

1 HB322
2 190496-1
3 By Representative Clouse
4 RFD: Ways and Means General Fund
5 First Read: 30-JAN-18

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8 SYNOPSIS: Currently, the private hospital assessment
9 and Medicaid funding program will terminate at the
10 end of fiscal year 2018.

11 This bill will extend the private hospital
12 assessment and Medicaid funding program for fiscal
13 year 2019.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To amend Sections 40-26B-71, 40-26B-73, 40-26B-77.1,
20 40-26B-79, 40-26B-80, 40-26B-81, 40-26B-82, 40-26B-84, and
21 40-26B-88, Code of Alabama 1975, to extend the private
22 hospital assessment and Medicaid funding program for fiscal
23 year 2019.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 40-26B-71, 40-26B-73,
26 40-26B-77.1, 40-26B-79, 40-26B-80, 40-26B-81, 40-26B-82,

1 40-26B-84, and 40-26B-88, Code of Alabama 1975, are amended to
2 read as follows:

3 "§40-26B-71.

4 "(a) For state fiscal year ~~2018~~ 2019, an assessment
5 is imposed on each privately operated hospital in the amount
6 of ~~5.50~~ 5.75 percent of net patient revenue in fiscal year
7 ~~2014~~ 2016. The assessment is a cost of doing business as a
8 privately operated hospital in the State of Alabama. Annually,
9 the Medicaid Agency shall make a determination of whether
10 changes in federal law or regulation have adversely affected
11 hospital Medicaid reimbursement ~~since October 1, 2015~~ during
12 the most recently completed fiscal year, or a reduction in
13 capitation payment rates has occurred. If the agency
14 determines that adverse impact to hospital Medicaid
15 reimbursement has occurred, or will occur, the agency shall
16 report its findings to the Chairman of the House Ways and
17 Means General Fund Committee who shall propose an amendment to
18 ~~Act 2013-246~~ Article 5 of Title 40 of the Alabama Code during
19 any legislative session prior to the start of the upcoming
20 fiscal year from the year the report was made, to address the
21 adverse impact. The assessment imposed on each private
22 hospital under this section shall be reduced pro rata, if the
23 total disproportionate share allotment for all hospitals is
24 reduced before or during the ~~2018~~ 2019 fiscal year, as a
25 result of any action by Alabama Medicaid Agency or the Centers
26 for Medicare and Medicaid Services.

1 "(b) (1) For state fiscal year ~~2018~~ 2019, net patient
2 revenue shall be determined using the data from each private
3 hospital's fiscal year ending ~~2014~~ 2016 Medicare Cost Report
4 contained in the Centers for Medicare and Medicaid Services
5 Healthcare Cost Information System.

6 "(2) The Medicare Cost Report for ~~2014~~ 2016 for each
7 private hospital shall be used for fiscal year ~~2018~~ 2019. If
8 the Medicare Cost Report is not available in Centers for
9 Medicare and Medicaid Services' Healthcare Cost Report
10 Information System, the hospital shall submit a copy to the
11 department to determine the hospital's net patient revenue for
12 fiscal year ~~2014~~ 2016.

13 "(3) If a privately operated hospital commenced
14 operations after the due date for a ~~2014~~ 2016 Medicare Cost
15 Report, the hospital shall submit its most recent Medicare
16 Cost Report to the department in order to allow the department
17 to determine the hospital's net patient revenue.

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

22 "§40-26B-73.

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

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

4 "(3) If the Medicaid Agency begins making payments
5 under Title 22, Chapter 6, Article 9, while Act 2017-382 is in
6 force, the hospital intergovernmental transfers imposed under
7 this article shall be deposited into the Hospital Assessment
8 Account.

9 "(b) Moneys in the Hospital Assessment Account shall
10 consist of:

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

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

16 "(3) Any appropriations, transfers, donations,
17 gifts, or moneys from other sources, as applicable; and

18 "(4) If the Medicaid Agency begins making payments
19 under Title 22, Chapter 6, Article 9, while Act 2017-382 is in
20 force, all moneys collected or received by the department from
21 publicly owned and state-owned hospital intergovernmental
22 transfers imposed under this article.

