

1 HB383
2 128202-3
3 By Representative Barton
4 RFD: Ways and Means General Fund
5 First Read: 31-MAR-11

1 40-26B-22, 40-26B-23, 40-26B-24, 40-26B-25, and 40-26B-26,
2 Code of Alabama 1975, are amended to read as follows:

3 "§40-26B-21.

4 "To provide further for the availability of indigent
5 health care, the operation of the Medicaid program, and the
6 maintenance and expansion of medical services:

7 "(a) There is levied and shall be collected a
8 privilege ~~tax~~ assessment on the business activities of every
9 nursing facility in the State of Alabama. The privilege ~~tax~~
10 assessment imposed is in addition to all other taxes and
11 assessments, and shall be at the annual rate of \$1,899.96 for
12 each bed in the nursing facility.

13 "(b) For the period September 1, 2010 through August
14 31, ~~2011~~ 2013, there is levied and shall be collected a
15 supplemental privilege ~~tax~~ assessment on the business
16 activities of every nursing facility in the State of Alabama.
17 The supplemental privilege ~~tax~~ assessment imposed is in
18 addition to all other taxes and assessments, including without
19 limitation, the privilege taxes provided for under this
20 article, and from September 1, 2010, through August 31, 2011,
21 shall be at the annual rate of \$1,063.08 for each bed in the
22 nursing facility, and one thousand six hundred three dollars
23 and eight cents (\$1,603.08) for the period of September 1,
24 2011, through August 31, 2013.

25 "(c) The total privilege ~~taxes~~ assessment and
26 supplemental privilege assessment (privilege assessments) paid
27 by a nursing facility pursuant to this article shall be

1 considered an allowable costs, as that term is defined in the
2 reimbursement methodology for nursing facilities contained in
3 Title 560 of the Alabama Administrative Code, and, to the
4 extent permitted under applicable federal law governing the
5 Alabama Medicaid nursing home program, the total ~~taxes~~
6 privilege assessments paid must be included in the computation
7 of the Medicaid per diem rate determined under the
8 reimbursement methodology for nursing facilities contained in
9 Title 560 of the Alabama Administrative Code. The payment to
10 nursing facilities of the determined allowable costs in
11 respect to the supplemental privilege ~~tax~~ assessment described
12 in subsection (b) shall be included in Medicaid per diem rates
13 for services provided commencing as of January 1, 2011, and
14 shall continue to be included in such Medicaid per diem rates
15 for a period equal to the number of months during which the
16 supplemental ~~privilege tax~~ assessments shall have been in
17 effect. For each Medicaid nursing facility, in determining the
18 adjustment to the Medicaid per diem for the allowable costs
19 associated with the supplemental ~~tax~~ assessment, the Alabama
20 Medicaid Agency shall divide the total supplemental ~~tax~~
21 assessment due under subsection (b) by the total of all
22 incurred resident days (regardless of payor class) reported by
23 such nursing facility in its Medicaid cost report filed for
24 the period ~~ending then ended~~ June 30, 2010. To accommodate the
25 increase in the supplemental assessment described in
26 subsection (c) (b), Medicaid shall use the same mechanism
27 described herein to adjust each nursing facility's rate

1 effective as of October 1, 2011.Notwithstanding the foregoing,
2 in the event that such cost report shall be for a period less
3 than one year, the resident days reported shall be annualized.
4 In the event that any portion of the privilege taxes paid by a
5 facility cannot be included in the computation of the Medicaid
6 per diem rate because of the effect of any cost ceiling
7 provision of the reimbursement methodology, the cost ceiling
8 must be adjusted to ensure continued treatment of the total
9 privilege ~~tax~~ assessments as an allowable cost.

