

1 HB392
2 127854-1
3 By Representative Barton
4 RFD: Ways and Means General Fund
5 First Read: 31-MAR-11

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8 SYNOPSIS: This bill would: Amend Article 5, Chapter
9 26B, Title 40, Code of Alabama 1975, to extend the
10 private hospital assessment and Medicaid funding
11 program for fiscal years 2012 and 2013; change the
12 base year to fiscal year 2009; change the
13 assessment rate for fiscal years 2012 and 2013;
14 change the due date for quarterly payment; and
15 change the methodology for base payments for
16 outpatient services.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To amend Sections 40-26B-71, 40-26B-73, 40-26B-75,
23 40-26B-77, 40-26B-79, 40-26B-80, 40-26B-81, 40-26B-82,
24 40-26B-84, and 40-26B-88, Code of Alabama 1975, relating to
25 the Hospital Funding Program; to extend the private hospital
26 assessment and Medicaid funding program for fiscal years 2012
27 and 2013; to change the base year to fiscal year 2009 for

1 purposes of calculating the assessment; to change the
2 assessment rate for fiscal years 2012 and 2013; to change the
3 due date for quarterly payment of the assessment; and to
4 change the methodology for base payments for outpatient
5 hospital services for state fiscal years 2012 and 2013.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 40-26B-71, 40-26B-73, 40-26B-75,
8 40-26B-77, 40-26B-79, 40-26B-80, 40-26B-81, 40-26B-82,
9 40-26B-84, and 40-26B-88, Code of Alabama 1975, are amended to
10 read as follows:

11 "§40-26B-71.

12 "(a) An assessment is imposed on each privately
13 operated hospital for the state fiscal year in the amount of
14 5.38 percent of each hospital's net patient revenue in the
15 fiscal year 2007 for the state fiscal years 2010 and 2011. For
16 fiscal years 2012 and 2013, an assessment is imposed on each
17 privately operated hospital for the state fiscal year in the
18 amount of 5.38 percent of net patient revenue in fiscal year
19 2009. If during fiscal year 2012 or 2013 there is an
20 extraordinary change in a private hospital's cost due to an
21 extraordinary known and measurable change that increases the
22 hospital's upper payment limit and entitles that hospital to
23 receive additional access payments, the assessment rate for
24 all private hospitals shall be changed to reflect the
25 hospital's additional costs. An extraordinary known and
26 measurable event is one that results in at least a 50 percent
27 increase in capital costs, necessitates the calculation of the

1 hospital's upper payment limit using a total cost to total
2 charge ratio, and occurs when the hospital has at least 15
3 percent annual Medicaid inpatient utilization rate. The
4 assessment is a cost of doing business as a privately operated
5 hospital in the State of Alabama.

6 "(b) (1) For state fiscal years 2010 and 2011, net
7 patient revenue shall be determined using the data from each
8 hospital's fiscal year ending in 2007 Medicare Cost Report
9 contained in the Centers for Medicare and Medicaid Services'
10 Healthcare Cost Report Information System file dated December
11 31, 2008. For state fiscal years 2012 and 2013, net patient
12 revenue shall be determined using the data from each
13 hospital's fiscal year ending 2009 Medicare Cost Report
14 contained in the Centers for Medicare and Medicaid Services'
15 Healthcare Cost Report Information System dated December 31,
16 2010.

17 "(2) If a privately operated hospital's fiscal year
18 ending in 2007 Medicare Cost Report is not contained in the
19 Centers for Medicare and Medicaid Services' Healthcare Cost
20 Report Information System file dated December 31, 2008, the
21 hospital shall submit a copy of the hospital's 2007 Medicare
22 Cost Report to the department in order to allow the department
23 to determine the hospital's net patient revenue for 2010 and
24 2011. For fiscal years 2012 and 2013, the Medicare Cost Report
25 for 2009 shall be used. If the Medicare Cost Report is not
26 available in the Centers for Medicare and Medicaid Services'
27 Healthcare Cost Report Information System, the hospital shall

1 submit a copy to the department to determine the hospital's
2 net patient revenue for fiscal years 2012 and 2013.

3 "(3) If a privately operated hospital commenced
4 operations after the due date for a 2007 Medicare Cost Report,
5 the hospital shall submit its most recent Medicare Cost Report
6 to the department in order to allow the department to
7 determine the hospital's net patient revenue.

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

12 "§40-26B-73.

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

16 "(2) The hospital assessments imposed under this
17 article shall be deposited into the Hospital Assessment
18 Account.

19 "(b) Moneys in the Hospital Assessment Account shall
20 consist of:

21 "(1) All moneys collected or received by the
22 department from privately operated hospital assessments
23 imposed under this article;

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

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

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

4 "(d) Moneys in the Hospital Assessment Account shall
5 not be used to replace other general revenues appropriated and
6 funded by the Legislature or other revenues used to support
7 Medicaid.

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

15 "(f) (1) Except as necessary to reimburse any funds
16 borrowed to supplement funds in the Hospital Assessment
17 Account, the moneys in the Hospital Assessment Account shall
18 be used only as follows:

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

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

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

25 "b. On September 30, 2011, any positive balance
26 remaining in the Hospital Assessment Account shall be factored
27 into the calculation of the new assessment rate by reducing

1 the amount of hospital assessment funds that must be generated
2 during the fiscal year beginning on October 1, 2011.

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

6 "§40-26B-75.

7 "(a) (1) The annual assessment imposed under this
8 article shall be due and payable on a quarterly basis on the
9 first day of each quarter.

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

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

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

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

26 "(3) After the initial installment has been paid
27 under this section, each subsequent quarterly installment

1 payment of an assessment imposed by this article shall be due
2 and payable on the first ~~day~~ 10 business days of the quarter.

