

1 HB401
2 205882-1
3 By Representative Clouse
4 RFD: Ways and Means General Fund
5 First Read: 05-MAR-20

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8 SYNOPSIS: Under existing law, a privilege assessment
9 and supplemental privilege assessment are imposed
10 on each bed in a nursing facility and a monthly
11 surcharge is also imposed.

12 This bill would increase the privilege
13 assessment, provide the methodology for
14 recalculation of current asset value as it relates
15 to calculation of nursing facility rates, and
16 authorize the Alabama Medicaid Agency to create a
17 quality incentive program for nursing facilities.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 Relating to the privilege assessment for nursing
24 facilities; to amend Sections 40-26B-21, 40-26B-26, and
25 40-26B-27, Code of Alabama 1975; to increase the privilege
26 assessment; to provide the methodology for recalculation of
27 current asset value as it relates to nursing facility rates;

1 to create a Medicaid quality incentive program for nursing
2 facilities; and to provide further for the effect of this
3 article if federal financial participation is not available.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 40-26B-21, 40-26B-26, and
6 40-26B-27, Code of Alabama 1975 are amended to read as
7 follows:

8 "§40-26B-21.

9 "To provide further for the availability of indigent
10 health care, the operation of the Medicaid program, and the
11 maintenance and expansion of medical services:

12 "(a) There is levied and shall be collected a
13 privilege assessment on the business activities of every
14 nursing facility in the State of Alabama. The privilege
15 assessment imposed is in addition to all other taxes and
16 assessments, and shall be at the annual rate of one thousand
17 eight hundred ninety-nine dollars and ninety-six cents
18 (\$1,899.96) for each bed in the nursing facility. Beginning
19 September 1, 2020, the privilege assessment shall be increased
20 from one thousand eight hundred ninety-nine dollars and
21 ninety-six cents for each bed in the nursing facility, by an
22 addition to the privilege assessment equal to three hundred
23 twenty-seven dollars and forty-eight cents (\$327.48) per
24 annum. The addition to the privilege assessment shall be paid
25 in equal monthly installments and shall merge into and be a
26 part of the privilege assessment described in this subsection.
27 The payment to nursing facilities of the determined allowable

1 costs in respect to the addition to the privilege assessment
2 described in this subsection shall be included in Medicaid per
3 diem rates for services provided commencing as of October 1,
4 2020, and shall continue to be included in such Medicaid per
5 diem rates in the same manner that reimbursement for the
6 privilege assessment is included in Medicaid per diem rates.
7 For each Medicaid nursing facility, in determining the October
8 1, 2020 adjustment to the Medicaid per diem for the allowable
9 costs associated with the addition to the privilege
10 assessment, the Medicaid Agency shall divide the total
11 addition to the privilege assessment by the total of all
12 incurred resident days (regardless of payor class) reported by
13 each nursing facility in its Medicaid cost report filed for
14 the period then ended June 30, 2019. Notwithstanding the
15 foregoing, in the event that such June 30, 2019, cost report
16 shall be for a period of less than one year, the resident days
17 reported shall be annualized. After the herein described
18 October 1, 2020, adjustment, the addition to the privilege
19 assessment shall be fully merged into the privilege assessment
20 and reimbursed in accordance with the method set forth for
21 calculating the reimbursement for the privilege assessment. In
22 the event that any portion of the privilege assessment paid by
23 a facility cannot be included in the computation of Medicaid
24 per diem rate because of the effect of any cost ceiling
25 provision of the reimbursement methodology, the cost ceiling
26 must be adjusted to ensure continued treatment of the total
27 privilege assessments as an allowable cost.