10 "(d) The privilege ~~tax~~ assessment rate or the
11 supplemental privilege ~~tax~~ assessment rate shall be reduced by
12 the department upon the advice of the Alabama Medicaid Agency
13 if, but only if, such reduction is required to ensure that the
14 total revenues to the State of Alabama produced by this
15 privilege ~~tax~~ assessment or, if the supplemental privilege ~~tax~~
16 assessment is in effect, the aggregate of the supplemental
17 privilege ~~tax~~ assessment and the privilege ~~tax~~ assessment,
18 during any state fiscal year are less than or equal to five
19 and one-half percent of the total revenues received by the
20 nursing facilities in the state subject to the ~~tax~~ assessment
21 during that same fiscal year. In the event that the
22 supplemental privilege ~~tax~~ assessment is reduced as provided
23 in the preceding sentence, then for each Medicaid nursing
24 facility a corresponding reduction shall be made to the
25 Medicaid per diem adjustment described in subsection (c) to
26 ensure that only the amount of supplemental privilege ~~tax~~

1 assessment actually paid is used in computing that Medicaid
2 nursing facility's allowable costs.

3 "§40-26B-22.

4 "(a) The ~~taxes~~ privilege assessments imposed by this
5 article shall be due and payable in monthly installments to
6 the department on or before the ~~tenth~~ twentieth day of the
7 month next succeeding the month in which the tax accrues, and
8 shall, when collected, be paid by the department into the
9 State Treasury. Payment by United States mail will be timely
10 if mailed in accordance with Section 40-1-45. When so paid
11 into the State Treasury, all such ~~taxes~~ privilege assessments
12 shall be deposited to the credit of the Alabama Health Care
13 Trust Fund or any successor fund administered by or on behalf
14 of the Alabama Medicaid Agency.

15 "(b) The receipts from the ~~taxes~~ privilege
16 assessments levied in this article shall be solely available
17 for appropriation by the Alabama Legislature to the Alabama
18 Medicaid Agency for use by ~~said~~ the agency in accomplishing
19 the purposes of this article. Provided, however, for the first
20 fiscal year in which this article is effective, to defray its
21 expenses including salaries and costs of operation incident to
22 the collection of this ~~tax~~ privilege assessment, there is
23 hereby appropriated to the department and shall be deducted as
24 a first charge thereon, an amount not to exceed one percent of
25 the revenues collected pursuant to this article. Such amount
26 of money as shall be appropriated for each succeeding fiscal
27 year by the Legislature to the department with which to pay

1 the salaries, the cost of operation and the management of the
2 department shall be deducted, as a first charge thereon, from
3 the ~~taxes~~ privilege assessments collected under and pursuant
4 to ~~said this~~ article. Provided, however, the expenditure of
5 ~~said the~~ sum so appropriated shall be budgeted and allotted
6 pursuant to Article 4 of Chapter 4 of Title 41, and limited to
7 the amount appropriated to defray the expenses of operating
8 ~~said the~~ department for each fiscal year, incident to the
9 collection of this ~~tax~~ privilege assessment.

10 "§40-26B-23.

11 "(a) On or before the ~~tenth~~ twentieth of each month,
12 beginning October 1991, each nursing facility subject to this
13 article shall file with the department a statement under
14 penalty of perjury on forms prescribed by ~~said the~~ department,
15 showing the total number of beds as of the last day of the
16 previous month, the taxes due under this article, and such
17 other reasonable and necessary information as the department,
18 after consultation with the Alabama Medicaid Agency and
19 adoption of appropriate rules and regulations, may require for
20 the proper enforcement of the provisions of this article. At
21 the time of filing such statement the nursing facility shall
22 pay to the department the amount of ~~taxes~~ privilege
23 assessments shown to be due.

24 "(b) The annual ~~taxes~~ privilege assessments levied
25 by this article shall be prorated on a month by month basis
26 for any beds added to or subtracted from the nursing facility
27 during the fiscal year except that, for any nursing facility

1 which adds licensed beds after July 1, 1991, and has a monthly
2 total occupancy rate of less than 85 percent according to
3 Medicaid program methodology, the amount due for each such
4 month shall be determined by prorating the annual ~~taxes~~
5 privilege assessments due per bed on a daily basis and
6 multiplying ~~said the~~ amount times the total number of patient
7 days furnished in such month by ~~said the~~ facility. This
8 exception shall cease as of the first month that the occupancy
9 rate of the nursing facility equals or exceeds 85 percent.

