

1 SB388
2 129000-1
3 By Senators Bedford, Keahey, Smitherman, Sanders, Beasley,
4 Coleman, Irons, Dunn and Brewbaker
5 RFD: Finance and Taxation General Fund
6 First Read: 12-APR-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-76, 40-26B-77, 40-26B-79, 40-26B-80, 40-26B-81,
24 40-26B-82, 40-26B-84, and 40-26B-88, Code of Alabama 1975,
25 relating to the Hospital Funding Program; to extend the
26 private hospital assessment and Medicaid funding program for
27 fiscal years 2012 and 2013; to change the base year to fiscal

1 year 2009 for purposes of calculating the assessment; to
2 change the assessment rate for fiscal years 2012 and 2013; to
3 change the due date for quarterly payment of the assessment;
4 and to 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-76, 40-26B-77, 40-26B-79, 40-26B-80, 40-26B-81,
9 40-26B-82, 40-26B-84, and 40-26B-88, Code of Alabama 1975, are
10 amended to 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 fiscal
15 year 2007 for the state fiscal years 2010 and 2011. For state
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 4.94 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 the hospital has at least a 15 percent
3 annual Medicaid inpatient utilization rate. The private
4 hospital must certify to the department the extraordinary
5 costs by August 31, 2012, for the assessment to increase in
6 2013. The assessment is a cost of doing business as a
7 privately operated hospital in the State of Alabama.

8 "(b) (1) For state fiscal years 2010 and 2011, net
9 patient revenue shall be determined using the data from each
10 hospital's fiscal year ending in 2007 Medicare Cost Report
11 contained in the Centers for Medicare and Medicaid Services'
12 Healthcare Cost Report Information System file dated December
13 31, 2008. For state fiscal years 2012 and 2013, net patient
14 revenue shall be determined using the data from each
15 hospital's fiscal year ending 2009 Medicare Cost Report
16 contained in the Centers for Medicare and Medicaid Services
17 Healthcare Cost Report Information System dated December 31,
18 2010.

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

1 available in Centers for Medicare and Medicaid Services
2 Healthcare Cost Report Information System, the hospital shall
3 submit a copy to the department to determine the hospital's
4 net patient revenue for fiscal years 2012 and 2013.

5 "(3) If a privately operated hospital commenced
6 operations after the due date for a 2007 Medicare Cost Report,
7 the hospital shall submit its most recent Medicare Cost Report
8 to the department in order to allow the department to
9 determine the hospital's net patient revenue. If a privately
10 operated hospital commenced operations after the due date for
11 a 2009 Medicare Cost Report, the hospital shall submit its
12 most recent Medicare Cost Report to the department in order to
13 allow the department to determine the hospital's net patient
14 revenue.

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

19 "§40-26B-73.

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

23 "(2) The hospital assessments imposed under this
24 article shall be deposited into the Hospital Assessment
25 Account.

26 "(b) Moneys in the Hospital Assessment Account shall
27 consist of:

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

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

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

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

11 "(d) Moneys in the Hospital Assessment Account shall
12 not be used to replace other general revenues appropriated and
13 funded by the Legislature or other revenues used to support
14 Medicaid.

15 "(e) The Hospital Assessment Account shall be exempt
16 from budgetary cuts, reductions, or eliminations caused by a
17 deficiency of State General Fund revenues to the extent
18 permissible under Amendment 26 to the Constitution of Alabama
19 of 1901, now appearing as Section 213 of the Official
20 Recompilation of the Constitution of Alabama of 1901, as
21 amended.

22 "(f) (1) Except as necessary to reimburse any funds
23 borrowed to supplement funds in the Hospital Assessment
24 Account, the moneys in the Hospital Assessment Account shall
25 be used only as follows:

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

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

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

5 "b. On September 30, ~~2011~~ 2013, any positive balance
6 remaining in the Hospital Assessment Account which was not
7 used by Alabama Medicaid to obtain federal matching funds
8 shall be factored into the calculation of ~~the~~ any new
9 assessment rate by reducing the amount of hospital assessment
10 funds that must be generated during the fiscal year beginning
11 on October 1, ~~2011~~ 2013, and if there is no new assessment
12 beginning October 1, 2013, the funds remaining shall be
13 refunded to the hospital that paid the assessment in
14 proportion to the amount remaining.

