



NUECES COUNTY HOSPITAL DISTRICT

Administrative Offices

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BOARD OF MANAGERS ORDER **SEPTEMBER 29, 2020**

Order Implementing Requirements, Rules, Regulations, and Procedures of Health Care Provider Participation Program

WHEREAS, pursuant to Health and Safety Code ("Code"), §298C.003, the Nueces County Hospital District ("NCHD") Board of Managers ("Board") on September 29, 2020 authorized NCHD to participate in a health care provider participation program;

WHEREAS, the purpose of NCHD's participation in a health care provider participation program is to generate revenue from a mandatory payment that may be required by NCHD from each institutional health care provider in NCHD's boundaries to fund certain intergovernmental transfers as prescribed in §298C.103(c) of the Code;

WHEREAS, pursuant to §298C.051 of the Code, the Board on September 29, 2020 authorized NCHD to collect a mandatory payment from each institutional health care provider located in NCHD's boundaries;

WHEREAS, pursuant to §298C.052 of the Code, if the Board orders collection of a mandatory payment, it must adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspect of the program;

WHEREAS, pursuant to §298C.053 of the Code, if the Board orders collection of a mandatory payment, it must require each institutional health care provider within the boundaries of NCHD to submit to the NCHD a copy of any financial and utilization data required by and reported to the Texas Department of State Health Services under the Code §311.032 and §311.033 (and any rules adopted by the Executive Commissioner of the Texas Health and Human Services Commission to implement those sections) in the most recent fiscal year for which the data was reported; if the institutional health care provider did not report any data under those sections, 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;

WHEREAS, pursuant to §298C.102 of the Code, if the Board orders collection of a mandatory payment, it must designate one or more banks as the depository for mandatory payments received by the NCHD's local provider participation fund;

WHEREAS, pursuant to §298C.103 of the Code, if the Board collects a mandatory payment, it must create a local provider participation fund;

WHEREAS, pursuant to §298C.151 of the Code, if the Board collects a mandatory payment, it must set the amount of the mandatory payment; and

WHEREAS, pursuant to §298C.152 of the Code, if the Board collects a mandatory payment, it may designate an official of NCHD or contract with another person to assess and collect the mandatory payments.

NOW THEREFORE, BE IT ORDERED that the Board of Managers of the Nueces County Hospital District hereby:

1. Creates the NCHD Health Care Provider Participation Program.
2. Adopts the Health Care Provider Participation Program Rules and Procedures attached to this ORDER and identified as Exhibit A, "Nueces County Hospital District Health Care Provider Participation Program Rules and Procedures"
3. Requires each institutional health care provider in the boundaries of NCHD to submit to NCHD a copy of any financial and utilization data required by and reported to the Texas Department of State Health Services under Texas Health & Safety Code §311.032 and §311.033 (and any rules adopted by the Executive Commissioner of the Texas Health and Human Services Commission ("Commission") to implement those sections) in the most recent fiscal year for which the data was reported; if the institutional health care provider did not report any data under those sections, 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.
4. Creates a local provider participation fund.
5. Designates Frost Bank, located at 501 S. Shoreline Boulevard, Corpus Christi, Texas 78401 as the depository for mandatory payments received by NCHD's local provider participation fund.
6. Sets the amount of the mandatory payment Fiscal Year 2020 (October 1, 2019 – September 30, 2020) as six percent (6%) of the net patient revenue of each institutional health care provider located in the boundaries of NCHD.
7. Authorizes the Board to take all other actions necessary to meet the requirements of Chapter 298C of the Code.
8. Designates NCHD's Administrator/Chief Executive Officer as the person to assess and collect the mandatory payments.
9. Authorizes NCHD's Administrator/Chief Executive Officer to make intergovernmental transfers ("IGTs") from the local provider participation fund to the Commission for the purposes described in §298C.103(c) of the Code; the IGTs shall be based on the Commission's schedule of requested IGTs for such described purposes.

