

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

1
2 ENROLLED, An Act,

3 Relating to the privilege assessment for nursing
4 facilities; to amend Sections 40-26B-21, 40-26B-26, and
5 40-26B-27, Code of Alabama 1975; to increase the privilege
6 assessment; to provide the methodology for recalculation of
7 current asset value as it relates to nursing facility rates;
8 to create a Medicaid quality incentive program for nursing
9 facilities; and to provide further for the effect of this
10 article if federal financial participation is not available.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 40-26B-21, 40-26B-26, and
13 40-26B-27, Code of Alabama 1975 are amended to read as
14 follows:

15 "§40-26B-21.

16 "To provide further for the availability of indigent
17 health care, the operation of the Medicaid program, and the
18 maintenance and expansion of medical services:

19 "(a) There is levied and shall be collected a
20 privilege assessment on the business activities of every
21 nursing facility in the State of Alabama. The privilege
22 assessment imposed is in addition to all other taxes and
23 assessments, and shall be at the annual rate of one thousand
24 eight hundred ninety-nine dollars and ninety-six cents
25 (\$1,899.96) for each bed in the nursing facility. Beginning

1 September 1, 2020, the privilege assessment shall be increased
2 from one thousand eight hundred ninety-nine dollars and
3 ninety-six cents for each bed in the nursing facility, by an
4 addition to the privilege assessment equal to three hundred
5 twenty-seven dollars and forty-eight cents (\$327.48) per
6 annum. The addition to the privilege assessment shall be paid
7 in equal monthly installments and shall merge into and be a
8 part of the privilege assessment described in this subsection.
9 The payment to nursing facilities of the determined allowable
10 costs in respect to the addition to the privilege assessment
11 described in this subsection shall be included in Medicaid per
12 diem rates for services provided commencing as of October 1,
13 2020, and shall continue to be included in such Medicaid per
14 diem rates in the same manner that reimbursement for the
15 privilege assessment is included in Medicaid per diem rates.
16 For each Medicaid nursing facility, in determining the October
17 1, 2020 adjustment to the Medicaid per diem for the allowable
18 costs associated with the addition to the privilege
19 assessment, the Medicaid Agency shall divide the total
20 addition to the privilege assessment by the total of all
21 incurred resident days (regardless of payor class) reported by
22 each nursing facility in its Medicaid cost report filed for
23 the period then ended June 30, 2019. Notwithstanding the
24 foregoing, in the event that such June 30, 2019, cost report
25 shall be for a period of less than one year, the resident days

1 reported shall be annualized. After the herein described
2 October 1, 2020, adjustment, the addition to the privilege
3 assessment shall be fully merged into the privilege assessment
4 and reimbursed in accordance with the method set forth for
5 calculating the reimbursement for the privilege assessment. In
6 the event that any portion of the privilege assessment paid by
7 a facility cannot be included in the computation of Medicaid
8 per diem rate because of the effect of any cost ceiling
9 provision of the reimbursement methodology, the cost ceiling
10 must be adjusted to ensure continued treatment of the total
11 privilege assessments as an allowable cost.

12 "(b) For the period September 1, 2010, through
13 August 31, 2022, there is levied and shall be collected a
14 supplemental privilege assessment on the business activities
15 of every nursing facility in the State of Alabama. The
16 supplemental privilege assessment imposed is in addition to
17 all other taxes and assessments, including without limitation,
18 the privilege taxes provided for under this article, and from
19 September 1, 2010, through August 31, 2011, shall be at the
20 annual rate of one thousand six hundred three dollars and
21 eight cents (\$1,063.08) for each bed in the nursing facility,
22 and one thousand and sixty-three dollars and eight cents
23 (\$1,603.08) for the period of September 1, 2011, through
24 August 31, 2022, except that beginning with the monthly
25 payment for the supplemental privilege assessment due

1 beginning May 20, 2012, and ending August 31, 2022, there
2 shall be a monthly surcharge due with each monthly payment of
3 the supplemental privilege assessment. The initial monthly
4 surcharge shall be one hundred thirty-one dollars and
5 twenty-five cents (\$131.25) per licensed bed. Beginning with
6 the monthly payment of the supplemental privilege assessment
7 due on September 20, 2012, the monthly surcharge shall be
8 reduced to forty-three dollars and seventy-five cents (\$43.75)
9 per month.

10 "For the period October 1, 2015, through August 31,
11 2022, there shall be collected a secondary supplemental
12 privilege assessment on the business activities of every
13 nursing facility in the State of Alabama. The secondary
14 supplemental privilege assessment imposed in this paragraph is
15 contingent upon the minimum appropriation provided in Section
16 2 of the act adding this paragraph, and is in addition to all
17 other taxes and assessments, including without limitation, the
18 privilege taxes provided for under this article, and beginning
19 October 1, 2015, shall be at the annual rate of four hundred
20 one dollars and twenty-eight cents (\$401.28) for each bed in
21 the nursing facility, payable monthly.

