

1 HB392
2 128780-5
3 By Representative Barton
4 RFD: Ways and Means General Fund
5 First Read: 31-MAR-11

1
2 ENROLLED, An Act,

3 To amend Article 5, Chapter 26B, Title 40, Code of
4 Alabama 1975; to extend the private hospital assessment and
5 Medicaid funding program for fiscal years 2012 and 2013; to
6 change the base year to fiscal year 2009 for purposes of
7 calculating the assessment; to change the assessment rate for
8 fiscal years 2012 and 2013; to change the due date for
9 quarterly payment of the assessment; and to change the
10 methodology for base payments for outpatient hospital services
11 for state fiscal years 2012 and 2013.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 40-26B-71, 40-26B-73, 40-26B-75,
14 40-26B-76, 40-26B-77, 40-26B-79, 40-26B-80, 40-26B-81,
15 40-26B-82, 40-26B-84, and 40-26B-88, Code of Alabama 1975, are
16 hereby amended to read as follows:

17 "§40-26B-71.

18 "(a) An assessment is imposed on each privately
19 operated hospital for the state fiscal year in the amount of
20 5.38 percent of each hospital's net patient revenue in fiscal
21 year 2007 for the state fiscal years 2010 and 2011. For state
22 fiscal years 2012 and 2013, an assessment is imposed on each
23 privately operated hospital for the state fiscal year in the
24 amount of ~~4.94~~ 5.14 percent of net patient revenue in fiscal
25 year 2009. If during fiscal year 2012 or 2013 there is an

1 extraordinary change in a private hospital's cost due to an
2 extraordinary known and measurable change that increases the
3 hospital's upper payment limit and entitles that hospital to
4 receive additional access payments, the assessment rate for
5 all private hospitals shall be changed to reflect the
6 hospital's additional costs. An extraordinary known and
7 measurable event is one that results in at least a 50 percent
8 increase in capital costs, necessitates the calculation of the
9 hospital's upper payment limit using a total cost to total
10 charge ratio, and the hospital has at least a 15 percent
11 annual Medicaid inpatient utilization rate. The private
12 hospital must certify to the department the extraordinary
13 costs by August 31, 2012, for the assessment to increase in
14 2013. The assessment is a cost of doing business as a
15 privately operated hospital in the State of Alabama.

16 " (b) (1) For state fiscal years 2010 and 2011, net
17 patient revenue shall be determined using the data from each
18 hospital's fiscal year ending in 2007 Medicare Cost Report
19 contained in the Centers for Medicare and Medicaid Services'
20 Healthcare Cost Report Information System file dated December
21 31, 2008. For state fiscal years 2012 and 2013, net patient
22 revenue shall be determined using the data from each
23 hospital's fiscal year ending 2009 Medicare Cost Report
24 contained in the Centers for Medicare and Medicaid Services

1 Healthcare Cost Report Information System dated December 31,
2 2010.

3 "(2) If a privately operated hospital's fiscal year
4 ending in 2007 Medicare Cost Report is not contained in the
5 Centers for Medicare and Medicaid Services' Healthcare Cost
6 Report Information System file dated December 31, 2008, the
7 hospital shall submit a copy of the hospital's 2007 Medicare
8 Cost Report to the department in order to allow the department
9 to determine the hospital's net patient revenue for 2010 and
10 2011. For fiscal years 2012 and 2013, the Medicare Cost Report
11 for 2009 shall be used. If the Medicare Cost Report is not
12 available in Centers for Medicare and Medicaid Services
13 Healthcare Cost Report Information System, the hospital shall
14 submit a copy to the department to determine the hospital's
15 net patient revenue for fiscal years 2012 and 2013.