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

26 "(d) Moneys in the Hospital Assessment Account shall
27 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 public, private, and state inpatient and
15 outpatient hospital payments.

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, 2014 and each year thereafter,
21 any positive balance remaining in the Hospital Assessment
22 Account which was not used by Alabama Medicaid to obtain
23 federal matching funds and paid out for hospital payments,
24 shall be factored into the calculation of any new assessment
25 rate by reducing the amount of hospital assessment funds that
26 must be generated during the next fiscal year. If there is no
27 new assessment beginning October 1, ~~2018~~ 2019, the funds

1 remaining shall be refunded to the hospital that paid the
2 assessment or made an intergovernmental transfer in proportion
3 to the amount remaining.

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

7 "§40-26B-77.1.

8 "(a) Beginning on October 1, 2016, and ending on
9 September 30, ~~2018~~ 2019, publicly owned and state-owned
10 hospitals will begin making intergovernmental transfers to the
11 Medicaid Agency. If Medicaid begins making payments pursuant
12 to Title 22, Chapter 6, Article 9, on or before ~~October 1,~~
13 ~~2018~~ September 30, 2019, the amount of these intergovernmental
14 transfers shall be calculated for each hospital using a
15 pro-rata basis based on the hospitals IGT contribution for FY
16 ~~2017~~ 2018 in relation to the total IGT for FY ~~2017~~ 2018. Total
17 IGTs for any given fiscal year shall not exceed \$333,434,048
18 with the exception of an adjustment as described in subsection
19 (d) and to the extent adjustments are required to comply with
20 federal regulations or terms of any waiver issued by the
21 federal government relating to the state's Medicaid program.
22 The total intergovernmental transfers shall equal and shall
23 not exceed the amount of state funds necessary for the
24 Medicaid Agency to obtain only those federal matching funds
25 necessary to pay publicly owned and state-owned hospitals for
26 hospital payments. If Medicaid does not begin making payments
27 pursuant to Title 22, Chapter 6, Article 9, on or before

1 September 30, ~~2018~~ 2019, the total intergovernmental transfers
2 shall equal the amount of state funds necessary for the agency
3 to obtain only those federal matching funds necessary to pay
4 publicly owned and state-owned hospitals for hospital
5 payments.

6 "(b) These intergovernmental transfers shall be made
7 in compliance with 42 U.S.C. §1396b.(w).

8 "(c) If a publicly or state-owned hospital commences
9 operations after October 1, 2013, the hospital shall commence
10 making intergovernmental transfers to the Medicaid Agency in
11 the first full month of operation of the hospital after
12 October 1, 2013.

13 "(d) If Medicaid begins making payments pursuant to
14 Title 22, Chapter 6, Article 9, on or before September 30,
15 ~~2018~~ 2019, notwithstanding any other provision of this
16 article, a private hospital that is subject to payment of the
17 assessment pursuant to this article at the beginning of a
18 state fiscal year, but during the state fiscal year
19 experiences a change in status so that it is subject to the
20 intergovernmental transfer computed under this article, it
21 shall continue to pay the same amount as calculated in Section
22 40-26B-71, but in the form of an Intergovernmental Transfer.

23 "§40-26B-79.

24 "If Medicaid begins making payments pursuant to
25 Title 22, Chapter 6, Article 9, on or before September 30,
26 ~~2018~~ 2019, Medicaid shall pay hospitals as a base amount for
27 state fiscal year ~~2018~~ 2019, for inpatient services an APR-DRG

