1 HB176

2 197311-1

3 By Representative Clouse

4 RFD: Ways and Means General Fund

5 First Read: 19-MAR-19

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SYNOPSIS: Currently, the private hospital assessment and Medicaid funding program will terminate at the end of fiscal year 2019.

This bill will extend the private hospital assessment and Medicaid funding program for fiscal years 2020, 2021, and 2022.

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 40-26B-71, 40-26B-73, 40-26B-77.1, 40-26B-79, 40-26B-80, 40-26B-81, 40-26B-82, 40-26B-84, 40-26B-85, and 40-26B-88, Code of Alabama 1975, to extend the private hospital assessment and Medicaid funding program for fiscal years 2020, 2021, and 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1 40-26B-84, 40-26B-85, and 40-26B-88, Code of Alabama 1975, are
2 amended to read as follows:
3 "§40-26B-71.
4 "(a) For state fiscal years ~~2019~~ 2020, 2021, and
5 2022, an assessment is imposed on each privately operated
6 hospital in the amount of ~~5.75~~ 6.00 percent of net patient
7 revenue in fiscal year ~~2016~~ 2017, which shall be reviewed and
8 updated, annually subject to limitations in this Article on
9 the use of funds in the Hospital Assessment Account. The
10 assessment is a cost of doing business as a privately operated
11 hospital in the State of Alabama. Annually, the Medicaid
12 Agency shall make a determination of whether changes in
13 federal law or regulation have adversely affected hospital
14 Medicaid reimbursement during the most recently completed
15 fiscal year, or a reduction in payment rates has occurred. If
16 the agency determines that adverse impact to hospital Medicaid
17 reimbursement has occurred, or will occur, the agency shall
18 report its findings to the Chairman of the House Ways and
19 Means General Fund Committee who shall propose an amendment to
20 Article 5, ~~of chapter~~ Chapter 26B, Title 40 Code of Alabama
21 1975 during any legislative session prior to the start of the
22 upcoming fiscal year from the year the report was made, to
23 address the adverse impact. The assessment imposed on each
24 private hospital under this section shall be reduced pro rata,
25 if the total disproportionate share allotment for all
26 hospitals is reduced before or during the ~~2019~~ 2022 fiscal
27 year, as a result of any action by Alabama Medicaid Agency or

1 the Centers for Medicare and Medicaid Services, and only to
2 the extent that the Hospital Assessment Account is more than
3 necessary to fund some or all hospital payments under the
4 Article.

5 "(b)(1) For state fiscal years ~~2019~~ 2020, 2021, and
6 2022, net patient revenue shall be determined using the data
7 from each private hospital's fiscal year ending ~~2016~~ 2017
8 Medicare Cost Report contained in the Centers for Medicare and
9 Medicaid Services Healthcare Cost Information System, which
10 shall be reviewed and updated annually subject to limitations
11 in this Article on the use of funds in the Hospital Assessment
12 Account. ~~(2)~~ The Medicare Cost Report for ~~2016~~ 2017 for each
13 private hospital, which shall be reviewed and updated
14 annually, shall be used for fiscal years ~~2019~~ 2020, 2021, and
15 2022. If the Medicare Cost Report is not available in Centers
16 for Medicare and Medicaid Services' Healthcare Cost Report
17 Information System, the hospital shall submit a copy to the
18 department to determine the hospital's net patient revenue for
19 fiscal year ~~2016~~ 2017.

20 "~~(3)~~ (2) If a privately operated hospital commenced
21 operations after the due date for a ~~2016~~ 2017 Medicare Cost
22 Report, the hospital shall submit its most recent Medicare
23 Cost Report to the department in order to allow the department
24 to determine the hospital's net patient revenue.