16 "(3) If a privately operated hospital commenced
17 operations after the due date for a 2007 Medicare Cost Report,
18 the hospital shall submit its most recent Medicare Cost Report
19 to the department in order to allow the department to
20 determine the hospital's net patient revenue. If a privately
21 operated hospital commenced operations after the due date for
22 a 2009 Medicare Cost Report, the hospital shall submit its
23 most recent Medicare Cost Report to the department in order to
24 allow the department to determine the hospital's net patient
25 revenue.

1 "(c) This article does not authorize a unit of
2 county or local government to license for revenue or impose a
3 tax or assessment upon hospitals or a tax or assessment
4 measured by the income or earnings of a hospital.

5 "§40-26B-73.

6 "(a) (1) There is created within the Health Care
7 Trust Fund referenced in Article 3, Chapter 6, Title 22, a
8 designated account known as the Hospital Assessment Account.

9 "(2) The hospital assessments imposed under this
10 article shall be deposited into the Hospital Assessment
11 Account.

12 "(b) Moneys in the Hospital Assessment Account shall
13 consist of:

14 "(1) All moneys collected or received by the
15 department from privately operated hospital assessments
16 imposed under this article;

17 "(2) Any interest or penalties levied in conjunction
18 with the administration of this article; and

19 "(3) Any appropriations, transfers, donations,
20 gifts, or moneys from other sources, as applicable.

21 "(c) The Hospital Assessment Account shall be
22 separate and distinct from the State General Fund and shall be
23 supplementary to the Health Care Trust Fund.

24 "(d) Moneys in the Hospital Assessment Account shall
25 not be used to replace other general revenues appropriated and

1 funded by the Legislature or other revenues used to support
 2 Medicaid.

3 "(e) The Hospital Assessment Account shall be exempt
 4 from budgetary cuts, reductions, or eliminations caused by a
 5 deficiency of State General Fund revenues to the extent
 6 permissible under Amendment 26 to the Constitution of Alabama
 7 of 1901, now appearing as Section 213 of the Official
 8 Recompilation of the Constitution of Alabama of 1901, as
 9 amended.

10 "(f) (1) Except as necessary to reimburse any funds
 11 borrowed to supplement funds in the Hospital Assessment
 12 Account, the moneys in the Hospital Assessment Account shall
 13 be used only as follows:

14 "a. To make inpatient and outpatient private
 15 hospital access payments under this article; or

16 "b. To reimburse moneys collected by the department
 17 from hospitals through error or mistake or under this article.

18 "(2)a. The Hospital Assessment Account shall retain
 19 account balances remaining each fiscal year.

20 "b. On September 30, ~~2011~~ 2013, any positive balance
 21 remaining in the Hospital Assessment Account which was not
 22 used by Alabama Medicaid to obtain federal matching funds
 23 shall be factored into the calculation of ~~the~~ any new
 24 assessment rate by reducing the amount of hospital assessment
 25 funds that must be generated during the fiscal year beginning

1 on October 1, ~~2011~~ 2013, and if there is no new assessment
2 beginning October 1, 2013, the funds remaining shall be
3 refunded to the hospital that paid the assessment in
4 proportion to the amount remaining.

5 "(3) A privately operated hospital shall not be
6 guaranteed that its inpatient and outpatient hospital payments
7 will equal or exceed the amount of its hospital assessment.

8 "§40-26B-75.

9 "(a) (1) The annual assessment imposed under this
10 article shall be due and payable on a quarterly basis ~~on~~
11 during the first ~~day~~ 10 business days of each quarter.

12 "(2) Notwithstanding subdivision (1), the initial
13 installment payment of an assessment imposed by this article
14 shall not be due and payable until:

15 "a. The department issues the written notice
16 required by this article stating that the payment
17 methodologies to privately operated hospitals required under
18 this article have been approved by the Centers for Medicare
19 and Medicaid Services and the waiver under 42 C.F.R. §433.68
20 for the assessment imposed by this article, if necessary, has
21 been granted by the Centers for Medicare and Medicaid
22 Services; and

23 "b. The 30-day verification period required by this
24 article has expired; and

1 "c. Medicaid has made all disproportionate share
2 payments for the fiscal year consistent with the effective
3 date of the approved state plan amendment and waiver.

