

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

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2 ENROLLED, An Act,

3 To amend Sections 40-26B-21, as amended by Act
4 2010-520, 2010 Regular Session, (Acts 2010, p. 879),
5 40-26B-22, 40-26B-23, 40-26B-24, 40-26B-25, and 40-26B-26,
6 Code of Alabama 1975, relating to nursing facilities and the
7 privilege assessment on nursing facilities and Medicaid
8 nursing facility reimbursement aspects; to extend the nursing
9 facility supplemental assessment referred to in Section
10 40-26B-21(b) through August 31, 2013, and beginning September
11 1, 2011, increase supplemental provider privilege assessment
12 from \$1,063.08 per annum to \$1,603.08 per annum and provide
13 that from October 1, 2011, through September 30, 2013, except
14 for calculating cost center ceilings, the automatic inflation
15 factor applied to overall rates shall be zero; and to
16 authorize the Medicaid Agency to create a special
17 reimbursement formula for dedicated ventilator care units in
18 nursing facilities.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 40-26B-21, as amended by Act
21 2010-520, 2010 Regular Session, (Acts 2010, p. 879),
22 40-26B-22, 40-26B-23, 40-26B-24, 40-26B-25, and 40-26B-26,
23 Code of Alabama 1975, are amended to read as follows:

24 "§40-26B-21.

1 "To provide further for the availability of indigent
2 health care, the operation of the Medicaid program, and the
3 maintenance and expansion of medical services:

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

10 "(b) For the period September 1, 2010 through August
11 31, ~~2011~~ 2013, there is levied and shall be collected a
12 supplemental privilege ~~tax~~ assessment on the business
13 activities of every nursing facility in the State of Alabama.
14 The supplemental privilege ~~tax~~ assessment imposed is in
15 addition to all other taxes and assessments, including without
16 limitation, the privilege taxes provided for under this
17 article, and from September 1, 2010, through August 31, 2011,
18 shall be at the annual rate of \$1,063.08 for each bed in the
19 nursing facility, and one thousand six hundred three dollars
20 and eight cents (\$1,603.08) for the period of September 1,
21 2011, through August 31, 2013.

22 "(c) The total privilege ~~taxes~~ assessment and
23 supplemental privilege assessment (privilege assessments) paid
24 by a nursing facility pursuant to this article shall be
25 considered an allowable costs, as that term is defined in the

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

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

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

1 Medicaid per diem adjustment described in subsection (c) to
2 ensure that only the amount of supplemental privilege ~~tax~~
3 assessment actually paid is used in computing that Medicaid
4 nursing facility's allowable costs.

5 "§40-26B-22.

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

17 "(b) The receipts from the ~~taxes~~ privilege
18 assessments levied in this article shall be solely available
19 for appropriation by the Alabama Legislature to the Alabama
20 Medicaid Agency for use by ~~said~~ the agency in accomplishing
21 the purposes of this article. Provided, however, for the first
22 fiscal year in which this article is effective, to defray its
23 expenses including salaries and costs of operation incident to
24 the collection of this ~~tax~~ privilege assessment, there is
25 hereby appropriated to the department and shall be deducted as

1 a first charge thereon, an amount not to exceed one percent of
2 the revenues collected pursuant to this article. Such amount
3 of money as shall be appropriated for each succeeding fiscal
4 year by the Legislature to the department with which to pay
5 the salaries, the cost of operation and the management of the
6 department shall be deducted, as a first charge thereon, from
7 the ~~taxes~~ privilege assessments collected under and pursuant
8 to ~~said this~~ article. Provided, however, the expenditure of
9 ~~said the~~ sum so appropriated shall be budgeted and allotted
10 pursuant to Article 4 of Chapter 4 of Title 41, and limited to
11 the amount appropriated to defray the expenses of operating
12 ~~said the~~ department for each fiscal year, incident to the
13 collection of this ~~tax~~ privilege assessment.

14 "§40-26B-23.

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

1 pay to the department the amount of ~~taxes~~ privilege
2 assessments shown to be due.

3 "(b) The annual ~~taxes~~ privilege assessments levied
4 by this article shall be prorated on a month by month basis
5 for any beds added to or subtracted from the nursing facility
6 during the fiscal year except that, for any nursing facility
7 which adds licensed beds after July 1, 1991, and has a monthly
8 total occupancy rate of less than 85 percent according to
9 Medicaid program methodology, the amount due for each such
10 month shall be determined by prorating the annual ~~taxes~~
11 privilege assessments due per bed on a daily basis and
12 multiplying ~~said~~ the amount times the total number of patient
13 days furnished in such month by ~~said~~ the facility. This
14 exception shall cease as of the first month that the occupancy
15 rate of the nursing facility equals or exceeds 85 percent.

16 "(c) Any nursing facility that fails to pay the
17 ~~taxes~~ privilege assessments levied by this article within the
18 time required by this article shall pay, in addition to the
19 taxes, a penalty of 10 percent of the amount of ~~taxes~~
20 privilege assessments due, together with interest thereon at
21 the rate prescribed by Section 40-1-44, such penalty and
22 interest to be assessed and collected as part of the ~~taxes~~
23 privilege assessments. Provided, however, the department, if a
24 good and sufficient reason is shown, may waive or remit the
25 penalty of 10 percent or a portion thereof. If payment is not

1 received by the last day of the month, the department shall
2 notify the Alabama Medicaid Agency, which shall withhold the
3 payment, interest and penalty owed from any reimbursement due
4 ~~said~~ to the nursing facility under the Medicaid program. The
5 ~~taxes~~ privilege assessment levied by this article shall
6 constitute a debt due the State of Alabama and may be
7 collected by civil action in addition to the methods provided
8 in this article. The department is empowered to assess, file
9 tax liens, and collect the ~~taxes~~ privilege assessments levied
10 by this article, as prescribed in this title.

