By: Birdwell S.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 299. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 299.001. DEFINITIONS. In this chapter:

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

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

(3) "Program" means the county health care provider participation program authorized by this chapter.

Sec. 299.002. APPLICABILITY. This chapter applies only to a county that:

(1) is adjacent to two counties with a population of 1,000,000 or more; and

(2) borders the Trinity River.

Sec. 299.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (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.

(b) The commissioners court may 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. 299.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may 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. 299.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize 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. 299.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Sec. 299.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this

chapter shall 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 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.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may 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. 299.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall 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) Not later than the 10th day before the date of 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 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.

Sec. 299.102. DEPOSITORY. (a) The commissioners court of

each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) 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, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Sec. 299.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any amounts received attributable to a suit to enforce liability for and collect a delinquent mandatory payment;

(2) money received from the Health and Human Services Commission 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) 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 authorized under the state Medicaid plan, 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 under 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;

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

(5) refund to paying hospitals the proportionate share of money 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;

(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 payment; and

(7) pay for any reasonable expenses the county incurs in order to collect delinquent mandatory payments, including any attorney's fees incurred as a result of contracting with an attorney to represent the county in seeking and enforcing the collection of delinquent mandatory payments.

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

(e) An intergovernmental transfer of funds described by Subsection (c)(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. 299.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commission of a county may require an annual mandatory payment to be assessed quarterly on the net patient revenue of an institutional health care provider located in the county. 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 2010. The county may update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this

chapter 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 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 hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying 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, to fund the nonfederal share of a Medicaid supplemental payment program as described by Section 299.103(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. Any reasonable expenses the commission incurs in order to collect delinquent mandatory payments, including any attorney's fees incurred as a

result of contracting with an attorney to represent the commission in seeking and enforcing the collection of delinquent mandatory payments, are not subject to the limitation described in this subsection.

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

Sec. 299.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Sec. 299.153. INSTALLMENT PAYMENTS; ATTORNEY FOR COLLECTION ACTIVITIES; SUIT. (a) A mandatory payment is considered to be delinquent if it is not fully paid within 60 days of the due date set by the county. The county may enter into an agreement with an institutional health care provider that allows payment in installments of a delinquent mandatory payment.

(b) The commission may contract with any competent attorney to represent the county to seek and enforce the collection of delinquent mandatory payments. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed the lesser of (1) 20 percent of the amount of delinquent mandatory payments collected and (2) $200,000.

(c) At any time after a mandatory payment becomes delinquent, the county may file suit in a court of competent jurisdiction to enforce liability for and collect the mandatory payment. The county may recover attorney's fees in a suit to enforce liability for and collect a delinquent mandatory payment. Any amounts recovered or otherwise received as a result of a suit to

enforce liability for and collect a delinquent mandatory payment shall be deposited into the local provider participation fund.

Sec. 299.154. 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.

(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, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

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

SECTION 3. 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, 2019.