25 "(c) This article does not authorize a unit of
26 county or local government to license for revenue or impose a

1 tax or assessment upon hospitals or a tax or assessment
2 measured by the income or earnings of a hospital.
3 "§40-26B-73.
4 "(a)(1) There is created within the Health Care
5 Trust Fund referenced in Article 3, Chapter 6, Title 22, a
6 designated account known as the Hospital Assessment Account.
7 "(2) The hospital assessments imposed under this
8 article shall be deposited into the Hospital Assessment
9 Account.
10 "(3) If the Medicaid Agency begins making payments
11 under Title 22, Chapter 6, Article 9, while Act 2017-382 is in
12 force, the hospital intergovernmental transfers imposed under
13 this article shall be deposited into the Hospital Assessment
14 Account.
15 "(b) Moneys in the Hospital Assessment Account shall
16 consist of:
17 "(1) All moneys collected or received by the
18 department from privately operated hospital assessments
19 imposed under this article;
20 "(2) Any interest or penalties levied in conjunction
21 with the administration of this article; and
22 "(3) Any appropriations, transfers, donations,
23 gifts, or moneys from other sources, as applicable; and
24 "(4) If the Medicaid Agency begins making payments
25 under Title 22, Chapter 6, Article 9, while Act 2017-382 is in
26 force, all moneys collected or received by the department from

1 publicly owned and state-owned hospital intergovernmental
2 transfers imposed under this article.
3 "(c) The Hospital Assessment Account shall be
4 separate and distinct from the State General Fund and shall be
5 supplementary to the Health Care Trust Fund.
6 "(d) Moneys in the Hospital Assessment Account shall
7 not be used to replace other general revenues appropriated and
8 funded by the Legislature or other revenues used to support
9 Medicaid.
10 "(e) The Hospital Assessment Account shall be exempt
11 from budgetary cuts, reductions, or eliminations caused by a
12 deficiency of State General Fund revenues to the extent
13 permissible under Amendment 26 to the Constitution of Alabama
14 of 1901, now appearing as Section 213 of the Official
15 Recompilation of the Constitution of Alabama of 1901, as
16 amended.
17 "(f)(1) Except as necessary to reimburse any funds
18 borrowed to supplement funds in the Hospital Assessment
19 Account, the moneys in the Hospital Assessment Account shall
20 be used only as follows:
21 "a. To make public, private, and state inpatient and
22 outpatient hospital payments.
23 "b. To reimburse moneys collected by the department
24 from hospitals through error or mistake or under this article.
25 (2)a. The Hospital Assessment Account shall retain
26 account balances remaining each fiscal year.

1 "b. On September 30, 2014 and each year thereafter,
2 any positive balance remaining in the Hospital Assessment
3 Account which was not used by Alabama Medicaid to obtain
4 federal matching funds and paid out for hospital payments,
5 shall be factored into the calculation of any new assessment
6 rate by reducing the amount of hospital assessment funds that
7 must be generated during the next fiscal year. If there is no
8 new assessment beginning October 1, ~~2019~~ 2022, the funds
9 remaining shall be refunded to the hospital that paid the
10 assessment or made an intergovernmental transfer in proportion
11 to the amount remaining.
12 "(3) A privately operated hospital shall not be
13 guaranteed that its inpatient and outpatient hospital payments
14 will equal or exceed the amount of its hospital assessment.
15 "§40-26B-77.1.
16 "(a) Beginning on October 1, 2016, and ending on
17 September 30, ~~2019~~ 2022, publicly owned and state-owned
18 hospitals will begin making intergovernmental transfers to the
19 Medicaid Agency. If Medicaid begins making payments pursuant
20 to Title 22, Chapter 6, Article 9, on or before September 30,
21 2019, the amount of these intergovernmental transfers shall be
22 calculated for each hospital using a pro-rata basis based on
23 the hospitals IGT contribution for FY 2018 in relation to the
24 total IGT for FY 2018. Total IGTs for any given fiscal year
25 shall not exceed $333,434,048 with the exception of an
26 adjustment as described in subsection (d) and to the extent
27 adjustments are required to comply with federal regulations or

terms of any waiver issued by the federal government relating to the state's Medicaid program. The total intergovernmental transfers shall equal and shall not exceed the amount of state funds necessary for the Medicaid Agency to obtain only those federal matching funds necessary to pay publicly owned and state-owned hospitals for hospital payments. If Medicaid does not begin making payments pursuant to Title 22, Chapter 6, Article 9, on or before September 30, ~~2019~~ 2022, the total intergovernmental transfers shall equal the amount of state funds necessary for the agency to obtain only those federal matching funds necessary to pay publicly owned and state-owned hospitals for hospital payments.