1 "(b) For the period September 1, 2010, through
2 August 31, 2022, there is levied and shall be collected a
3 supplemental privilege assessment on the business activities
4 of every nursing facility in the State of Alabama. The
5 supplemental privilege assessment imposed is in addition to
6 all other taxes and assessments, including without limitation,
7 the privilege taxes provided for under this article, and from
8 September 1, 2010, through August 31, 2011, shall be at the
9 annual rate of one thousand six hundred three dollars and
10 eight cents (\$1,063.08) for each bed in the nursing facility,
11 and one thousand and sixty-three dollars and eight cents
12 (\$1,603.08) for the period of September 1, 2011, through
13 August 31, 2022, except that beginning with the monthly
14 payment for the supplemental privilege assessment due
15 beginning May 20, 2012, and ending August 31, 2022, there
16 shall be a monthly surcharge due with each monthly payment of
17 the supplemental privilege assessment. The initial monthly
18 surcharge shall be one hundred thirty-one dollars and
19 twenty-five cents (\$131.25) per licensed bed. Beginning with
20 the monthly payment of the supplemental privilege assessment
21 due on September 20, 2012, the monthly surcharge shall be
22 reduced to forty-three dollars and seventy-five cents (\$43.75)
23 per month.

24 "For the period October 1, 2015, through August 31,
25 2022, there shall be collected a secondary supplemental
26 privilege assessment on the business activities of every
27 nursing facility in the State of Alabama. The secondary

1 supplemental privilege assessment imposed in this paragraph is
2 contingent upon the minimum appropriation provided in Section
3 2 of the act adding this paragraph, and is in addition to all
4 other taxes and assessments, including without limitation, the
5 privilege taxes provided for under this article, and beginning
6 October 1, 2015, shall be at the annual rate of four hundred
7 one dollars and twenty-eight cents (\$401.28) for each bed in
8 the nursing facility, payable monthly.

9 "(c) The total privilege assessment (and the
10 addition to the privilege assessment), supplemental privilege
11 assessment, secondary privilege assessment, (privilege
12 assessments) and surcharge paid by a nursing facility pursuant
13 to this article shall be considered an allowable cost, as that
14 term is defined in the reimbursement methodology for nursing
15 facilities contained in Title 560 of the Alabama
16 Administrative Code, and, to the extent permitted under
17 applicable federal law governing the Alabama Medicaid nursing
18 home program, the total privilege assessments paid must be
19 included in the computation of the Medicaid per diem rate
20 determined under the reimbursement methodology for nursing
21 facilities contained in Title 560 of the Alabama
22 Administrative Code. The payment to nursing facilities of the
23 determined allowable costs in respect to the supplemental
24 privilege assessment described in subsection (b) shall be
25 included in Medicaid per diem rates for services provided
26 commencing as of January 1, 2011, and shall continue to be
27 included in such Medicaid per diem rates for a period equal to

1 the number of months during which the supplemental assessments
2 shall have been in effect. For each Medicaid nursing facility,
3 in determining the adjustment to the Medicaid per diem for the
4 allowable costs associated with the supplemental assessment,
5 the Medicaid Agency shall divide the total supplemental
6 assessment due under subsection (b) by the total of all
7 incurred resident days (regardless of payor class) reported by
8 such nursing facility in its Medicaid cost report filed for
9 the period then ended June 30, 2010. To accommodate the
10 increase in the supplemental assessment and the surcharge
11 described in subsection (b), the agency shall use the
12 mechanism described herein to adjust each nursing facility's
13 rate effective as of October 1, 2011, regarding the privilege
14 assessment, and May 1, 2012, regarding the surcharge.
15 Notwithstanding the foregoing, in the event that such cost
16 report shall be for a period less than one year, the resident
17 days reported shall be annualized. In the event that any
18 portion of the privilege assessment paid by a facility cannot
19 be included in the computation of the Medicaid per diem rate
20 because of the effect of any cost ceiling provision of the
21 reimbursement methodology, the cost ceiling must be adjusted
22 to ensure continued treatment of the total privilege
23 assessments as an allowable cost.