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

18 "§40-26B-75.

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

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

25 "a. The department issues the written notice
26 required by this article stating that the payment
27 methodologies to privately operated hospitals required under

1 this article have been approved by the Centers for Medicare
2 and Medicaid Services and the waiver under 42 C.F.R. §433.68
3 for the assessment imposed by this article, if necessary, has
4 been granted by the Centers for Medicare and Medicaid
5 Services; and

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

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

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

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

19 "(c) (1) If a privately operated hospital fails to
20 ~~timely~~ pay the full amount of a quarterly assessment by the
21 tenth legislative day of the quarter, the department shall add
22 to the assessment:

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

25 "b. On the last day of each quarter after the due
26 date until the assessed amount and the penalty imposed under
27 this section are paid in full, an additional five percent

1 penalty assessment on any unpaid quarterly and unpaid penalty
2 assessment amounts.

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

6 "§40-26B-76.

7 "(a) (1) The department shall send a notice of
8 assessment to each privately operated hospital informing the
9 hospital of the assessment rate, the hospital's net patient
10 revenue calculation, and the estimated assessment amount owed
11 by the hospital for the applicable fiscal year.

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

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

21 "(b) (1) The privately operated hospital shall have
22 30 days from the date of its receipt of a notice of assessment
23 to review and verify the assessment rate, the hospital's net
24 patient revenue calculation, and the estimated assessment
25 amount.

26 "(2) If a privately operated hospital disputes the
27 hospital's net patient revenue calculation and the estimated

1 assessment amount, the hospital shall notify the department of
2 the disputed amounts within 10 business days of notification
3 of the assessment by the department. The hospital and the
4 department shall attempt to resolve the dispute on an informal
5 basis initially. If the hospital and department cannot
6 informally resolve the dispute, the dispute resolution process
7 described in Chapter 2A of this title, the Alabama Taxpayer's
8 Bill of Rights and Uniform Revenue Procedures Act and any
9 subsequent amendatory acts shall be followed to resolve the
10 dispute.

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

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

19 "(d) (1) For a privately operated hospital subject to
20 the assessment imposed under this article that ceases to
21 conduct hospital operations or maintain its state license or
22 did not conduct hospital operations throughout a state fiscal
23 year, the assessment for the state fiscal year in which the
24 cessation occurs shall be adjusted by multiplying the annual
25 assessment computed under this article by a fraction, the
26 numerator of which is the number of days during the year that
27 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
26 fiscal year experiences a change in status so that it becomes
27 exempted from payment under this article shall be relieved of

1 its obligation to pay the hospital assessment on the date
2 specified in rules promulgated by Medicaid under the Alabama
3 Administrative Procedure Act.

4 "§40-26B-77.

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

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

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

20 "(3) If a publicly or state-owned hospital commenced
21 operations after the due date for the state fiscal year 2007,
22 the hospital shall submit its certification upon completion of
23 the first six months of operation of the hospital to Medicaid
24 in order to allow Medicaid to add the certification amount to
25 the total certified public expenditure amount. If a publicly
26 or state-owned hospital commenced operations after the due
27 date for the state fiscal year 2009, the hospital shall submit

1 its certification upon completion of the first six months of
2 operation of the hospital to Medicaid in order to allow
3 Medicaid to add the certification amount to the total
4 certified public expenditure amount.

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

12 "§40-26B-79.

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

22 "(b) Any publicly owned or privately operated
23 hospital that ceases to operate as a hospital that was in
24 operation during the hospital's fiscal year ending in 2007
25 shall notify Medicaid at the time the facility ceases to
26 operate. Base payments that would have been made to these
27 facilities for these services will not be made beginning on

1 the date that the facility ceased to operate as a hospital and
2 will be held in the Hospital Assessment Account.