**NUECES COUNTY HOSPITAL DISTRICT
BOARD OF MANAGERS**

John B. Martinez, J.D.
Chairman

Sylvia Tryon Oliver
Vice Chairman

Belinda Flores, R.N.
Member

Vishnu V. Reddy, M.D.
Member

Daniel W. Dain
Member

John E. Valls
Member

Mariana Garza, J.D.
Member

CERTIFICATE OF SECRETARY

THE STATE OF TEXAS
COUNTY OF NUECES

§
§
§

THE UNDERSIGNED HEREBY CERTIFIES that:

1. The members of the Board of Managers (the "Board") of the Nueces County Hospital District (the "Hospital District") have been duly appointed pursuant to Texas Health and Safety Code (the "Health Code"), §281.021.
2. Pursuant to Health Code, §281.021(a), the Hospital District's Board of Managers (the "Board") have been duly appointed; pursuant to Health Code, §281.048, the Board is the governing body of the Hospital District; and pursuant to the collective authorities of Health Code, §281.047 and §281.048, the Board has, and the time of adoption of this Order had, full power and authority to manage, control, administer, and to adopt rules governing operation of the Hospital District.
3. On the 29th day of September 2020 the Board convened in a regular meeting at the Hospital District's regular meeting place (the "Meeting"), the duly constituted members and officers of the Board being as follows:

John B. Martinez, J.D., Chairman
 Sylvia Tryon Oliver, Vice Chairman
 Belinda Flores, R.N.
 Vishnu V. Reddy, M.D.
 Daniel W. Dain
 John E. Valls
 Mariana Garza, J.D.

and all of said persons were present, except the following absentees:
 _____, thus, constituting a quorum.

4. Among other business considered at the Meeting, the attached order entitled:

**Order Implementing Requirements, Rules, Regulations, and Procedures
 of Health Care Provider Participation Program**

is a true copy of a order introduced and submitted to the Board for consideration toward passage and adoption (the "Order"). After presentation and discussion, it was then duly moved and seconded that the Order be passed and adopted. The motion to pass and adopt the Order prevailed and carried by the following viva voce vote:

YEAS: ()
 NAYS: ()
 PRESENT NOT VOTING: ()

ABSENT: ()

all as shown in the official Minutes of the Board for the Meeting.

5. The attached Order is a true and correct copy of the original on file in the official records of the Hospital District; the duly qualified and acting members of the Board on the date of the Meeting are those persons shown above, and, according to the records of my office, each member of the Board was given actual notice of the time, place, and purpose of the Meeting and had actual notice that the Order would be considered; and the Meeting and deliberation of the aforesaid public business, was open to the public and written notice of said meeting, including the subject of the Order, was posted and given in advance thereof in compliance with the provisions of Chapter 551, Texas Government Code, as amended.
6. I am the Secretary of the Board having been duly appointed pursuant to Health Code, §281.023(b).
7. The foregoing Order is in full force and effect; that the same has not been rescinded, nor has it been amended or modified in any way.

IN WITNESS WHEREOF, I have hereunto signed my name officially and affixed the seal of the Hospital District on this the 29th day of September 2020.

Jonny F. Hipp
Secretary, Board of Managers
Nueces County Hospital District

{HOSPITAL DISTRICT SEAL}

**NUECES COUNTY DISTRICT
HEALTH CARE PROVIDER PARTICIPATION PROGRAM
RULES AND PROCEDURES**

General Provisions

Rule 1. Definitions. In these rules and procedures:

- (a) "Board" means the Board of the District.
- (b) "District" means the Nueces County District.
- (c) "Mandatory payment" means a mandatory payment authorized under Chapter 298C, Subtitle D, Title 4, Health and Safety Code.
- (d) "Institutional health care provider" means a hospital that is not owned and operated by a federal or state government and provides inpatient hospital services.
- (e) "Paying provider" means an institutional health care provider required to make a mandatory payment.
- (f) "Program" means the health care provider participation program authorized under Chapter 298C, Subtitle D, Title 4, Health & Safety Code.
- (g) "Year" means the District's fiscal year (October 1 – September 30).