10 "(c) Any nursing facility that fails to pay the
11 ~~taxes~~ privilege assessments levied by this article within the
12 time required by this article shall pay, in addition to the
13 taxes, a penalty of 10 percent of the amount of ~~taxes~~
14 privilege assessments due, together with interest thereon at
15 the rate prescribed by Section 40-1-44, such penalty and
16 interest to be assessed and collected as part of the ~~taxes~~
17 privilege assessments. Provided, however, the department, if a
18 good and sufficient reason is shown, may waive or remit the
19 penalty of 10 percent or a portion thereof. If payment is not
20 received by the last day of the month, the department shall
21 notify the Alabama Medicaid Agency, which shall withhold the
22 payment, interest and penalty owed from any reimbursement due
23 ~~said to the~~ nursing facility under the Medicaid program. The
24 ~~taxes~~ privilege assessment levied by this article shall
25 constitute a debt due the State of Alabama and may be
26 collected by civil action in addition to the methods provided
27 in this article. The department is empowered to assess, file

1 tax liens, and collect the ~~taxes~~ privilege assessments levied
2 by this article, as prescribed in this title.

3 "§40-26B-24.

4 "(a) It shall be the duty of each nursing facility
5 subject to this article to keep and preserve such suitable
6 books and records as may be necessary to determine the amount
7 of ~~taxes~~ privilege assessments for which it is liable under
8 the provisions of this article. ~~Said~~ The books and records
9 shall be kept and preserved for a period of not less than
10 three years, and all such books and records shall be open for
11 examination during business hours by the department or its
12 duly authorized agents.

13 "(b) All information secured pursuant to this
14 article by the department shall be confidential, as prescribed
15 by Section 40-2A-10, except that the department may provide
16 such information to the Alabama Medicaid Agency as necessary
17 for the proper administration of the Medicaid program, or for
18 the department's proper administration of the ~~taxes~~ privilege
19 assessments levied by this article.

20 "(c) The department shall from time to time, as it
21 deems desirable, and after consultation with the Alabama
22 Medicaid Agency, promulgate such reasonable rules and
23 regulations as necessary to provide for the orderly and
24 efficient administration of the ~~tax~~ privilege assessment
25 levied by this article.

26 "§40-26B-25.

1 "(a) The Alabama Medicaid Agency shall use the
2 revenues from the ~~tax~~ privilege assessment in furtherance of
3 the purposes of this article, provided that any uses shall be
4 limited to those for which federal financial participation
5 under Title XIX of the Social Security Act is available.

6 "(b) Any reimbursement due a nursing facility under
7 the Medicaid program shall be paid in a timely fashion. If the
8 amount payable is not in dispute and is not paid by the
9 Alabama Medicaid Agency within 30 days of the due date,
10 interest on the amount due shall be charged. The interest rate
11 shall be the legal amount currently charged by the state.

12 "§40-26B-26.

13 "(a) No revenues resulting from the ~~tax~~ privilege
14 assessment established by this article and applied to
15 increases in covered services or reimbursement levels or other
16 enhancements of the Medicaid program shall be subject to
17 reduction or elimination while ~~said tax~~ the privilege
18 assessment is in effect.

19 "(b) Every nursing facility participating in the
20 Medicaid program in the State of Alabama shall be reimbursed
21 according to the reimbursement methodology contained in
22 Chapter 560-X-22 of the Alabama Medicaid Agency Administrative
23 Code (Supp. 12/31/95) on January 31, 1998, which methodology
24 is incorporated by reference herein, except that the following
25 shall apply:

26 "(1) The ceiling for the operating cost center
27 described in Title 560-X-22-.06 (2) (a) of the Alabama Medicaid

1 Agency Administrative Code (Supp. 12/95) shall be computed at
2 the median plus five percent.

3 "(2) The ceiling for the direct patient care cost
4 center described in Title 560-X-22-.06 (2) (b) of the Alabama
5 Medicaid Agency Administrative Code (Supp. 12/95) shall be
6 computed at the median plus 10 percent, and the provider's
7 actual allowable reported cost per patient day plus 11
8 percent, or the established ceiling plus 11 percent, whichever
9 is less, will be used for each provider's rate computation.

