

## **BILL ANALYSIS**

Senate Research Center

H.B. 4548  
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Intergovernmental Relations  
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Engrossed

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

It has been noted that certain communities, such as Ellis County, have neither a public hospital nor a hospital district through which health care providers can partner to take advantage of federal funds. It has been suggested that a county health care provider participation program would be beneficial for such communities. H.B. 4548 seeks to provide for such a program.

H.B. 4548 amends current law relating to the creation and operations of health care provider participation programs in certain counties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioners court of a county in SECTION 1 and SECTION 2 (Sections 292C.053 and 296A.053, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to a county in SECTION 2 (Sections 292C.154 and 296A.154, 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 292C, as follows:

#### **CHAPTER 292C. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES WITH HOSPITAL DISTRICT BORDERING OKLAHOMA**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 292C.001. DEFINITIONS. Defines "institutional health care provider" and "paying hospital" and defines "program" to mean the county health care provider participation program authorized by this chapter (program).

Sec. 292C.002. APPLICABILITY. Provides that this chapter applies only to a county that:

- (1) contains a hospital district that is not countywide;
- (2) has a population of more than 125,000; and
- (3) borders Oklahoma.

Sec. 292C.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) Provides that 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. Authorizes money in the fund to be used by the county to fund certain intergovernmental transfers as provided by this chapter.

(b) Authorizes the commissioners court of a county to adopt an order authorizing the county to participate in the program, subject to the limitations provided by this chapter.

Sec. 292C.004. EXPIRATION. Provides that the authority of a county to administer and operate a program under this chapter expires December 31, 2023.

#### SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292C.051. 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. 292C.052. MAJORITY VOTE REQUIRED. Prohibits the commissioners court of a county from authorizing 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. 292C.053. RULES AND PROCEDURES. Authorizes the commissioners court of a county, after the commissioners court has voted to require a mandatory payment authorized under this chapter, to adopt rules relating to the administration of the mandatory payment.

Sec. 292C.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter to require each institutional health care provider located in the county 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.

(b) Authorizes the commissioners court of a county that collects a mandatory payment authorized under this chapter to 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. 292C.101. HEARING. (a) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter, each year, to hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Requires the commissioners court of the county, 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.

(c) Provides that 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. 292C.102. DEPOSITORY. (a) Requires the commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution to designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) Provides that 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, is required to be deposited with the county depository in the county's local provider participation fund and authorizes the money to be withdrawn only as provided by this chapter.

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

Sec. 292C.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Requires each county that collects a mandatory payment authorized under this chapter to create a local provider participation fund.

(b) Provides that 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 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.

(c) Authorizes money deposited to the local provider participation fund 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 the administrative expenses of the county solely for activities under this chapter;

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

(4) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Prohibits money deposited to the local provider participation fund from being used to pay for the services of a consultant or a person required to register under Chapter 305 (Registration of Lobbyists), Government Code.

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

(f) Prohibits 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 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. 292C.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Authorizes the commissioners court of a county that collects a mandatory payment authorized under this chapter, except as provided by Subsection (e), to require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. Authorizes the commissioners court to provide for the mandatory payment to be assessed 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 as determined by the data reported to the DSHS under Sections 311.032 and 311.033 in the fiscal year ending in 2017 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2017 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 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 collects a mandatory payment authorized under this chapter to set the amount of the mandatory payment. Prohibits the amount of the mandatory payment required of each paying hospital from exceeding six percent of the paying hospital's net patient revenue.

(d) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter, 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 and to fund an intergovernmental transfer described by Section 292C.103(c)(1), except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year is prohibited from exceeding \$20,000, plus the cost of collateralization of deposits. Authorizes the county, if the county demonstrates to the paying hospitals that the costs of administering the program under this chapter, excluding those costs associated with the collateralization of deposits, exceed \$20,000 in any year, on consent of a majority of the paying hospitals, 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.

Sec. 292C.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Sec. 292C.153. INTEREST, PENALTIES, AND DISCOUNTS. Provides that interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Sec. 292C.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) Provides that 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) 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.

SECTION 2. Amends Subtitle D, Title 4, Health and Safety Code, by adding Chapter 296A, as follows:

#### CHAPTER 296A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING TWO POPULOUS COUNTIES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 296A.001. DEFINITIONS. Defines "institutional health care provider" and "paying hospital" and defines "program" to mean the county health care provider participation program authorized by this chapter (program).

Sec. 296A.002. APPLICABILITY. Provides that this chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital; and

(2) has a population of less than 600,000 and borders two counties both with populations of one million or more.

Sec. 296A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) Provides that 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. Authorizes money in the fund to be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) Authorizes the commissioners court to 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. 296A.051. 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. 296A.052. MAJORITY VOTE REQUIRED. Prohibits the commissioners court of a county from authorizing 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. 296A.053. RULES AND PROCEDURES. Authorizes the commissioners court, after the commissioners court has voted to require a mandatory payment authorized under this chapter, to adopt rules relating to the administration of the mandatory payment.

Sec. 296A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) Requires the commissioners court of a county that collects a mandatory payment authorized 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 DSHS under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of HHSC to implement those sections.

(b) Authorizes the commissioners court of a county that collects a mandatory payment authorized under this chapter to 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. 296A.101. HEARING. (a) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter, each year, 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 of the county not later than the 10th 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.

(c) Provides that 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. 296A.102. DEPOSITORY. (a) Requires the commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution to designate one or more banks located in the county as the depository for mandatory payments received by the county. Provides that a bank designated as a depository serves for two years or until a successor is designated.

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

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

Sec. 296A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Requires each county that collects a mandatory payment authorized under this chapter to create a local provider participation fund.

(b) Provides that 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 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.

(c) Authorizes money deposited to the local provider participation fund 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) subsidize indigent programs;

(3) pay the administrative expenses of the county for activities under this chapter;

(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 HHSC that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

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

(e) Prohibits 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 Subsection (c)(1) 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. 296A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Authorizes the commissioners court of a county that collects a mandatory payment authorized under this chapter, except as provided by Subsection (e), to require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. Authorizes the commissioners court to provide for the mandatory payment to be assessed 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 as determined by the data reported to DSHS under Sections 311.032 and 311.033 in the fiscal year ending in 2017 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2017 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 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 collects a mandatory payment authorized under this chapter to set the amount of the mandatory payment. Prohibits the amount of the mandatory payment required of each paying hospital from exceeding 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) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter, 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, to fund the nonfederal share of a Medicaid supplemental payment program, 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 is prohibited from exceeding the lesser of four percent of the total revenue generated from the mandatory payment or \$20,000.

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

Sec. 296A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Sec. 296A.153. INTEREST, PENALTIES, AND DISCOUNTS. Provides that interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Sec. 296A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) Provides that 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) 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.

SECTION 3. Requires the commissioners court of the county, as soon as practicable after the expiration of the authority of a county to administer and operate a health care provider participation program under Chapter 292C, Health and Safety Code, as added by this Act, to transfer to the institutional health care providers in the county a proportionate share of any remaining funds in any local provider participation fund created by the county under Section 292C.103, Health and Safety Code, as added by this Act.

SECTION 4. Requires a state agency if, before implementing any provision of this Act, 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 5. Effective date: upon passage or September 1, 2019.