24 "(d) The privilege assessment rate or the
25 supplemental privilege assessment rate or the surcharge rate
26 shall be reduced by the department upon the advice of the
27 Medicaid Agency if, but only if, such reduction is required to

1 ensure that the total revenues to the State of Alabama
2 produced by this privilege assessment or, if the supplemental
3 privilege assessment and surcharge are in effect, the
4 aggregate of the supplemental privilege assessment and
5 surcharge and the privilege assessment, during any state
6 fiscal year are less than or equal to six percent of the total
7 revenues received by the nursing facilities in the state
8 subject to the assessment during that same fiscal year. In the
9 event that the supplemental privilege assessment or surcharge
10 are reduced as provided in the preceding sentence, then for
11 each Medicaid nursing facility a corresponding reduction shall
12 be made to the Medicaid per diem adjustment described in
13 subsection (c) to ensure that only the amount of supplemental
14 privilege assessment or surcharge actually paid is used in
15 computing that Medicaid nursing facility's allowable costs.

16 "(e) The Medicaid nursing facility program shall
17 continue to be administered directly by the Medicaid Agency
18 until at least October 1, 2022.

19 "§40-26B-26.

20 "(a) No revenues resulting from the privilege
21 assessment established by this article and applied to
22 increases in covered services or reimbursement levels or other
23 enhancements of the Medicaid program shall be subject to
24 reduction or elimination while the privilege assessment is in
25 effect.

26 "(b) Every nursing facility participating in the
27 Medicaid program in the State of Alabama shall be reimbursed

1 according to the reimbursement methodology contained in
2 Chapter 560-X-22 of the Alabama Medicaid Agency Administrative
3 Code (Supp. 12/31/95) on January 31, 1998, which methodology
4 is incorporated by reference herein, except that the following
5 shall apply:

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

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

17 "(3) The Medicaid Inflation Index described in Title
18 560-X-22-.07 of the Alabama Medicaid Agency Administrative
19 Code (Supp. 12/95) shall be computed without regard to the
20 trend factor variance described in Title 560-X-22-.07 (5) of
21 the Alabama Medicaid Agency Administrative Code (Supp. 12/95).

22 "(4) In calculating the ceiling for the operating
23 cost center, the direct patient care cost center or the
24 indirect patient care cost center, any increase in that
25 ceiling over such ceiling set in the year next preceding,
26 shall not exceed an amount equal to the product of such
27 ceiling for the previous year times the sum of the Medicaid

1 Inflation Index, described in Title 560-X-22-.07 of the
2 Alabama Medicaid Agency Administrative Code (Supp. 12/95),
3 plus four percent.

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

19 "(6) For the period that the federal financial
20 participation under Title XIX of the Social Security Act for
21 certain intergovernmental transfers is available to the
22 Alabama Medicaid program, the Commissioner of the agency may
23 pay an enhancement, not to exceed the upper limits for
24 Medicare nursing facility payments, to rural hospital
25 connected nursing facilities under governmental authority or
26 control. Notwithstanding the foregoing, the enhancement shall

1 not be limited by the provisions of Title 560-X-22 of the
2 Alabama Medicaid Administrative Code.

3 "(7) Notwithstanding subdivision (3), from October
4 1, 2011, through September 30, 2014, in applying the inflation
5 factor, zero percent shall be used to compute overall rates.

6 "(8) Beginning with the setting of Medicaid nursing
7 facility rates set based on the cost reporting period ended
8 June 30, 2020, the current asset value (as described in Title
9 560-x-22.14(11) of the Alabama Medicaid Administrative Code)
10 for each nursing facility, after applying the July 1, 2020
11 rebasings as provided under Title 560-x-22.14(11) of the
12 Alabama Medicaid Administrative Code, used to calculate
13 nursing facility rates, shall be recalculated by adding to
14 each respective nursing facility's current asset value an
15 amount equal to the product derived by multiplying the June
16 30, 2020, rebasing as provided under Title 560-x-22.14(11) of
17 the Alabama Medicaid Agency Administrative Code by 41.03%. The
18 current asset value as adjusted herein, shall be rebased each
19 subsequent year in accordance with Title 560-x-22.14 of the
20 Alabama Administrative Code, and applied to calculate Medicaid
21 nursing facility rates each subsequent cost reporting year.
22 Notwithstanding anything to the contrary in the foregoing, for
23 the purposes of applying the recalculated current asset value
24 to calculate a nursing facility's Medicaid rate for the cost
25 reporting year beginning as of July 1, 2020, any resulting
26 rate increase shall be effective for services provided on or
27 after October 1, 2020. No nursing facility Medicaid rate

1 increase for the recalculation of current asset value
2 described in this subparagraph shall be effective for services
3 provided prior to October 1, 2020.