Rule 2. Health Care Provider Participation Program; Participation in Program; Purpose.

(a) The Board has adopted, on the affirmative vote of at least a majority of the Board, an order authorizing the District to participate in the Program.

(b) The Program authorizes the District to collect a mandatory payment from each institutional health care provider located in the District to be deposited in a local provider participation fund established by the District.

(c) The Program's purpose is to enable the District to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to District residents in need of health care.

(d) To the extent any provision or procedure under Chapter 298C, Subtitle D, Title 4, Texas Health & Safety Code causes a mandatory payment to be ineligible for federal matching funds, the Board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare & Medicaid Services.

Powers and Duties of Board

Rule 3. Limitation on Authority to Require Mandatory Payment. The District may require a mandatory payment from an institutional health care provider only in the manner provided in these rules and procedures.

Rule 4. Majority Vote Required Prior to Mandatory Payment. The District may not collect a mandatory payment without an affirmative vote of a majority of the members of the Board authorizing the District to participate in the Program.

Rule 5. Institutional Health Care Provider Reporting; Inspection of Records.

(a) The District shall require each institutional health care provider to submit to the District a copy of any financial and utilization data required by and reported to the Department of State Health Services under Texas Health & Safety Code, §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 District may inspect the records of an institutional health care provider to the extent necessary to ensure that the institutional health care provider has submitted all required data under these rules and procedures.

General Financing Provisions

Rule 6. Hearing.

(a) Each year, the Board shall hold a public hearing on the amounts of any mandatory payments that the Board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth (5th) day before the date of the hearing required under Rule 6(a), the Board shall publish notice of the hearing in a newspaper of general circulation in the District and provide written notice of the hearing to each institutional health care provider in the District.

(c) A representative of a paying provider 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.

Rule 7. Depository.

(a) The District shall designate one or more banks as the depository for the District local provider participation fund wherein mandatory payments received by the District will be deposited.

(b) All income received by the District under these rules and procedures, including revenue from mandatory payments remaining after fees for assessing and collecting the payments are deducted, will be deposited in the local provider participation fund and may be withdrawn only as provided by these rules and procedures.

(c) All funds under these rules and procedures will be secured in the manner provided for securing other funds of the District.

Rule 8. Local Provider Participation Fund; Authorized Uses of Money.

(a) If the Hospital District requires a mandatory payment, it shall create a local provider participation fund

(b) The local provider participation fund of the District will consist of:

(1) revenue received by the District attributable to mandatory payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the District 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 District to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to hospitals in the Medicaid managed care service area in which the District is located, 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);

(B) delivery system reform incentive payments, 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);

(C) uniform rate enhancements for hospitals in the Medicaid managed care service area in which the District is located;

(D) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to hospitals described by Rule 8(c)(1)(A), Rule 8(c)(1)(B), or Rule 8(c)(1)(C); or

(E) any reimbursement to hospitals for which federal matching funds are available;

(2) pay the administrative expenses of the District in administering the Program, including collateralization of deposits;

(3) refund of a mandatory payment collected in error from a paying provider;

(4) refund to paying providers the proportionate share of money that the District:

(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 uniform rate enhancements described by Rule 8(c)(1)(C); or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments of uniform rate enhancements described by Rule 8(c)(1)(C).

(5) transfer funds to the Health and Human Services Commission if the District is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the District made intergovernmental transfers described by Rule 8(c)(1); and

(6) reimburse the District if the District is required by the rules governing the uniform rate enhancement program described by Rule 8(c)(1)(C) 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 District funds.

(e) An intergovernmental transfer of funds described by Rule 8(c)(1) made by the District, any funds received by the state, District, or other entity as a result of that transfer may not be used by the state, District, or 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).

Mandatory Payments

Rule 9. Mandatory Payments Based on Paying provider Net Patient Revenue.

(a) Except as provided by Rule 11, if the Board collects a mandatory payment, it may require that a mandatory payment be assessed annually or periodically throughout the year at the discretion of the Board on the net patient revenue of each institutional health care provider located in the in the District.