10 "(3) The Medicaid Inflation Index described in Title
11 560-X-22-.07 of the Alabama Medicaid Agency Administrative
12 Code (Supp. 12/95) shall be computed without regard to the
13 trend factor variance described in Title 560-X-22-.07 (5) of
14 the Alabama Medicaid Agency Administrative Code (Supp. 12/95).

15 "(4) In calculating the ceiling for the operating
16 cost center, the direct patient care cost center or the
17 indirect patient care cost center, any increase in that
18 ceiling over such ceiling set in the year next preceding,
19 shall not exceed an amount equal to the product of such
20 ceiling for the previous year times the sum of the Medicaid
21 Inflation Index, described in Title 560-X-22-.07 of the
22 Alabama Medicaid Agency Administrative Code (Supp. 12/95),
23 plus four percent.

24 "(5) In determining the reimbursement in any fiscal
25 year to a nursing facility for certain specialized medical
26 equipment as described in Title 560-X-22-.14 (19) of the
27 Alabama Medicaid Agency Administrative Code (Supp. 12/95),

1 there shall be added to the daily Medicaid per diem rate
2 computed for that fiscal year, without regard to the cost of
3 such specialized medical equipment, an amount equal to the
4 actual cost of such specialized medical equipment utilized for
5 Medicaid residents during the fiscal year next preceding and
6 divided by the actual number of Medicaid patient days incurred
7 during that preceding fiscal year. For the purpose of this
8 subdivision the terms Medicaid patient days, Medicaid per diem
9 rate, and fiscal year shall have the meanings assigned to them
10 in Title 560-X-22 et seq. of the Alabama Medicaid Agency
11 Administrative Code (Supp. 12/95).

12 "(6) For the period that the federal financial
13 participation under Title XIX of the Social Security Act for
14 certain intergovernmental transfers is available to the
15 Alabama Medicaid program, the Commissioner of the agency may
16 pay an enhancement, not to exceed the upper limits for
17 Medicare nursing facility payments, to rural hospital
18 connected nursing facilities under governmental authority or
19 control. Notwithstanding the foregoing, the enhancement shall
20 not be limited by the provisions of Title 560-X-22 of the
21 Alabama Medicaid Administrative Code.

22 "(7) Notwithstanding subdivision (3), from October
23 1, 2011, through September 30, 2013, in applying the inflation
24 factor, zero percent shall be used to compute overall rates.

25 "(c) Payments by the Medicaid program to each
26 nursing facility for nursing home services shall be sufficient
27 to cover the costs determined by cost reporting principles

1 incurred by each such nursing facility in providing care in an
2 economical and efficient manner and that is adequate to permit
3 the provision of care and services necessary to attain or
4 maintain the highest practicable, physical, mental, and
5 psychosocial well-being of each resident eligible for Alabama
6 Medicaid nursing home benefits in conformity with applicable
7 state and federal laws, rules and regulations and quality and
8 safety standards.

9 ~~"(d) Medicaid shall be empowered to create a special
10 reimbursement model to accommodate care provided in dedicated
11 ventilator units in nursing facilities that meet special
12 physical plant requirements such as dedicated emergency power
13 generation, through the wall medical gases and suction, staff
14 24-hour per day with trained respiratory therapists, and
15 contract for medical direction with or employ an Alabama
16 licensed physician who is a board certified pulmonologist."~~

17 "(d) Notwithstanding the provisions of subsection
18 (b), Medicaid shall be empowered to create a special
19 reimbursement model to accommodate enhanced reimbursed care
20 provided in dedicated ventilator units in nursing facilities
21 that meet special physical plant requirements such as
22 dedicated emergency power generation, through-the-wall medical
23 gases and suction, 24-hour per day staffing with trained
24 licensed respiratory therapists, and medical direction through
25 contract with or employment of an Alabama licensed physician
26 who is a board certified pulmonologist."

1 Section 2. This act shall become effective on
2 September 1, 2011, following its passage and approval by the
3 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
General Fund..... 31-MAR-11

Read for the second time and placed
on the calendar..... 06-APR-11

Read for the third time and passed
as amended..... 26-APR-11

Yeas 97, Nays 0, Abstains 1

Greg Pappas
Clerk