11 "§40-26B-24.

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

21 "(b) All information secured pursuant to this
22 article by the department shall be confidential, as prescribed
23 by Section 40-2A-10, except that the department may provide
24 such information to the Alabama Medicaid Agency as necessary
25 for the proper administration of the Medicaid program, or for

1 the department's proper administration of the ~~taxes~~ privilege
2 assessments levied by this article.

3 "(c) The department shall from time to time, as it
4 deems desirable, and after consultation with the Alabama
5 Medicaid Agency, promulgate such reasonable rules and
6 regulations as necessary to provide for the orderly and
7 efficient administration of the ~~tax~~ privilege assessment
8 levied by this article.

9 "§40-26B-25.

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

15 "(b) Any reimbursement due a nursing facility under
16 the Medicaid program shall be paid in a timely fashion. If the
17 amount payable is not in dispute and is not paid by the
18 Alabama Medicaid Agency within 30 days of the due date,
19 interest on the amount due shall be charged. The interest rate
20 shall be the legal amount currently charged by the state.

21 "§40-26B-26.

22 "(a) No revenues resulting from the ~~tax~~ privilege
23 assessment established by this article and applied to
24 increases in covered services or reimbursement levels or other
25 enhancements of the Medicaid program shall be subject to

1 reduction or elimination while ~~said tax~~ the privilege
2 assessment is in effect.

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

10 "(1) The ceiling for the operating cost center
11 described in Title 560-X-22-.06 (2) (a) of the Alabama Medicaid
12 Agency Administrative Code (Supp. 12/95) shall be computed at
13 the median plus five percent.

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

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

1 "(4) In calculating the ceiling for the operating
2 cost center, the direct patient care cost center or the
3 indirect patient care cost center, any increase in that
4 ceiling over such ceiling set in the year next preceding,
5 shall not exceed an amount equal to the product of such
6 ceiling for the previous year times the sum of the Medicaid
7 Inflation Index, described in Title 560-X-22-.07 of the
8 Alabama Medicaid Agency Administrative Code (Supp. 12/95),
9 plus four percent.

10 "(5) In determining the reimbursement in any fiscal
11 year to a nursing facility for certain specialized medical
12 equipment as described in Title 560-X-22-.14 (19) of the
13 Alabama Medicaid Agency Administrative Code (Supp. 12/95),
14 there shall be added to the daily Medicaid per diem rate
15 computed for that fiscal year, without regard to the cost of
16 such specialized medical equipment, an amount equal to the
17 actual cost of such specialized medical equipment utilized for
18 Medicaid residents during the fiscal year next preceding and
19 divided by the actual number of Medicaid patient days incurred
20 during that preceding fiscal year. For the purpose of this
21 subdivision the terms Medicaid patient days, Medicaid per diem
22 rate, and fiscal year shall have the meanings assigned to them
23 in Title 560-X-22 et seq. of the Alabama Medicaid Agency
24 Administrative Code (Supp. 12/95).

1 "(6) For the period that the federal financial
2 participation under Title XIX of the Social Security Act for
3 certain intergovernmental transfers is available to the
4 Alabama Medicaid program, the Commissioner of the agency may
5 pay an enhancement, not to exceed the upper limits for
6 Medicare nursing facility payments, to rural hospital
7 connected nursing facilities under governmental authority or
8 control. Notwithstanding the foregoing, the enhancement shall
9 not be limited by the provisions of Title 560-X-22 of the
10 Alabama Medicaid Administrative Code.

11 "(7) Notwithstanding subdivision (3), from October
12 1, 2011, through September 30, 2013, in applying the inflation
13 factor, zero percent shall be used to compute overall rates.

14 "(c) Payments by the Medicaid program to each
15 nursing facility for nursing home services shall be sufficient
16 to cover the costs determined by cost reporting principles
17 incurred by each such nursing facility in providing care in an
18 economical and efficient manner and that is adequate to permit
19 the provision of care and services necessary to attain or
20 maintain the highest practicable, physical, mental, and
21 psychosocial well-being of each resident eligible for Alabama
22 Medicaid nursing home benefits in conformity with applicable
23 state and federal laws, rules and regulations and quality and
24 safety standards.

1 ~~"(d) Medicaid shall be empowered to create a special~~
2 ~~reimbursement model to accommodate care provided in dedicated~~
3 ~~ventilator units in nursing facilities that meet special~~
4 ~~physical plant requirements such as dedicated emergency power~~
5 ~~generation, through the wall medical gases and suction, staff~~
6 ~~24-hour per day with trained respiratory therapists, and~~
7 ~~contract for medical direction with or employ an Alabama~~
8 ~~licensed physician who is a board certified pulmonologist."~~

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

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 26-APR-11, as amended.

Greg Pappas
Clerk

Senate	<hr/>	02-JUN-11	Passed
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