(b) The Board shall provide an institutional health care provider written notice of each assessment and the mandatory payments shall be made not later than thirty (30) days following the date of receipt of the notice of payment.

(c) In the first year in which the mandatory payment is required, the mandatory payment is assessed based on the most recent year data collected pursuant to Rule 5(a). If no such data are available for an institutional health care provider, the mandatory payment may be calculated based on the institutional health care provider's Medicare cost report submitted for the previous year or for the closest subsequent year for which the provider submitted the Medicare cost report.

(d) The District shall update the amount of the mandatory payment on an annual basis.

Rule 10. Mandatory Payment Requirements

(a) The amount of a mandatory payment must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the District.

(b) If the Board requires a mandatory payment, it shall set the amount of the mandatory payment; the aggregate amount of the mandatory payments required of all paying providers in the District may not exceed six percent (6%) of the aggregate net patient revenue from hospital services provided by all paying providers in the District.

(c) Subject to the maximum amount prescribed by Rule 11(a), if the Board requires a mandatory payment, it shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the District for activities under these rules and procedures and to fund an intergovernmental transfer for purposes described in Rule 8(c).

(i) The annual amount of revenue from mandatory payments used for administrative expenses of the District for activities under these rules and procedures is \$150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(d) The mandatory payment may not be collected for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for hospitals to cover the administrative expenses of the District associated with the Program.

(e) To the extent any Program provision or procedure causes a mandatory payment to be ineligible for federal matching funds, the Board may provide by rule for an alternative provision or procedure that conforms to the requirements of federal Centers for Medicare & Medicaid Services.

Rule 11. Mandatory Payment Prohibitions.

(a) The amount of the mandatory payment required of each paying provider may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying providers located in the in the District, equals an amount of revenue that exceeds six percent (6%) of the aggregate net patient revenue of all paying providers in the District.

(b) A mandatory payment may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

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

(d) A mandatory payment assessed hereunder is not a tax for hospital purposes for purposes of Texas Constitution, Section 4, Article IX or Texas Health and Safety Code, §281.045.

Rule 12. Assessment and Collection of Mandatory Payments.

(a) The District may designate an official of the District or contract with another person to assess and collect of the mandatory payments.

(b) The person charged by the District with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the District a collection fee in the 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 District, any revenue from a collection fee charged under Rule (b) shall be deposited in the District's general fund and, if appropriate, shall be reported as fees of the District.

Rule 13. Limitation of District's Liability and Indemnification of the District.

(a) In consideration of the District creating the Program through adoption and implementation of these Rules and Regulations, the District shall not be liable:

- (1) for failure to make an intergovernmental transfer under the Program;
- (2) for failure to make an intergovernmental transfer timely under the

Program;

(3) for any disallowance of all or any part of the mandatory payments under the Program;

(4) for any recoupment of mandatory payments due to a state or federal agency related to a disallowance or termination of the Program.

(b) In consideration of the District creating the Program and by participating in the Program, each paying provider does hereby indemnify and hold the District harmless for:

(1) any mandatory payments due to the local provider participation fund under the terms and conditions of the Program by an institutional health care provider;

(2) any recoupment of a mandatory payments by any state or federal agency resulting from a state or federal agency's disallowance or termination of the Program;

(3) any damages, attorney fees or other expenses incurred by the District in performing its responsibilities under the Program.

Rule 14. Amendment to these Nueces County Hospital District Health Care Provider Participation Program Rules and Procedures. These Rules and Procedures are subject to amendment only by action of the Board.

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EXHIBIT A-1

Institutional Health Care Providers

1. CHRISTUS Spohn Hospital Corpus Christi
2. Corpus Christi Rehabilitation Hospital
3. Driscoll Children's Hospital
4. PAM Rehabilitation Hospital of Corpus Christi
5. PAM Specialty Hospital of Corpus Christi North
6. South Texas Surgical Hospital
7. The Corpus Christi Medical Center – Bay Area