4 "(3) After the initial installment has been paid
5 under this section, each subsequent quarterly installment
6 payment of an assessment imposed by this article shall be due
7 and payable ~~on~~ during the first ~~day~~ 10 business days of the
8 quarter.

9 "(b) The payment by a privately operated hospital of
10 the assessment created in this article shall be reported as an
11 allowable cost for Medicaid reimbursement purposes.

12 "(c) (1) If a privately operated hospital fails to
13 ~~timely~~ pay the full amount of a quarterly assessment by the
14 tenth legislative business day of the quarter, the department
15 shall add to the assessment:

16 "a. A penalty assessment equal to five percent of
17 the quarterly amount not paid on or before the due date; and

18 "b. On the last day of each quarter after the due
19 date until the assessed amount and the penalty imposed under
20 this section are paid in full, an additional five percent
21 penalty assessment on any unpaid quarterly and unpaid penalty
22 assessment amounts.

23 "(2) Payments shall be credited first to unpaid
24 quarterly amounts, rather than to penalty or interest amounts,
25 beginning with the most delinquent installment.

1 "§40-26B-76.

2 "(a) (1) The department shall send a notice of
 3 assessment to each privately operated hospital informing the
 4 hospital of the assessment rate, the hospital's net patient
 5 revenue calculation, and the estimated assessment amount owed
 6 by the hospital for the applicable fiscal year.

7 "(2) Except as set forth in subdivision (3), annual
 8 notices of assessment shall be sent at least 30 days before
 9 the due date for the first quarterly assessment payment of
 10 each fiscal year.

11 "(3) The first notice of assessment shall be sent
 12 within 30 days after receipt by the department of notification
 13 from the Centers for Medicare and Medicaid Services that the
 14 payments required under this article and, if necessary, the
 15 waiver granted under 42 C.F.R. §433.68, have been approved.

16 "(b) (1) The privately operated hospital shall have
 17 30 days from the date of its receipt of a notice of assessment
 18 to review and verify the assessment rate, the hospital's net
 19 patient revenue calculation, and the estimated assessment
 20 amount.

21 "(2) If a privately operated hospital disputes the
 22 hospital's net patient revenue calculation and the estimated
 23 assessment amount, the hospital shall notify the department of
 24 the disputed amounts within 10 business days of notification
 25 of the assessment by the department. The hospital and the

1 department shall attempt to resolve the dispute on an informal
2 basis initially. If the hospital and department cannot
3 informally resolve the dispute, the dispute resolution process
4 described in Chapter 2A of this title, the Alabama Taxpayer's
5 Bill of Rights and Uniform Revenue Procedures Act and any
6 subsequent amendatory acts shall be followed to resolve the
7 dispute.

8 "(c) (1) If a hospital provider operates, conducts,
9 or maintains more than one privately operated hospital in the
10 state, the hospital provider shall pay the assessment for each
11 hospital separately.

12 "(2) However, if the hospital provider operates more
13 than one privately operated hospital under one Medicaid
14 provider number, the hospital provider may pay the assessment
15 for the hospitals in the aggregate.

16 "(d) (1) For a privately operated hospital subject to
17 the assessment imposed under this article that ceases to
18 conduct hospital operations or maintain its state license or
19 did not conduct hospital operations throughout a state fiscal
20 year, the assessment for the state fiscal year in which the
21 cessation occurs shall be adjusted by multiplying the annual
22 assessment computed under this article by a fraction, the
23 numerator of which is the number of days during the year that
24 the hospital operated and the denominator of which is 365.

1 "(2)a. Immediately prior to ceasing operations, the
2 hospital shall pay the adjusted assessment for that state
3 fiscal year to the extent not previously paid.

