

- SUBJECT:** Establishing a model for local provider participation funds
- COMMITTEE:** County Affairs — committee substitute recommended
- VOTE:** 8 ayes — Bohac, Anderson, Biedermann, Cole, Dominguez, Huberty, Rosenthal, Stickland
- 0 nays
- 1 absent — Coleman
- WITNESSES:** For — (*Registered, but did not testify:* Anthony Haley, Baylor, Scott, and White Health; Christina Hoppe, Children's Hospital Association of Texas; Linda Townsend, CHRISTUS Health; Crystal Brown, Steward Health Care; Maureen Milligan, Teaching Hospitals of Texas; Gabriela Villareal, Texas Conference of Urban Counties; Don McBeath, Texas Organization of Rural and Community Hospitals; Alexis Tatum, Travis County Commissioners Court)
- Against — None
- On — Charlie Greenberg, Health and Human Services Commission
- BACKGROUND:** Local provider participation funds (LPPFs) were first authorized by the Legislature in 2013 as a way for counties to access federal funding for their nonpublic hospitals without expanding Medicaid, requiring state funding, or taxing the residents of the county. The funds provide a mechanism by which the county can collect mandatory payments from such institutions to provide the nonfederal share of Medicaid supplemental payments in order to access federal matching funds. LPPFs are administered by health care provider participation programs.
- Some have suggested that the federal Centers for Medicare and Medicaid Services may void some older LPPFs because they may not meet newer federal guidelines.

DIGEST:

CSHB 4289 would authorize certain hospital districts, counties, and municipalities to administer health care provider participation programs and to create health care provider participation districts to administer such programs.

Health care provider participation districts. The bill would allow two or more eligible local governments, defined in the bill as hospital districts, counties, or municipalities, to create a health care provider participation district.

Applicability. To be eligible to create a health care provider participation district, a hospital district, county, or municipality would have to not already be participating in a health care provider participation program and have only one institutional health care provider located in the hospital district, county, or municipality.

Concurrent order. Two or more eligible local governments could create a health care provider participation district by adopting concurrent orders. The concurrent orders would have to:

- be approved by the governing body of each creating local government;
- contain identical provisions; and
- define the boundaries of the district to be coextensive with the combined boundaries of each creating local government.

Board of directors. If such a district was created by three or more local governments, the bill would require the presiding officer of the governing body of each local government that created the district to appoint one director to the district's board of directors.

If such a district was created by two local governments, the bill would require the presiding officer of the governing body of the most populous local government to appoint two directors to the district's board of directors and the presiding officer of the other local government to appoint one.

The bill would establish the timing and duration of board members' terms and the rules regarding qualifications, vacancies, selection of officers, and responsibilities of directors and officers. A majority of the board members would have to concur in matters relating to the business of the district. The bill would prohibit directors and officers from being compensated but would allow reimbursement for actual expenses incurred in the performance of official duties.

District authority and finances. The bill would authorize the board to sue and be sued on behalf of the district. The district would not be authorized to issue bonds. The bill also would establish that existing law regulating the finances of health services districts, with certain exceptions, also would regulate the finances of health care provider participation districts.

Dissolution. The bill would require a health care provider participation district to be dissolved if the local governments that created the district adopted identical concurrent orders to dissolve it. The bill would establish the required procedures by which the board would administer this dissolution and pay debts and dispose of assets and funds. The board would be required to provide an accounting to each local government that created the district that would show the manner in which the assets and debts were distributed.

Health care provider participation program. The bill would authorize the governing body of an eligible entity, by majority vote of the body, to create a health care provider participation program and to require a mandatory payment from institutional health care providers.

Applicability. The bill would allow the following entities to create and administer a health care provider participation program:

- a hospital district that is not already participating in a health care provider participation program;
- a county or municipality that is not already participating in a health care provider participation program and is not served by a hospital

- district or a public hospital; and
- a health care provider participation district.

If a governing body of a local government or health care provider participation district authorized such a program, it would have to require each hospital to submit to the government or district a copy of any financial and utilization data required to have been submitted to the Department of State Health Services (DSHS) and any rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC) to implement those reporting requirements.

Collection, holding and disbursement of funds. The bill would require the governing body to publicize and hold a public hearing on the amounts of any mandatory payments in each year that it authorized a health care provider participation program. A representative of any paying hospital would be allowed to attend and to be heard at any such meeting.

The governing body would establish a local provider participation fund (LPPF) in one or more banks that would be designated as depositories for the mandatory payments. The fund would consist of:

- all received revenue attributable to mandatory payments authorized by the bill;
- money received from HHSC as a refund of an intergovernmental transfer for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the transfer does not receive a federal matching payment; and
- fund earnings.

Money in the fund could not be commingled with other funds.

Intergovernmental transfers. The LPPF would be allowed to fund intergovernmental transfers from the local government or health care provider participation district to the state. These transfers would include uncompensated care payments to nonpublic hospitals under a Medicaid 1115 waiver, uniform rate enhancements for nonpublic hospitals in the

Medicaid managed care service area, payments available under another waiver program that was substantially similar to Medicaid, or any reimbursement to nonpublic hospitals for which federal matching funds were available.

