# BILL ANALYSIS

Senate Research Center
86R56 MEW-D

H.B. 651
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Health & Human Services
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Engrossed

## AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised that counties not served by a hospital district or a public hospital are unable to take advantage of mechanisms available to other counties for drawing down federal funding to finance critical health care needs. It has been suggested that additional tools to help finance this care would ease the burden on those counties and better serve county residents. H.B. 651 seeks to address these concerns by providing for the creation and operation of certain health care provider participation programs.

H.B. 651 amends current law relating to the creation and operations of health care provider participation programs in counties not served by a hospital district or a public hospital.

## RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioners court of a county in SECTION 1 (Sections 299.0052 and 299.0153, 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 299, as follows:

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 299.0001. PURPOSE. Provides that the purpose of this chapter is to authorize a county not served by a hospital district or a public hospital to administer a county health care provider participation program to provide additional compensation to hospitals in the county by collecting mandatory payments from each hospital in the county to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Sec. 299.0002. DEFINITIONS. Defines "institutional health care provider," "paying hospital," and "program."

Sec. 299.0003. APPLICABILITY. Provides that this chapter applies only to a county that is not served by a hospital district or a public hospital.

Sec. 299.0004. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; COUNTY ORDER REQUIRED FOR PARTICIPATION. Authorizes the commissioners court of a county to adopt an order authorizing the county to participate in a health care provider participation program, subject to the limitations provided by this chapter.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 299.0051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. Authorizes the commissioners court of a county to 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. 299.0052. RULES AND PROCEDURES. Authorizes the commissioners court of a county to adopt rules relating to the administration of the health care provider participation program in the county, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Sec. 299.0053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. Requires the commissioners court, if the commissioners court of a county authorizes the county to participate in a health care provider participation program under this chapter, to 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 (DSHS) 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. 299.0101. HEARING. (a) Requires the commissioners court, in each year that the commissioners court of a county authorizes a health care provider participation program under this chapter, to 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) Requires the commissioners court, 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 county and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the county.

Sec. 299.0102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) Requires each commissioners court of a county that collects a mandatory payment authorized under this chapter to create a local provider participation fund in one or more banks designated by the county as a depository for the mandatory payments received by the county.

(b) Authorizes the commissioners court of a county to withdraw or use money in the local provider participation fund of the county only for a purpose authorized under this chapter.

(c) Requires all funds collected under this chapter to be secured in the manner provided for securing other county funds.

Sec. 299.0103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) Provides that the local provider participation fund established by a county under Section 299.0102 consists of:

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

(2) money received from HHSC 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.

(b) Authorizes money deposited to the local provider participation fund of a county to 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, 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; or

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

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

(3) pay the administrative expenses of the county in administering the program, including collateralization of deposits;

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

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

(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.

(c) Prohibits money in the local provider participation fund of a county from being commingled with other county funds.

(d) Prohibits 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 from being 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) Requires the commissioners court, if the commissioners court of a county authorizes a health care provider participation 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 county, except as provided by Subsection (e). Requires the commissioners court to provide that the mandatory payment is to be collected at least annually, but not more often than 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 located in the county as determined by the data reported to DSHS under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. Provides that, 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. Requires the county to update the amount of the mandatory payment on an annual basis.

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

(c) Requires the commissioners court of a county that authorizes a program under this chapter to set the amount of the mandatory payment. Prohibits the amount of the mandatory payment required of each paying hospital in the county from exceeding six percent of the hospital's net patient revenue.

(d) Requires the commissioners court of a county that authorizes a program, subject to the maximum amount prescribed by Subsection (c), to 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. Prohibits the amount of revenue from mandatory payments that may be used for administrative expenses by the county in a year from exceeding $25,000, plus the cost of collateralization of deposits. Authorizes the county, 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, to use additional revenue from mandatory payments received under this chapter to compensate the county for its administrative expenses. Prohibits a paying hospital from unreasonably withholding consent to compensate the county for administrative expenses.

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

(f) Provides that a mandatory payment under this chapter is not a tax for purposes of Section 5(a), Article IX, Texas Constitution.

Sec. 299.0152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes a county to collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Sec. 299.0153. CORRECTION OF INVALID PROVISION OR PROCEDURE. Authorizes the county, 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 county or an institutional health care provider in the county beyond the provisions of this chapter. Provides that this section does not require the commissioners court of a county to adopt a rule.

SECTION 2. 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 3. Effective date: upon passage or September 1, 2019.