22 "(c) The total privilege assessment (and the
23 addition to the privilege assessment), supplemental privilege
24 assessment, secondary privilege assessment, (privilege
25 assessments) and surcharge paid by a nursing facility pursuant

1 to this article shall be considered an allowable cost, as that
2 term is defined in the reimbursement methodology for nursing
3 facilities contained in Title 560 of the Alabama
4 Administrative Code, and, to the extent permitted under
5 applicable federal law governing the Alabama Medicaid nursing
6 home program, the total privilege assessments paid must be
7 included in the computation of the Medicaid per diem rate
8 determined under the reimbursement methodology for nursing
9 facilities contained in Title 560 of the Alabama
10 Administrative Code. The payment to nursing facilities of the
11 determined allowable costs in respect to the supplemental
12 privilege assessment described in subsection (b) shall be
13 included in Medicaid per diem rates for services provided
14 commencing as of January 1, 2011, and shall continue to be
15 included in such Medicaid per diem rates for a period equal to
16 the number of months during which the supplemental assessments
17 shall have been in effect. For each Medicaid nursing facility,
18 in determining the adjustment to the Medicaid per diem for the
19 allowable costs associated with the supplemental assessment,
20 the Medicaid Agency shall divide the total supplemental
21 assessment due under subsection (b) by the total of all
22 incurred resident days (regardless of payor class) reported by
23 such nursing facility in its Medicaid cost report filed for
24 the period then ended June 30, 2010. To accommodate the
25 increase in the supplemental assessment and the surcharge

1 described in subsection (b), the agency shall use the
2 mechanism described herein to adjust each nursing facility's
3 rate effective as of October 1, 2011, regarding the privilege
4 assessment, and May 1, 2012, regarding the surcharge.

5 Notwithstanding the foregoing, in the event that such cost
6 report shall be for a period less than one year, the resident
7 days reported shall be annualized. In the event that any
8 portion of the privilege assessment paid by a facility cannot
9 be included in the computation of the Medicaid per diem rate
10 because of the effect of any cost ceiling provision of the
11 reimbursement methodology, the cost ceiling must be adjusted
12 to ensure continued treatment of the total privilege
13 assessments as an allowable cost.

14 "(d) The privilege assessment rate or the
15 supplemental privilege assessment rate or the surcharge rate
16 shall be reduced by the department upon the advice of the
17 Medicaid Agency if, but only if, such reduction is required to
18 ensure that the total revenues to the State of Alabama
19 produced by this privilege assessment or, if the supplemental
20 privilege assessment and surcharge are in effect, the
21 aggregate of the supplemental privilege assessment and
22 surcharge and the privilege assessment, during any state
23 fiscal year are less than or equal to six percent of the total
24 revenues received by the nursing facilities in the state
25 subject to the assessment during that same fiscal year. In the

1 event that the supplemental privilege assessment or surcharge
2 are reduced as provided in the preceding sentence, then for
3 each Medicaid nursing facility a corresponding reduction shall
4 be made to the Medicaid per diem adjustment described in
5 subsection (c) to ensure that only the amount of supplemental
6 privilege assessment or surcharge actually paid is used in
7 computing that Medicaid nursing facility's allowable costs.

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

11 "§40-26B-26.

12 "(a) No revenues resulting from the privilege
13 assessment established by this article and applied to
14 increases in covered services or reimbursement levels or other
15 enhancements of the Medicaid program shall be subject to
16 reduction or elimination while the privilege assessment is in
17 effect.

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

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

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

12 "(3) The Medicaid Inflation Index described in Title
13 560-X-22-.07 of the Alabama Medicaid Agency Administrative
14 Code (Supp. 12/95) shall be computed without regard to the
15 trend factor variance described in Title 560-X-22-.07 (5) of
16 the Alabama Medicaid Agency Administrative Code (Supp. 12/95).

17 "(4) In calculating the ceiling for the operating
18 cost center, the direct patient care cost center or the
19 indirect patient care cost center, any increase in that
20 ceiling over such ceiling set in the year next preceding,
21 shall not exceed an amount equal to the product of such
22 ceiling for the previous year times the sum of the Medicaid
23 Inflation Index, described in Title 560-X-22-.07 of the
24 Alabama Medicaid Agency Administrative Code (Supp. 12/95),
25 plus four percent.

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

16 "(6) For the period that the federal financial
17 participation under Title XIX of the Social Security Act for
18 certain intergovernmental transfers is available to the
19 Alabama Medicaid program, the Commissioner of the agency may
20 pay an enhancement, not to exceed the upper limits for
21 Medicare nursing facility payments, to rural hospital
22 connected nursing facilities under governmental authority or
23 control. Notwithstanding the foregoing, the enhancement shall
24 not be limited by the provisions of Title 560-X-22 of the
25 Alabama Medicaid Administrative Code.

1 "(7) Notwithstanding subdivision (3), from October
2 1, 2011, through September 30, 2014, in applying the inflation
3 factor, zero percent shall be used to compute overall rates.

4 "(8) Beginning with the setting of Medicaid nursing
5 facility rates set based on the cost reporting period ended
6 June 30, 2020, the current asset value (as described in Title
7 560-x-22.14(11) of the Alabama Medicaid Administrative Code)
8 for each nursing facility, after applying the July 1, 2020
9 rebasings as provided under Title 560-x-22.14(11) of the
10 Alabama Medicaid Administrative Code, used to calculate
11 nursing facility rates, shall be recalculated by adding to
12 each respective nursing facility's current asset value an
13 amount equal to the product derived by multiplying the June
14 30, 2020, rebasing as provided under Title 560-x-22.14(11) of
15 the Alabama Medicaid Agency Administrative Code by 41.03%. The
16 current asset value as adjusted herein, shall be rebased each
17 subsequent year in accordance with Title 560-x-22.14 of the
18 Alabama Administrative Code, and applied to calculate Medicaid
19 nursing facility rates each subsequent cost reporting year.
20 Notwithstanding anything to the contrary in the foregoing, for
21 the purposes of applying the recalculated current asset value
22 to calculate a nursing facility's Medicaid rate for the cost
23 reporting year beginning as of July 1, 2020, any resulting
24 rate increase shall be effective for services provided on or
25 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.

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

1 must either (i) show improvement in that category during the
2 current scoring period over the most recent prior scoring
3 period, and/or (ii) rank for that category at or above the
4 established national average.

5 "§40-26B-27.

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

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 07-MAY-20.

Jeff Woodard
Clerk

Senate

09-MAY-20

Passed