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

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

"(d) If Medicaid begins making payments pursuant to Title 22, Chapter 6, Article 9, on or before September 30, 2019, notwithstanding any other provision of this article, a private hospital that is subject to payment of the assessment pursuant to this article at the beginning of a state fiscal year, but during the state fiscal year experiences a change in status so that it is subject to the intergovernmental transfer computed under this article, it shall continue to pay the same

amount as calculated in Section 40-26B-71, but in the form of an intergovernmental transfer.

"§40-26B-79.

"If Medicaid begins making payments pursuant to Title 22, Chapter 6, Article 9, on or before September 30, 2019, Medicaid shall pay hospitals as a base amount for state fiscal year 2019, for inpatient services an APR-DRG payment that is equal to the total modeled UPL submitted and approved by CMS during fiscal year 2019. If Medicaid begins making payments pursuant to Title 22, Chapter 6, Article 9, on a date other than the first day of fiscal year 2019, there shall be no retroactive adjustment to payments already made to hospitals in accordance with the approved State Plan. If approved by CMS, Medicaid shall publish the APR-DRG rates for each hospital prior to September 30, 2018. If Medicaid does not begin making payments pursuant to Title 22, Chapter 6, Article 9, on or before September 30, ~~2019~~ 2022, Medicaid shall pay hospitals as a base amount for fiscal years ~~2019~~ 2020, 2021, and 2022, the total inpatient payments made by Medicaid during state fiscal year 2007, divided by the total patient days paid in state fiscal year 2007, multiplied by patient days paid during fiscal years ~~2019~~ 2020, 2021, and 2022. This payment to be paid using Medicaid's published check write table is in addition to any hospital access payments Medicaid may elect to pay hospitals inpatient payments other than per diems and access payments, if Medicaid does not make payments pursuant to Title 22, Chapter 6, Article 9 in fiscal

1 year 2019, only if the Hospital Services and Reimbursement
2 Panel approves the change in Hospital Payments.
3 "§40-26B-80.
4 "If Medicaid begins making payments pursuant to
5 Title 22, Chapter 6, Article 9, on or before September 30,
6 2019, Medicaid shall pay hospitals as a base amount for fiscal
7 year 2019 for outpatient services based upon a fee for service
8 and access payments or OPPS schedule. If Medicaid begins
9 making payments pursuant to Title 22, Chapter 6, Article 9, on
10 a date other than the first day of fiscal year ~~2019~~ 2022,
11 there shall be no retroactive adjustment to payments already
12 made to hospitals in accordance with the approved State Plan.
13 "Should Medicaid implement OPPS, the total amount
14 budgeted (total base rate) for OPPS shall not be less than the
15 total outpatient UPL.
16 "If Medicaid does not begin making payments pursuant
17 to Title 22, Chapter 6, Article 9, on or before September 30,
18 2019, Medicaid shall pay hospitals as a base amount for fiscal
19 year 2019 for outpatient services, based upon an outpatient
20 fee schedule in existence on September 30, 2018. Hospital
21 outpatient base payments shall be in addition to any hospital
22 access payments or other payments described in this article.
23 "§40-26B-81.
24 "(a) If Medicaid begins making payments pursuant to
25 Title 22, Chapter 6, Article 9, on or before September 30,
26 2019, to preserve and improve access to hospital services, for
27 hospital inpatient and outpatient services rendered on or

after October 1, 2018, Medicaid shall consider the published inpatient and outpatient rates as defined in Sections 40-26B-79 and 40-26B-80 as the minimum payment allowed.

"(b) If Medicaid does not begin making payments pursuant to Title 22, Chapter 6, Article 9, on or before September 30, 2019, the aggregate hospital access payment amount is an amount equal to the upper payment limit, less total hospital base payments determined under this article. All publicly, state-owned, and privately operated hospitals shall be eligible for inpatient and outpatient hospital access payments for fiscal years ~~2019~~ 2020, 2021, and 2022, as set forth in this article.