4 "(c) Payments by the Medicaid program to each
5 nursing facility for nursing home services shall be sufficient
6 to cover the costs determined by cost reporting principles
7 incurred by each such nursing facility in providing care in an
8 economical and efficient manner and that is adequate to permit
9 the provision of care and services necessary to attain or
10 maintain the highest practicable, physical, mental, and
11 psychosocial well-being of each resident eligible for Alabama
12 Medicaid nursing home benefits in conformity with applicable
13 state and federal laws, rules and regulations and quality and
14 safety standards.

15 "(d) Notwithstanding subsection (b), Medicaid shall
16 be empowered to create a special reimbursement model to
17 accommodate enhanced reimbursed care provided in dedicated
18 ventilator units in nursing facilities that meet special
19 physical plant requirements such as dedicated emergency power
20 generation, through-the-wall medical gases and suction,
21 24-hour per day staffing with trained licensed respiratory
22 therapists, and medical direction through contract with or
23 employment of an Alabama licensed physician who is a board
24 certified pulmonologist.

25 "(e) Notwithstanding subsection (b), the Alabama
26 Medicaid Agency shall be empowered to create a quality
27 incentive program for nursing facilities that meet certain

1 quality measures during the scoring year. For the purpose of
2 this subsection, the scoring year for any year is the cost
3 reporting year beginning July 1 and ending June 30. The first
4 scoring period shall be July 1, 2020 through June 30, 2021.
5 The quality incentive will be paid to nursing facilities in a
6 lump sum on or before February 1, following the scoring period
7 ended the immediately prior June 30. For each scoring year,
8 the Alabama Medicaid Agency shall establish a quality
9 incentive fund of not less than \$5,000,000, from which quality
10 incentive awards will be awarded and paid to those nursing
11 facilities qualifying for a quality incentive award. Quality
12 incentive scoring for each scoring period shall be determined
13 from certain measures selected by the Alabama Medicaid Agency
14 from (i) five of the MDS Quality Measures compiled by the
15 Centers for Medicare and Medicaid Services (CMS), Department
16 of Health and Human Services and (ii) three of customer
17 satisfaction survey categories that are independently gathered
18 and prepared by NRC Health, or another nationally recognized
19 satisfaction survey company with experience in the long term
20 care field. The Alabama Medicaid Agency shall determine the
21 manner that scoring points are awarded, provided that to be
22 eligible to earn points for any category, a nursing facility
23 must either (i) show improvement in that category during the
24 current scoring period over the most recent prior scoring
25 period, and/or (ii) rank for that category at or above the
26 established national average.

27 "§40-26B-27.

1 "This article is intended to be severable. ~~shall be~~
2 ~~of no effect if~~ If federal financial participation under Title
3 XIX of the Social Security Act is not available to the Alabama
4 Medicaid program for the purposes of any section, subsection,
5 paragraph or subparagraph of this article at the approved
6 federal medical assistance percentage, established under
7 Section 1905 of the Social Security Act, for the applicable
8 fiscal year then, the section, subsection, paragraph and
9 subparagraph of this article for which the approved federal
10 financial participation at the approved federal medical
11 assistance percentage, established under Section 1905 of the
12 Social Security Act is not available shall be of no effect.
13 All other sections, subsections, paragraphs and subparagraphs
14 of this article eligible for federal financial participation
15 shall remain in effect."

16 Section 2. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.