4 "b. The hospital also shall receive payments from
5 Medicaid under this article, which shall be adjusted by the
6 same fraction as its annual assessment.

7 "(e) A privately operated hospital subject to an
8 assessment under this article that has not been previously
9 licensed as a hospital in Alabama and that commences hospital
10 operations during a state fiscal year shall pay the required
11 assessment computed under this article and shall be eligible
12 for hospital access payments under this article on the date
13 specified in rules promulgated by Medicaid under the Alabama
14 Administrative Procedure Act.

15 "(f) A hospital that is exempt from payment of the
16 assessment under this article at the beginning of a state
17 fiscal year, but during the state fiscal year experiences a
18 change in status so that it becomes subject to the assessment
19 shall pay the required assessment computed under this article
20 and shall be eligible for hospital access payments under this
21 article on the date specified in rules promulgated by Medicaid
22 under the Alabama Administrative Procedure Act.

23 "(g) A privately operated hospital that is subject
24 to payment of the assessment computed under this article at
25 the beginning of a state fiscal year, but during the state

1 fiscal year experiences a change in status so that it becomes
2 exempted from payment under this article shall be relieved of
3 its obligation to pay the hospital assessment on the date
4 specified in rules promulgated by Medicaid under the Alabama
5 Administrative Procedure Act.

6 "§40-26B-77.

7 "(a) A certification of public expenditures shall be
8 completed and provided to Medicaid by each publicly and
9 state-owned hospital for each state fiscal year beginning with
10 fiscal year 2007. This written certification shall include the
11 sum of the cost of providing care to Medicaid eligible
12 beneficiaries for both inpatient and outpatient care plus the
13 amount of uncompensated care provided to hospital inpatients
14 and outpatients during that same state fiscal year.

15 "(b) (1) For state fiscal years 2010, ~~and 2011, 2012,~~
16 and 2013, Medicaid shall pay to each publicly or state-owned
17 hospitals the disproportionate share moneys for that fiscal
18 year during the first month of the state fiscal year.

19 "(2) Certified public expenditures made by publicly
20 and state-owned hospitals shall comply with the requirements
21 of 42 U.S.C. §1396b(w).

22 "(3) If a publicly or state-owned hospital commenced
23 operations after the due date for the state fiscal year 2007,
24 the hospital shall submit its certification upon completion of
25 the first six months of operation of the hospital to Medicaid

1 in order to allow Medicaid to add the certification amount to
2 the total certified public expenditure amount. If a publicly
3 or state-owned hospital commenced operations after the due
4 date for the state fiscal year 2009, the hospital shall submit
5 its certification upon completion of the first six months of
6 operation of the hospital to Medicaid in order to allow
7 Medicaid to add the certification amount to the total
8 certified public expenditure amount.

9 "(4) If a hospital ceases to operate as a
10 state-owned or public hospital it shall provide a
11 certification to Medicaid which shall include all dates of
12 inpatient and outpatient services until and including the
13 hospital's last day of patient service as a publicly or
14 state-owned hospital within 10 business days of the last day
15 the hospital operated as a state-owned or public hospital.

16 "§40-26B-79.

17 "(a) Medicaid shall pay hospitals as a base amount
18 for state fiscal years 2010, ~~and 2011,~~ 2012, and 2013, the
19 total inpatient payments made by Medicaid during state fiscal
20 year 2007, divided by the total patient days paid in state
21 fiscal year 2007, multiplied by patient days paid during
22 fiscal years 2010, ~~and 2011,~~ 2012, and 2013. This payment to
23 be paid using Medicaid's published check write table is in
24 addition to any access payments, disproportionate share
25 payments, or other payments described in this article.

1 "(b) Any publicly owned or privately operated
2 hospital that ceases to operate as a hospital that was in
3 operation during the hospital's fiscal year ending in 2007
4 shall notify Medicaid at the time the facility ceases to
5 operate. Base payments that would have been made to these
6 facilities for these services will not be made beginning on
7 the date that the facility ceased to operate as a hospital and
8 will be held in the Hospital Assessment Account.