"(1) In addition to any other funds paid to hospitals for inpatient hospital services to Medicaid patients, each eligible hospital shall receive inpatient hospital access payments each state fiscal year. Publicly and state-owned hospitals shall receive total payments, including hospital base payments, that, in the aggregate, equal the upper payment limit for publicly and state-owned hospitals, until the Hospital Assessment Account is exhausted. Privately operated hospitals shall receive total payments, including hospital base payments that, in the aggregate, equal the upper payment limit for privately operated hospitals, until the Hospital Assessment Account is exhausted. Any intergovernmental transfers and hospital provider taxes shall be used only as moneys paid to hospitals.

1 "(2) Inpatient hospital access payments shall be
2 made on a quarterly basis.
3 "(3) In addition to any other funds paid to
4 hospitals for outpatient hospital services to Medicaid
5 patients, each eligible hospital shall receive outpatient
6 hospital access payments each state fiscal year. Publicly and
7 state-owned hospitals shall receive payments, including
8 hospital base payments, that, in the aggregate, equal the
9 upper payment limit for publicly and state-owned hospitals,
10 until the Hospital Assessment Account is exhausted. Privately
11 operated hospitals shall receive payments, including hospital
12 base payments that, in the aggregate, equal the upper payment
13 limit for privately operated hospitals, until the Hospital
14 Assessment Account is exhausted.
15 "(4) Outpatient hospital access payments shall be
16 made on a quarterly basis.
17 "(c) A hospital access payment shall not be used to
18 offset any other payment by Medicaid for hospital inpatient or
19 outpatient services to Medicaid beneficiaries, including,
20 without limitation, any fee-for-service, per diem, private or
21 public hospital inpatient adjustment, or hospital cost
22 settlement payment.
23 "(d) The specific hospital payments for publicly,
24 state-owned, and privately operated hospitals shall be
25 described in the state plan amendment to be submitted to and
26 approved by the Centers for Medicare and Medicaid Services.
27 "§40-26B-82.

1 "(a) The assessment imposed under this article shall
2 not take effect or shall cease to be imposed and any moneys
3 remaining in the Hospital Assessment Account in the Alabama
4 Medicaid Program Trust Fund shall be refunded to hospitals in
5 proportion to the amounts paid by them if any of the following
6 occur:
7 "(1) Expenditures for hospital inpatient and
8 outpatient services paid for by the Alabama Medicaid Program
9 for fiscal years ~~2019~~ 2020, 2021, and 2022, are less than the
10 amount paid during fiscal year 2017. Reimbursement rates under
11 this article for fiscal years ~~2019~~ 2020, 2021, and 2022, are
12 less than the rates approved by CMS in Sections 40-26B-79 and
13 40-26B-80.
14 "(2) Medicaid makes changes in its rules that reduce
15 hospital inpatient payment rates, outpatient payment rates, or
16 adjustment payments, including any cost settlement protocol,
17 that were in effect on September 30, ~~2018~~ 2019.
18 "(3) The inpatient or outpatient hospital access
19 payments required under this article are changed or the
20 assessments imposed or certified public expenditures, or
21 intergovernmental transfers recognized under this article are
22 not eligible for federal matching funds under Title XIX of the
23 Social Security Act, 42 U.S.C. §1396 et seq., or 42 U.S.C.
24 §1397aa et seq.
25 "(4) The Medicaid Agency contracts with an alternate
26 care provider in a Medicaid region under any terms other than
27 the following:

