4-7 chapter causes a mandatory payment authorized under this chapter to
4-8 be ineligible for federal matching funds, the county may provide by
4-9 rule for an alternative provision or procedure that conforms to the
4-10 requirements of the federal Centers for Medicare and Medicaid
4-11 Services. A rule adopted under this section may not create, impose,
4-12 or materially expand the legal or financial liability or
4-13 responsibility of the county or an institutional health care
4-14 provider in the county beyond the provisions of this chapter. This
4-15 section does not require the commissioners court of a county to
4-16 adopt a rule.

4-17 SECTION 2. If before implementing any provision of this Act
4-18 a state agency determines that a waiver or authorization from a
4-19 federal agency is necessary for implementation of that provision,
4-20 the agency affected by the provision shall request the waiver or
4-21 authorization and may delay implementing that provision until the
4-22 waiver or authorization is granted.

4-23 SECTION 3. This Act takes effect immediately if it receives
4-24 a vote of two-thirds of all the members elected to each house, as
4-25 provided by Section 39, Article III, Texas Constitution. If this
4-26 Act does not receive the vote necessary for immediate effect, this
4-27 Act takes effect September 1, 2019.