

1 SB288  
2 128202-1  
3 By Senator Marsh  
4 RFD: Health  
5 First Read: 29-MAR-11

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8 SYNOPSIS: This bill would extend the supplemental  
9 assessment on the business activities of a nursing  
10 facility referred to in Section 40-26B-21(b)  
11 through August 31, 2013, and beginning September 1,  
12 2011, increase supplemental provider privilege  
13 assessment from \$1,063.08 per annum to \$1,603.08  
14 per annum and provide that from October 1, 2011,  
15 through September 30, 2013, except for calculating  
16 cost center ceilings, the automatic inflation  
17 factor applied to overall rates shall be zero, and  
18 to authorize the Medicaid Agency to create a  
19 special reimbursement formula for dedicated  
20 ventilator care units in nursing facilities.

21  
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25  
26 To amend Sections 40-26B-21, as amended by Act  
27 2010-520, 2010 Regular Session, (Acts 2010, p. 879),

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

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 40-26B-21, as amended by Act  
17 2010-520, 2010 Regular Session, (Acts 2010, p. 879),  
18 40-26B-22, 40-26B-23, 40-26B-24, 40-26B-25, and 40-26B-26,  
19 Code of Alabama 1975, are amended to read as follows:

20 "§40-26B-21.

21 "To provide further for the availability of indigent  
22 health care, the operation of the Medicaid program, and the  
23 maintenance and expansion of medical services:

24 "(a) There is levied and shall be collected a  
25 privilege ~~tax~~ assessment on the business activities of every  
26 nursing facility in the State of Alabama. The privilege ~~tax~~  
27 assessment imposed is in addition to all other taxes and

1 assessments, and shall be at the annual rate of \$1,899.96 for  
2 each bed in the nursing facility.

3 "(b) For the period September 1, 2010 through August  
4 31, 2011, there is levied and shall be collected a  
5 supplemental privilege ~~tax~~ assessment on the business  
6 activities of every nursing facility in the State of Alabama.  
7 The supplemental privilege ~~tax~~ assessment imposed is in  
8 addition to all other taxes and assessments, including without  
9 limitation, the privilege taxes provided for under this  
10 article, and from September 1, 2010, through August 31, 2011,  
11 shall be at the annual rate of \$1,063.08 for each bed in the  
12 nursing facility, and one thousand six hundred three dollars  
13 and eight cents (\$1,603.08) for the period of September 1,  
14 2011, through August 31, 2013.

15 "(c) The total privilege ~~taxes~~ assessment and  
16 supplemental privilege assessment (privilege assessments) paid  
17 by a nursing facility pursuant to this article shall be  
18 considered an allowable costs, as that term is defined in the  
19 reimbursement methodology for nursing facilities contained in  
20 Title 560 of the Alabama Administrative Code, and, to the  
21 extent permitted under applicable federal law governing the  
22 Alabama Medicaid nursing home program, the total ~~taxes~~  
23 privilege assessments paid must be included in the computation  
24 of the Medicaid per diem rate determined under the  
25 reimbursement methodology for nursing facilities contained in  
26 Title 560 of the Alabama Administrative Code. The payment to  
27 nursing facilities of the determined allowable costs in

1 respect to the supplemental privilege ~~tax~~ assessment described  
2 in subsection (b) shall be included in Medicaid per diem rates  
3 for services provided commencing as of January 1, 2011, and  
4 shall continue to be included in such Medicaid per diem rates  
5 for a period equal to the number of months during which the  
6 supplemental ~~privilege tax~~ assessments shall have been in  
7 effect. For each Medicaid nursing facility, in determining the  
8 adjustment to the Medicaid per diem for the allowable costs  
9 associated with the supplemental ~~tax~~ assessment, the Alabama  
10 Medicaid Agency shall divide the total supplemental ~~tax~~  
11 assessment due under subsection (b) by the total of all  
12 incurred resident days (regardless of payor class) reported by  
13 such nursing facility in its Medicaid cost report filed for  
14 the period ~~ending then ended~~ June 30, 2010. To accommodate the  
15 increase in the supplemental assessment described in  
16 subsection (c), Medicaid shall use the same mechanism  
17 described herein to adjust each nursing facility's rate  
18 effective as of October 1, 2011. Notwithstanding the  
19 foregoing, in the event that such cost report shall be for a  
20 period less than one year, the resident days reported shall be  
21 annualized. In the event that any portion of the privilege  
22 taxes paid by a facility cannot be included in the computation  
23 of the Medicaid per diem rate because of the effect of any  
24 cost ceiling provision of the reimbursement methodology, the  
25 cost ceiling must be adjusted to ensure continued treatment of  
26 the total privilege ~~tax~~ assessments as an allowable cost.