9 ~~"(c) Any publicly owned or privately operated
10 hospital that ceases to operate an obstetrical or psychiatric
11 unit after September 30, 2009, that was in operation during
12 the hospital's fiscal year ending in 2007 shall notify
13 Medicaid at the time the facility ceases to operate an
14 obstetrical or psychiatric unit. Base payments that would have
15 been made to these facilities for these services will not be
16 made beginning on the date after September 30, 2009, that the
17 facility ceased to operate an obstetrical or psychiatric unit
18 and will be held in the Hospital Assessment Account.~~

19 ~~"(d) Funds held in the Hospital Assessment Account
20 due to base payments withheld from hospitals shall be paid at
21 the end of the state fiscal year as follows:~~

22 ~~"(1) Any hospital, in the same geographic market
23 area of a hospital that ceases to operate, that has
24 experienced increased utilization from 2007 shall receive a~~

1 ~~proportionate increase in base payments financed by withheld~~
2 ~~base payments due to hospitals that ceased to operate.~~

3 ~~"(2) Any hospital, in the same geographic market~~
4 ~~area of a hospital that closed an obstetrical unit, that~~
5 ~~experiences increased obstetrical utilization after September~~
6 ~~30, 2009, shall receive a proportionate increase in base~~
7 ~~payments financed by withheld base payments due to hospitals~~
8 ~~that ceased to operate an obstetrical unit.~~

9 ~~"(3) Any hospital in the same geographic market area~~
10 ~~of a hospital that closed a psychiatric unit which experiences~~
11 ~~increased psychiatric utilization after September 30, 2009,~~
12 ~~shall receive a proportionate increase in base payments~~
13 ~~financed by withheld base payments due to hospitals that~~
14 ~~ceased to operate a psychiatric unit.~~

15 ~~"(4) Any funds not expended shall be paid to all~~
16 ~~hospitals proportionally to total base payments at the end of~~
17 ~~the state fiscal year.~~

18 ~~"§40-26B-80.~~

19 ~~"Medicaid shall pay hospitals as a base amount for~~
20 ~~state fiscal years 2010 and 2011 the total outpatient payments~~
21 ~~made by Medicaid during state fiscal year 2007, divided by the~~
22 ~~total Internal Control Number or ICN count incurred in state~~
23 ~~fiscal year 2007, multiplied by the Internal Control Number or~~
24 ~~ICN count incurred each month during fiscal years 2010 and~~
25 ~~2011. Medicaid shall pay hospitals as a base amount for fiscal~~

1 years 2012 and 2013 for outpatient services based upon the
2 outpatient fee schedule in existence on September 30, 2009,
3 plus an additional six percent inflation factor. Outpatient
4 base payments shall be paid using Medicaid's published check
5 write table and shall be paid in addition to any ~~assessment~~
6 access payments or other payments described in this article.

7 "§40-26B-81.

8 "(a) To preserve and improve access to hospital
9 services, for hospital inpatient and outpatient services
10 rendered on or after October 1, 2009, Medicaid shall make
11 hospital access payments to publicly, state-owned, and
12 privately operated hospitals as set forth in this section.

13 "(b) The aggregate hospital access payment amount is
14 an amount equal to the upper payment limit, less total base
15 payments determined under this article.

16 "(c) All publicly, state-owned, and privately
17 operated hospitals shall be eligible for inpatient and
18 outpatient hospital access payments for fiscal years 2010, and
19 2011, 2012, and 2013 as set forth in this article.

20 "(1) In addition to any other funds paid to
21 hospitals for inpatient hospital services to Medicaid
22 patients, each eligible hospital shall receive inpatient
23 hospital access payments each state fiscal year. Publicly and
24 state-owned hospitals shall receive payments, including base
25 payments, that, in the aggregate, equal the upper payment

1 limit for publicly and state-owned hospitals. Privately
2 operated hospitals shall receive payments, including base
3 payments that, in the aggregate, equal the upper payment limit
4 for privately operated hospitals.