1 payment that is equal to the total modeled UPL submitted and
2 approved by CMS during fiscal year ~~2017~~ 2019. If Medicaid
3 begins making payments pursuant to Title 22, Chapter 6,
4 Article 9, on a date other than the first day of fiscal year
5 ~~2018~~ 2019, there shall be no retroactive adjustment to
6 payments already made to hospitals in accordance with the
7 approved State Plan. If approved by CMS, Medicaid shall
8 publish the APR-DRG rates for each hospital prior to September
9 30, ~~2017~~ 2018. If Medicaid does not begin making payments
10 pursuant to Title 22, Chapter 6, Article 9, on or before
11 September 30, ~~2018~~ 2019, Medicaid shall pay hospitals as a
12 base amount for fiscal year ~~2018~~ 2019 the total inpatient
13 payments made by Medicaid during state fiscal year 2007,
14 divided by the total patient days paid in state fiscal year
15 2007, multiplied by patient days paid during fiscal year ~~2018~~
16 2019. This payment to be paid using Medicaid's published check
17 write table is in addition to any hospital access payments
18 Medicaid may elect to pay hospitals inpatient payments other
19 than per diems and access payments, if Medicaid does not make
20 payments pursuant to Title 22, Chapter 6, Article 9 in ~~fiscal~~
21 ~~year 2017~~ or fiscal year ~~2018~~ 2019, only if the Hospital
22 Services and Reimbursement Panel approves the change in
23 Hospital Payments.

24 "§40-26B-80.

25 "If Medicaid begins making payments pursuant to
26 Title 22, Chapter 6, Article 9, on or before September 30,
27 ~~2018~~ 2019, Medicaid shall pay hospitals as a base amount for

1 fiscal year ~~2018~~ 2019 for outpatient services based upon a fee
2 for service and access payments or OPSS schedule. If Medicaid
3 begins making payments pursuant to Title 22, Chapter 6,
4 Article 9, on a date other than the first day of fiscal year
5 ~~2018~~ 2019, there shall be no retroactive adjustment to
6 payments already made to hospitals in accordance with the
7 approved State Plan.

8 "Should Medicaid implement OPSS, the total amount
9 budgeted (total base rate) for OPSS shall not be less than the
10 total outpatient UPL.

11 If Medicaid does not begin making payments pursuant
12 to Title 22, Chapter 6, Article 9, on or before September 30,
13 ~~2018~~ 2019, Medicaid shall pay hospitals as a base amount for
14 fiscal year ~~2018~~ 2019 for outpatient services, based upon an
15 outpatient fee schedule in existence on September 30, ~~2015~~
16 2018. Hospital outpatient base payments shall be in addition
17 to any hospital access payments or other payments described in
18 this article.

19 "§40-26B-81.

20 "(a) If Medicaid begins making payments pursuant to
21 Title 22, Chapter 6, Article 9, on or before September 30,
22 ~~2018~~ 2019, to preserve and improve access to hospital
23 services, for hospital inpatient and outpatient services
24 rendered on or after October 1, ~~2016~~ 2018, Medicaid shall
25 consider the published inpatient and outpatient rates as
26 defined in Sections 40-26B-79 and 40-26B-80 as the minimum
27 payment allowed.

1 "(b) If Medicaid does not begin making payments
2 pursuant to Title 22, Chapter 6, Article 9, on or before
3 September 30, ~~2018~~ 2019, the aggregate hospital access payment
4 amount is an amount equal to the upper payment limit, less
5 total hospital base payments determined under this article.
6 All publicly, state-owned, and privately operated hospitals
7 shall be eligible for inpatient and outpatient hospital access
8 payments for fiscal year ~~2018~~ 2019 as set forth in this
9 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
15 hospital base payments, that, in the aggregate, equal the
16 upper payment limit for publicly and state-owned hospitals.
17 Privately operated hospitals shall receive payments, including
18 hospital base payments that, in the aggregate, equal the upper
19 payment limit 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
27 hospital base payments, that, in the aggregate, equal the

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

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

7 "(c) 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 or
11 public hospital inpatient adjustment, or hospital cost
12 settlement payment.

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

17 "§40-26B-82.

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

24 "(1) Expenditures for hospital inpatient and
25 outpatient services paid for by the Alabama Medicaid Program
26 for fiscal year ~~2018~~ 2019 are less than the amount paid during
27 fiscal year 2017. Reimbursement rates under this article for

1 fiscal year ~~2018~~ 2019 are less than the rates approved by CMS
2 in Sections 40-26B-79 and 40-26B-80.