1           "(d) The privilege ~~tax~~ assessment rate or the  
2 supplemental privilege ~~tax~~ assessment rate shall be reduced by  
3 the department upon the advice of the Alabama Medicaid Agency  
4 if, but only if, such reduction is required to ensure that the  
5 total revenues to the State of Alabama produced by this  
6 privilege ~~tax~~ assessment or, if the supplemental privilege ~~tax~~  
7 assessment is in effect, the aggregate of the supplemental  
8 privilege ~~tax~~ assessment and the privilege ~~tax~~ assessment,  
9 during any state fiscal year are less than or equal to five  
10 and one-half percent of the total revenues received by the  
11 nursing facilities in the state subject to the ~~tax~~ assessment  
12 during that same fiscal year. In the event that the  
13 supplemental privilege ~~tax~~ assessment is reduced as provided  
14 in the preceding sentence, then for each Medicaid nursing  
15 facility a corresponding reduction shall be made to the  
16 Medicaid per diem adjustment described in subsection (c) to  
17 ensure that only the amount of supplemental privilege ~~tax~~  
18 assessment actually paid is used in computing that Medicaid  
19 nursing facility's allowable costs.

20           "§40-26B-22.

21           "(a) The ~~taxes~~ privilege assessments imposed by this  
22 article shall be due and payable in monthly installments to  
23 the department on or before the tenth day of the month next  
24 succeeding the month in which the tax accrues, and shall, when  
25 collected, be paid by the department into the State Treasury.  
26 Payment by United States mail will be timely if mailed in  
27 accordance with Section 40-1-45. When so paid into the State

1 Treasury, all such ~~taxes~~ privilege assessments shall be  
2 deposited to the credit of the Alabama Health Care Trust Fund  
3 or any successor fund administered by or on behalf of the  
4 Alabama Medicaid Agency.

5 "(b) The receipts from the ~~taxes~~ privilege  
6 assessments levied in this article shall be solely available  
7 for appropriation by the Alabama Legislature to the Alabama  
8 Medicaid Agency for use by ~~said the~~ agency in accomplishing  
9 the purposes of this article. Provided, however, for the first  
10 fiscal year in which this article is effective, to defray its  
11 expenses including salaries and costs of operation incident to  
12 the collection of this ~~tax~~ privilege assessment, there is  
13 hereby appropriated to the department and shall be deducted as  
14 a first charge thereon, an amount not to exceed one percent of  
15 the revenues collected pursuant to this article. Such amount  
16 of money as shall be appropriated for each succeeding fiscal  
17 year by the Legislature to the department with which to pay  
18 the salaries, the cost of operation and the management of the  
19 department shall be deducted, as a first charge thereon, from  
20 the ~~taxes~~ privilege assessments collected under and pursuant  
21 to ~~said this~~ article. Provided, however, the expenditure of  
22 ~~said the~~ sum so appropriated shall be budgeted and allotted  
23 pursuant to Article 4 of Chapter 4 of Title 41, and limited to  
24 the amount appropriated to defray the expenses of operating  
25 ~~said the~~ department for each fiscal year, incident to the  
26 collection of this ~~tax~~ privilege assessment.

27 "§40-26B-23.