5 "(2) Inpatient hospital access payments shall be
6 made on a quarterly basis.

7 "(3) In addition to any other funds paid to
8 hospitals for outpatient hospital services to Medicaid
9 patients, each eligible hospital shall receive outpatient
10 hospital access payments each state fiscal year. Publicly and
11 state-owned hospitals shall receive payments, including base
12 payments, that, in the aggregate, equal the upper payment
13 limit for publicly and state-owned hospitals. Privately
14 operated hospitals shall receive payments, including base
15 payments that, in the aggregate, equal the upper payment limit
16 for privately operated hospitals.

17 "(4) Outpatient hospital access payments shall be
18 made on a ~~monthly~~ quarterly basis.

19 "(d) A hospital access payment shall not be used to
20 offset any other payment by Medicaid for hospital inpatient or
21 outpatient services to Medicaid beneficiaries, including,
22 without limitation, any fee-for-service, per diem, private
23 hospital inpatient adjustment, or cost settlement payment.

24 "(e) The specific hospital payments for publicly,
25 state-owned, and privately operated hospitals shall be

1 described in the state plan amendment to be submitted to and
 2 approved by the Centers for Medicare and Medicaid Services.

3 "§40-26B-82.

4 "(a) The assessment imposed under this article shall
 5 not take effect or shall cease to be imposed and any moneys
 6 remaining in the Hospital Assessment Account in the Alabama
 7 Medicaid Program Trust Fund shall be refunded to hospitals in
 8 proportion to the amounts paid by them if any of the following
 9 occur:

10 "(1) Expenditures for hospital inpatient and
 11 outpatient services paid by the Alabama Medicaid Program for
 12 fiscal years 2010, ~~and 2011,~~ 2012, and 2013 are less than the
 13 amount paid during fiscal year 2009.

14 "(2) Medicaid makes changes in its rules that reduce
 15 hospital inpatient payment rates, outpatient payment rates, or
 16 adjustment payments, including any cost settlement protocol,
 17 that were in effect on ~~March 1, 2009~~ October 1, 2009.

18 "(3) The inpatient or outpatient hospital access
 19 payments required under this article are changed or the
 20 assessments imposed or certified public expenditures
 21 recognized under this article are not eligible for federal
 22 matching funds under Title XIX of the Social Security Act, 42
 23 U.S.C. §1396 et seq., or 42 U.S.C. §1397aa et seq.

24 "(b) (1) The assessment imposed under this article
 25 shall not take effect or shall cease to be imposed if the

1 assessment is determined to be an impermissible tax under
 2 Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

3 "(2) Moneys in the Hospital Assessment Account in
 4 the Alabama Medicaid Program Trust Fund derived from
 5 assessments imposed before the determination described in
 6 subdivision (1) shall be disbursed under this article to the
 7 extent federal matching is not reduced due to the
 8 impermissibility of the assessments, and any remaining moneys
 9 shall be refunded to hospitals in proportion to the amounts
 10 paid by them.

11 "§40-26B-84.

12 "This article shall be of no effect if federal
 13 financial participation under Title XIX of the Social Security
 14 Act is not available to Medicaid at the approved federal
 15 medical assistance percentage, established under Section 1905
 16 of the Social Security Act, for the state fiscal years 2010,
 17 ~~and 2011,~~ 2012, and 2013.

18 "§40-26B-88.

19 "This article shall automatically terminate and
 20 become null and void by its own terms on September 30, ~~2011~~
 21 2013, unless a later bill is passed extending the article to
 22 future state fiscal years."

23 Section 2. This act shall become effective
 24 immediately following its passage and approval by the
 25 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

01-JUN-11

Passed