3 "(2) Medicaid makes changes in its rules that reduce
4 hospital inpatient payment rates, outpatient payment rates, or
5 adjustment payments, including any cost settlement protocol,
6 that were in effect on September 30, ~~2016~~ 2018.

7 "(3) The inpatient or outpatient hospital access
8 payments required under this article are changed or the
9 assessments imposed or certified public expenditures, or
10 intergovernmental transfers recognized under this article are
11 not eligible for federal matching funds under Title XIX of the
12 Social Security Act, 42 U.S.C. §1396 et seq., or 42 U.S.C.
13 §1397aa et seq.

14 "(4) The Medicaid Agency contracts with an alternate
15 care provider in a Medicaid region under any terms other than
16 the following:

17 "a. If a regional care organization or alternate
18 care provider failed to provide adequate service pursuant to
19 its contract, or had its certification terminated, or if the
20 Medicaid Agency could not award a contract to a regional care
21 organization under its quality, efficiency, and cost
22 conditions, or if no organization had been awarded a regional
23 care organization certificate by October 1, 2016, or the date
24 of extension as set out in Act No. 2016-377, then the Medicaid
25 Agency shall first offer a contract, to resume interrupted
26 service or to assume service in the region, under its quality,
27 efficiency and cost conditions to any other regional care

1 organization that Medicaid judged would meet its quality
2 criteria.

3 "b. If by October 1, 2014, no organization had a
4 probationary regional care organization certification in a
5 region. However, the Medicaid Agency could extend the deadline
6 until January 1, 2015, if it judged an organization was making
7 reasonable progress toward getting probationary certification.
8 If Medicaid judged that no organization in the region likely
9 would achieve probationary certification by January 1, 2015,
10 then the Medicaid Agency shall let any organization with
11 probationary or full regional care organization certification
12 apply to develop a regional care organization in the region.
13 If at least one organization made such an application, the
14 agency no sooner than October 1, 2015, would decide whether
15 any organization could reasonably be expected to become a
16 fully certified regional care organization in the region and
17 its initial region.

18 "c. If an organization lost its probationary
19 certification before October 1, 2016, or the date of the
20 extension as set out in Act No. 2016-377, Medicaid shall offer
21 any other organization with probationary or full regional care
22 organization certification, which it judged could successfully
23 provide service in the region and its initial region, the
24 opportunity to serve Medicaid beneficiaries in both regions.

25 "d. Medicaid may contract with an alternate care
26 provider only if no regional care organization accepted a
27 contract under the terms of a., or no organization was granted

1 the opportunity to develop a regional care organization in the
2 affected region under the terms of b., or no organization was
3 granted the opportunity to serve Medicaid beneficiaries under
4 the terms of c.

5 "e. The Medicaid Agency may contract with an
6 alternate care provider under the terms of paragraph d. only
7 if, in the judgment of the Medicaid Agency, care of Medicaid
8 enrollees would be better, more efficient, and less costly
9 than under the then existing care delivery system. Medicaid
10 may contract with more than one alternate care provider in a
11 Medicaid region.

12 "f.1. If the Medicaid Agency were to contract with
13 an alternate care provider under the terms of this section,
14 that provider would have to pay reimbursements for hospital
15 inpatient or outpatient care at rates at least equal to those
16 published as of October 1, ~~2016~~ 2017, pursuant to Sections
17 40-26B-79 and 40-26B-80.

18 "2. If more than a year had elapsed since the
19 Medicaid Agency directly paid reimbursements to hospitals, the
20 minimum reimbursement rates paid by the alternate care
21 provider would have to be changed to reflect any percentage
22 increase in the national medical consumer price index minus
23 100 basis points.

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 year ~~2018~~
15 2019.

16 "§40-26B-88.

17 "This article shall automatically terminate and
18 become null and void by its own terms on September 30, ~~2018~~
19 2019, unless a later act is enacted extending the article to
20 future state fiscal years."

21 Section 2. This Act shall become effective on
22 October 1 2018.