By: Metcalf (Senate Sponsor - Nichols) H.B. No. 4835

(In the Senate - Received from the House May 3, 2023; May 5, 2023, read first time and referred to Committee on Local Government; May 22, 2023, reported favorably by the following vote: Yeas 9, Nays 0; May 22, 2023, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Bettencourt	X			
Springer	X			
Eckhardt	X			
Gutierrez	X			
Hall	X			
Nichols	X			
Parker	X			
Paxton	X			
West	X			

A BILL TO BE ENTITLED
AN ACT

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

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 292D to read as follows:

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292D.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. 292D.002. APPLICABILITY. 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) 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 as provided by Section 292D.103(c).

(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. 292D.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENTS. 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. 292D.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. 292D.053. RULES AND PROCEDURES. The commissioners

court may 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) If the commissioners court of a county authorizes the county to participate in a program under this chapter, the commissioners court 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. 292D.101. HEARING. (a) In each year that the commissioners court of a county authorizes a program under this chapter, the commissioners court 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 fifth 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 and provide written notice of the hearing to each institutional health care provider located in the county.

(c) 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) 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.

(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. 292D.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter 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 penalties and interest attributable to delinquent payments;

(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 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 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;

(5) transfer funds to the Health and Human Services Commission 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) Money in the local provider participation fund may not be commingled with other county funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the county, any funds received by the state or county as a result of the transfer may not be used by the state, county, 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 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) Except as provided by Subsection (e), if the commissioners court of a county authorizes a program under this chapter, the commissioners court may 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 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 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 commissioners court shall 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 aggregate amount of the mandatory payment required of all paying hospitals may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the county.

(d) Subject to 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 and to fund an intergovernmental transfer described by Section 292D.103(c)(1). The annual amount of revenue from mandatory payments that may be used to pay the administrative expenses of the county for activities under this chapter may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

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

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

(b) The person charged by the county with the assessment and collection of mandatory payments shall 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) 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) shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county.

Sec. 292D.153. INTEREST, PENALTIES, AND DISCOUNTS. 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) 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) 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 commissioners court of the county administering the program may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand 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. This section does not require the commissioners court of a county to adopt a rule.

(c) The county may 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. Section 300.0003, Health and Safety Code, is amended to read as follows:

Sec. 300.0003. APPLICABILITY. (a) Except as provided by Subsection (b), this [~~This~~] chapter applies only to:

(1) a hospital district that is not participating in a health care provider participation program authorized by another chapter of this subtitle; and

(2) a county or municipality that:

(A) is not participating in a health care provider participation program authorized by another chapter of this subtitle; and

(B) is not served by a hospital district or a public hospital.

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

SECTION 3. Chapter 295, Health and Safety Code, is repealed.

SECTION 4. (a) In this section, "paying hospital" has the meaning assigned by Section 295.001, Health and Safety Code.

(b) 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 the Health and Human Services Commission, the municipality shall refund to each paying hospital in the municipality that hospital's proportionate share of the remaining amount of mandatory payments.

(c) This section expires September 1, 2025.

SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2023.

(b) The section of this Act adding Chapter 292D, Health and Safety Code, takes effect September 1, 2025.

* * * * *