1 "a. If a regional care organization or alternate
2 care provider failed to provide adequate service pursuant to
3 its contract, or had its certification terminated, or if the
4 Medicaid Agency could not award a contract to a regional care
5 organization under its quality, efficiency, and cost
6 conditions, or if no organization had been awarded a regional
7 care organization certificate by October 1, 2016, or the date
8 of extension as set out in Act No. 2016-377, then the Medicaid
9 Agency shall first offer a contract, to resume interrupted
10 service or to assume service in the region, under its quality,
11 efficiency and cost conditions to any other regional care
12 organization that Medicaid judged would meet its quality
13 criteria.
14 "b. If by October 1, 2014, no organization had a
15 probationary regional care organization certification in a
16 region. However, the Medicaid Agency could extend the deadline
17 until January 1, 2015, if it judged an organization was making
18 reasonable progress toward getting probationary certification.
19 If Medicaid judged that no organization in the region likely
20 would achieve probationary certification by January 1, 2015,
21 then the Medicaid Agency shall let any organization with
22 probationary or full regional care organization certification
23 apply to develop a regional care organization in the region.
24 If at least one organization made such an application, the
25 agency no sooner than October 1, 2015, would decide whether
26 any organization could reasonably be expected to become a

1 fully certified regional care organization in the region and
2 its initial region.
3 "c. If an organization lost its probationary
4 certification before October 1, 2016, or the date of the
5 extension as set out in Act No. 2016-377, Medicaid shall offer
6 any other organization with probationary or full regional care
7 organization certification, which it judged could successfully
8 provide service in the region and its initial region, the
9 opportunity to serve Medicaid beneficiaries in both regions.
10 "d. Medicaid may contract with an alternate care
11 provider only if no regional care organization accepted a
12 contract under the terms of paragraph a., or no organization
13 was granted the opportunity to develop a regional care
14 organization in the affected region under the terms of
15 paragraph b., or no organization was granted the opportunity
16 to serve Medicaid beneficiaries under the terms of paragraph
17 c.
18 "e. The Medicaid Agency may contract with an
19 alternate care provider under the terms of paragraph d. only
20 if, in the judgment of the Medicaid Agency, care of Medicaid
21 enrollees would be better, more efficient, and less costly
22 than under the then existing care delivery system. Medicaid
23 may contract with more than one alternate care provider in a
24 Medicaid region.
25 "f.1. If the Medicaid Agency were to contract with
26 an alternate care provider under the terms of this section,
27 that provider would have to pay reimbursements for hospital

1 inpatient or outpatient care at rates at least equal to those
2 published as of October 1, 2017, pursuant to Sections
3 40-26B-79 and 40-26B-80.
4 "2. If more than a year had elapsed since the
5 Medicaid Agency directly paid reimbursements to hospitals, the
6 minimum reimbursement rates paid by the alternate care
7 provider would have to be changed to reflect any percentage
8 increase in the national medical consumer price index minus
9 100 basis points.
10 "(b)(1) The assessment imposed under this article
11 shall not take effect or shall cease to be imposed if the
12 assessment is determined to be an impermissible tax under
13 Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.
14 "(2) Moneys in the Hospital Assessment Account in
15 the Alabama Medicaid Program Trust Fund derived from
16 assessments imposed before the determination described in
17 subdivision (1) shall be disbursed under this article to the
18 extent federal matching is not reduced due to the
19 impermissibility of the assessments, and any remaining moneys
20 shall be refunded to hospitals in proportion to the amounts
21 paid by them.
22 "§40-26B-84.
23 "This article shall be of no effect if federal
24 financial participation under Title XIX of the Social Security
25 Act is not available to Medicaid at the approved federal
26 medical assistance percentage, established under Section 1905

1 of the Social Security Act, for the state fiscal years ~~2019~~
2 2020 2021, and 2022.
3 "§40-26B-85.
4 "Except for Medicaid expansion under the Affordable
5 Care Act; as amended, ~~If~~ if Medicaid elects to liberalize the
6 eligibility criteria for individuals who apply for Medicaid
7 services or to expand or increase the medical assistance
8 benefits as defined in Title XIX of the Social Security Act
9 which it currently provides to Medicaid beneficiaries, the
10 state share of such funds necessary to increase medical
11 assistance benefits or allow more persons to become eligible
12 for Medicaid shall only be appropriated from the State General
13 Fund and not from any funds produced or segregated for
14 hospital payments under this article.
15 "§40-26B-88.
16 "This article shall automatically terminate and
17 become null and void by its own terms on September 30, ~~2019~~
18 2022, unless a later act is enacted extending the article to
19 future state fiscal years."
20 Section 2. This act shall become effective on
21 October 1, 2019.