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

14           "(b) The annual ~~taxes~~ privilege assessments levied  
15 by this article shall be prorated on a month by month basis  
16 for any beds added to or subtracted from the nursing facility  
17 during the fiscal year except that, for any nursing facility  
18 which adds licensed beds after July 1, 1991, and has a monthly  
19 total occupancy rate of less than 85 percent according to  
20 Medicaid program methodology, the amount due for each such  
21 month shall be determined by prorating the annual ~~taxes~~  
22 privilege assessments due per bed on a daily basis and  
23 multiplying ~~said~~ the amount times the total number of patient  
24 days furnished in such month by ~~said~~ the facility. This  
25 exception shall cease as of the first month that the occupancy  
26 rate of the nursing facility equals or exceeds 85 percent.



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

21                   "§40-26B-24.

22                   "(a) It shall be the duty of each nursing facility  
23 subject to this article to keep and preserve such suitable  
24 books and records as may be necessary to determine the amount  
25 of ~~taxes~~ privilege assessments for which it is liable under  
26 the provisions of this article. ~~Said~~ The books and records  
27 shall be kept and preserved for a period of not less than

1 three years, and all such books and records shall be open for  
2 examination during business hours by the department or its  
3 duly authorized agents.

4 "(b) All information secured pursuant to this  
5 article by the department shall be confidential, as prescribed  
6 by Section 40-2A-10, except that the department may provide  
7 such information to the Alabama Medicaid Agency as necessary  
8 for the proper administration of the Medicaid program, or for  
9 the department's proper administration of the ~~taxes~~ privilege  
10 assessments levied by this article.

11 "(c) The department shall from time to time, as it  
12 deems desirable, and after consultation with the Alabama  
13 Medicaid Agency, promulgate such reasonable rules and  
14 regulations as necessary to provide for the orderly and  
15 efficient administration of the ~~tax~~ privilege assessment  
16 levied by this article.

17 "§40-26B-25.

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

23 "(b) Any reimbursement due a nursing facility under  
24 the Medicaid program shall be paid in a timely fashion. If the  
25 amount payable is not in dispute and is not paid by the  
26 Alabama Medicaid Agency within 30 days of the due date,

1 interest on the amount due shall be charged. The interest rate  
2 shall be the legal amount currently charged by the state.

3 "§40-26B-26.

4 "(a) No revenues resulting from the ~~tax~~ privilege  
5 assessment established by this article and applied to  
6 increases in covered services or reimbursement levels or other  
7 enhancements of the Medicaid program shall be subject to  
8 reduction or elimination while ~~said tax~~ the privilege  
9 assessment is in effect.

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

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

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

1               "(3) The Medicaid Inflation Index described in Title  
2 560-X-22-.07 of the Alabama Medicaid Agency Administrative  
3 Code (Supp. 12/95) shall be computed without regard to the  
4 trend factor variance described in Title 560-X-22-.07 (5) of  
5 the Alabama Medicaid Agency Administrative Code (Supp. 12/95).

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

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

1 in Title 560-X-22 et seq. of the Alabama Medicaid Agency  
2 Administrative Code (Supp. 12/95).

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

13 "(7) Notwithstanding subdivision (3), from October  
14 1, 2011, through September 30, 2013, in applying the inflation  
15 factor, zero percent shall be used to compute overall rates,  
16 but the actual inflation factor computed in subdivision (3)  
17 shall be applied to compute the ceilings described in  
18 subdivision (4).

19 "(c) Payments by the Medicaid program to each  
20 nursing facility for nursing home services shall be sufficient  
21 to cover the costs determined by cost reporting principles  
22 incurred by each such nursing facility in providing care in an  
23 economical and efficient manner and that is adequate to permit  
24 the provision of care and services necessary to attain or  
25 maintain the highest practicable, physical, mental, and  
26 psychosocial well-being of each resident eligible for Alabama  
27 Medicaid nursing home benefits in conformity with applicable

1 state and federal laws, rules and regulations and quality and  
2 safety standards.

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

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