Refunds. The bill would allow the local government or health care provider participation district to use the fund to refund mandatory payments collected in error and to refund to hospitals a proportionate share of any funds that were received by the local government or health care provider participation district from HHSC but not used to fund the payment of the nonfederal share of the Medicaid supplemental payment program.

Other permitted uses. The bill also would allow the local government or health care provider participation district to use the fund to:

- pay the administrative expenses of the program, including those related to the collateralization of deposits;
- transfer funds to HHSC to address a disallowance of federal matching funds with respect to intergovernmental transfers; and
- reimburse the local government or health care provider participation district if the local government or district is required by the rules governing the uniform rate enhancement program to incur an expense or forego Medicaid reimbursements from the state because the balance of the LPPF is not sufficient to fund that rate enhancement program.

Accounting of funds for health care provider participation districts. The bill would require health care provider participation districts to maintain an accounting of the funds received from each local government that created the district.

Prohibited uses of intergovernmental transfers. The bill would prohibit the use of intergovernmental transfers from the local government or health care provider participation district to the state under this program to fund expanded Medicaid eligibility under the federal Affordable Care Act or to

fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Mandatory payments. The bill would require the governing body of the local government or health care provider participation district, if it authorized a health care provider participation program, to assess the annual mandatory payment required of each hospital on the basis of its net patient revenue. The applicable governing body would have to provide that the mandatory payment was to be assessed at least annually, but not more often than quarterly.

In the first year in which a mandatory payment was required, the governing body would assess that payment on the net patient revenue of an institutional health care provider as determined by the data reported to certain state and federal agencies. The local government or health care provider participation district would be required to update the amount of this payment on an annual basis.

The amount of a mandatory payment would have to be uniformly proportionate with the amount of net patient revenue generated by each paying hospital. A health care provider participation program could not hold harmless any institutional health care provider, as required under federal law.

The aggregate amount of the mandatory payments could not exceed 6 percent of the aggregate net patient revenue from hospital services provided by all applicable paying hospitals.

The governing body of the local government or health care provider participation district would set mandatory payments in amounts that would generate sufficient revenue to cover administrative expenses and to fund intergovernmental transfers. Revenue paid toward administrative expenses could not exceed \$150,000 plus the cost of collateralization of deposits.

A paying hospital could not add a mandatory payment as a surcharge to a patient.

A mandatory payment would not be considered a tax for purposes of the applicable provision of Art. 9, Texas Constitution.

The local government or health care provider participation district could assess and collect or contract with another person to assess and collect mandatory payments. That person would 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.

If the person charged with the assessment and collection of mandatory payments was an official of the local government or health care provider participation district, any revenue from a collection fee would be deposited in the local government or district general fund and, if appropriate, reported as fees of the local government or district.

Mandatory payments could not be collected for the purpose of raising general revenue or any amount in excess of what was reasonably necessary to fund the purposes of the health care provider participation program.

Authorization of alternative provisions. In the event that any provision or procedure of this bill caused a mandatory payment to be ineligible for federal matching funds, the bill would allow the local government or health care provider participation district to provide by rule for an alternative provision or procedure that conformed to the requirements of the federal Centers for Medicare and Medicaid Services. No such rule would be allowed to create, impose, or materially expand the legal or financial liability or responsibility of the health care provider participation district or local government or of a hospital within the district or local government.

Reporting requirements. The bill would require the governing body of

the local government or health care provider participation district to report information regarding the program to HHSC on a schedule determined by the commission. The information would have to include:

- the amount of the mandatory payments required and collected in each year the program was authorized;
- any expenditure of money attributable to mandatory payments collected, including any contract with an entity for the administration or operation of a relevant program or with a person for the assessment and collection of mandatory payments; and
- the amount of money attributable to mandatory payments that was used for any other purpose.

The bill would require HHSC to adopt rules to administer provisions relating to reporting requirements.

Authority to refuse payments. HHSC could refuse to accept money from a LPPF established under the bill if the commission determined that doing so may violate federal law.

Delay of implementation for necessary waivers. The bill would authorize a state agency that determined that a waiver or authorization from a federal agency was necessary to implement a provision of the bill to request that waiver and delay implementation of the provision until the waiver was granted.

Expiration of authority. The authority of a local government or district to administer and operate a health care provider participation program would expire on September 1 following the second anniversary of the date the governing body of the local government or district authorized the participation of the local government or district in the program.

As soon as practicable after the expiration of the authority of a local government to administer and operate a program, the governing body of the local government would be required to transfer to each institutional health care provider in the boundaries of the local government that

provider's proportionate share of any remaining funds in any LPPF created by the local government.

If a state agency determined that a waiver or authorization from a federal agency was necessary before implementing any of the bill's provisions, the agency would be required to request the waiver or authorization and may delay implementing that provision until a waiver or authorization was granted.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.