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

6 "(c) (1) If a privately operated hospital fails to
7 timely pay the full amount of a quarterly assessment, the
8 department shall add to the assessment:

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

11 "b. On the last day of each quarter after the due
12 date until the assessed amount and the penalty imposed under
13 this section are paid in full, an additional five percent
14 penalty assessment on any unpaid quarterly and unpaid penalty
15 assessment amounts.

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

19 "§40-26B-77.

20 "(a) A certification of public expenditures shall be
21 completed and provided to Medicaid by each publicly and
22 state-owned hospital for each state fiscal year beginning with
23 fiscal year 2007. This written certification shall include the
24 sum of the cost of providing care to Medicaid eligible
25 beneficiaries for both inpatient and outpatient care plus the
26 amount of uncompensated care provided to hospital inpatients
27 and outpatients during that same state fiscal year.

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

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

8 "(3) If a publicly or state-owned hospital commenced
9 operations after the due date for the state fiscal year 2007,
10 the hospital shall submit its certification upon completion of
11 the first six months of operation of the hospital to Medicaid
12 in order to allow Medicaid to add the certification amount to
13 the total certified public expenditure amount. If a publicly
14 or state-owned hospital commenced operations after the due
15 date for the state fiscal year 2009, the hospital shall submit
16 its certification upon completion of the first six months of
17 operation of the hospital to Medicaid in order to allow
18 Medicaid to add the certification amount to the total
19 certified public expenditure amount.

20 "(4) If a hospital ceases to operate as a
21 state-owned or public hospital it shall provide a
22 certification to Medicaid which shall include all dates of
23 inpatient and outpatient services until and including the
24 hospital's last day of patient service as a publicly or
25 state-owned hospital within 10 business days of the last day
26 the hospital operated as a state-owned or public hospital.

27 "§40-26B-79.

1 "(a) Medicaid shall pay hospitals as a base amount
2 for state fiscal years 2010, ~~and 2011, 2012, and 2013~~ the
3 total inpatient payments made by Medicaid during state fiscal
4 year 2007, divided by the total patient days paid in state
5 fiscal year 2007, multiplied by patient days paid during
6 fiscal years 2010, ~~and 2011, 2012, and 2013~~. This payment to
7 be paid using Medicaid's published check write table is in
8 addition to any access payments, disproportionate share
9 payments, or other payments described in this article.

10 "(b) Any publicly owned or privately operated
11 hospital that ceases to operate as a hospital that was in
12 operation during the hospital's fiscal year ending in 2007
13 shall notify Medicaid at the time the facility ceases to
14 operate. Base payments that would have been made to these
15 facilities for these services will not be made beginning on
16 the date that the facility ceased to operate as a hospital and
17 will be held in the Hospital Assessment Account.

18 "(c) Any publicly owned or privately operated
19 hospital that ceases to operate an obstetrical or psychiatric
20 unit after September 30, 2009, that was in operation during
21 the hospital's fiscal year ending in 2007 shall notify
22 Medicaid at the time the facility ceases to operate an
23 obstetrical or psychiatric unit. Base payments that would have
24 been made to these facilities for these services will not be
25 made beginning on the date after September 30, 2009, that the
26 facility ceased to operate an obstetrical or psychiatric unit
27 and will be held in the Hospital Assessment Account.

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

4 "(1) Any hospital, in the same geographic market
5 area of a hospital that ceases to operate, that has
6 experienced increased utilization from 2007 shall receive a
7 proportionate increase in base payments financed by withheld
8 base payments due to hospitals that ceased to operate.

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

15 "(3) Any hospital in the same geographic market area
16 of a hospital that closed a psychiatric unit which experiences
17 increased psychiatric utilization after September 30, 2009,
18 shall receive a proportionate increase in base payments
19 financed by withheld base payments due to hospitals that
20 ceased to operate a psychiatric unit.

21 "(4) Any funds not expended shall be paid to all
22 hospitals proportionally to total base payments at the end of
23 the state fiscal year.

24 "§40-26B-80.

25 "Medicaid shall pay hospitals as a base amount for
26 state fiscal years 2010 and 2011 the total outpatient payments
27 made by Medicaid during state fiscal year 2007, divided by the

1 total Internal Control Number or ICN count incurred in state
2 fiscal year 2007, multiplied by the Internal Control Number or
3 ICN count incurred each month during fiscal years 2010 and
4 2011. Medicaid shall pay hospitals as a base amount for fiscal
5 years 2012 and 2013 for outpatient services based upon the
6 outpatient fee schedule in existence on September 30, 2009,
7 plus an additional six percent inflation factor. Outpatient
8 base payments shall be paid using Medicaid's published check
9 write table and shall be paid in addition to any assessment
10 payments or other payments described in this article.

11 "§40-26B-81.

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

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

20 "(c) All publicly, state-owned, and privately
21 operated hospitals shall be eligible for inpatient and
22 outpatient hospital access payments for fiscal years 2010, ~~and~~
23 2011, 2012, and 2013 as set forth in this article.

24 "(1) In addition to any other funds paid to
25 hospitals for inpatient hospital services to Medicaid
26 patients, each eligible hospital shall receive inpatient
27 hospital access payments each state fiscal year. Publicly and

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

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

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

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

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

26 "(e) The specific hospital payments for publicly,
27 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
26 assessment is determined to be an impermissible tax under
27 Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

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

9 "§40-26B-84.

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

16 "§40-26B-88.

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

21 Section 2. This act shall become effective
22 immediately following its passage and approval by the
23 Governor, or its otherwise becoming law.