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

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

16 ~~"(1) Any hospital, in the same geographic market~~
17 ~~area of a hospital that ceases to operate, that has~~
18 ~~experienced increased utilization from 2007 shall receive a~~
19 ~~proportionate increase in base payments financed by withheld~~
20 ~~base payments due to hospitals that ceased to operate.~~

21 ~~"(2) Any hospital, in the same geographic market~~
22 ~~area of a hospital that closed an obstetrical unit, that~~
23 ~~experiences increased obstetrical utilization after September~~
24 ~~30, 2009, shall receive a proportionate increase in base~~
25 ~~payments financed by withheld base payments due to hospitals~~
26 ~~that ceased to operate an obstetrical unit.~~

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

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

10 ~~"§40-26B-80.~~

11 "Medicaid shall pay hospitals as a base amount for
12 state fiscal years 2010 and 2011 the total outpatient payments
13 made by Medicaid during state fiscal year 2007, divided by the
14 total Internal Control Number or ICN count incurred in state
15 fiscal year 2007, multiplied by the Internal Control Number or
16 ICN count incurred each month during fiscal years 2010 and
17 2011. Medicaid shall pay hospitals as a base amount for fiscal
18 years 2012 and 2013 for outpatient services based upon the
19 outpatient fee schedule in existence on September 30, 2009,
20 plus an additional six percent inflation factor. Outpatient
21 base payments shall be paid using Medicaid's published check
22 write table and shall be paid in addition to any assessment
23 payments or other payments described in this article.

24 "§40-26B-81.

25 "(a) To preserve and improve access to hospital
26 services, for hospital inpatient and outpatient services
27 rendered on or after October 1, 2009, Medicaid shall make

1 hospital access payments to publicly, state-owned, and
2 privately operated hospitals as set forth in this section.

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

6 "(c) All publicly, state-owned, and privately
7 operated hospitals shall be eligible for inpatient and
8 outpatient hospital access payments for fiscal years 2010, ~~and~~
9 2011, 2012, and 2013 as set forth in this article.

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

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

22 "(3) In addition to any other funds paid to
23 hospitals for outpatient hospital services to Medicaid
24 patients, each eligible hospital shall receive outpatient
25 hospital access payments each state fiscal year. Publicly and
26 state-owned hospitals shall receive payments, including base
27 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 "(4) Outpatient hospital access payments shall be
6 made on a ~~monthly~~ quarterly basis.

7 "(d) A hospital access payment shall not be used to
8 offset any other payment by Medicaid for hospital inpatient or
9 outpatient services to Medicaid beneficiaries, including,
10 without limitation, any fee-for-service, per diem, private
11 hospital inpatient adjustment, or cost settlement payment.

12 "(e) The specific hospital payments for publicly,
13 state-owned, and privately operated hospitals shall be
14 described in the state plan amendment to be submitted to and
15 approved by the Centers for Medicare and Medicaid Services.

16 "§40-26B-82.

17 "(a) The assessment imposed under this article shall
18 not take effect or shall cease to be imposed and any moneys
19 remaining in the Hospital Assessment Account in the Alabama
20 Medicaid Program Trust Fund shall be refunded to hospitals in
21 proportion to the amounts paid by them if any of the following
22 occur:

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

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

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

11 "(b) (1) The assessment imposed under this article
12 shall not take effect or shall cease to be imposed if the
13 assessment is determined to be an impermissible tax under
14 Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

15 "(2) Moneys in the Hospital Assessment Account in
16 the Alabama Medicaid Program Trust Fund derived from
17 assessments imposed before the determination described in
18 subdivision (1) shall be disbursed under this article to the
19 extent federal matching is not reduced due to the
20 impermissibility of the assessments, and any remaining moneys
21 shall be refunded to hospitals in proportion to the amounts
22 paid by them.

23 "§40-26B-84.

24 "This article shall be of no effect if federal
25 financial participation under Title XIX of the Social Security
26 Act is not available to Medicaid at the approved federal
27 medical assistance percentage, established under Section 1905

1 of the Social Security Act, for the state fiscal years 2010,
2 and 2011, 2012, and 2013.

3 "§40-26B-88.

4 "This article shall automatically terminate and
5 become null and void by its own terms on September 30, ~~2011~~
6 2013, unless a later bill is passed extending the article to
7 future state fiscal years."

8 Section 2. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law.