

1 HB176
2 197311-2
3 By Representative Clouse
4 RFD: Ways and Means General Fund
5 First Read: 19-MAR-19

1
2 ENROLLED, An Act,

3 To amend Sections 40-26B-71, 40-26B-73, 40-26B-77.1,
4 40-26B-79, 40-26B-80, 40-26B-81, 40-26B-82, 40-26B-84,
5 40-26B-85, and 40-26B-88, Code of Alabama 1975, to extend the
6 private hospital assessment and Medicaid funding program for
7 fiscal years 2020, 2021, and 2022.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 40-26B-71, 40-26B-73,
10 40-26B-77.1, 40-26B-79, 40-26B-80, 40-26B-81, 40-26B-82,
11 40-26B-84, 40-26B-85, and 40-26B-88, Code of Alabama 1975, are
12 amended to read as follows:

13 "§40-26B-71.

14 "(a) For state fiscal years 2019 2020, 2021, and
15 2022, an assessment is imposed on each privately operated
16 hospital in the amount of 5.75 6.00 percent of net patient
17 revenue in fiscal year 2016 2017, which shall be reviewed and
18 updated, annually subject to limitations in this Article on
19 the use of funds in the Hospital Assessment Account. The
20 assessment is a cost of doing business as a privately operated
21 hospital in the State of Alabama. Annually, the Medicaid
22 Agency shall make a determination of whether changes in
23 federal law or regulation have adversely affected hospital
24 Medicaid reimbursement during the most recently completed
25 fiscal year, or a reduction in payment rates has occurred. If

1 the agency determines that adverse impact to hospital Medicaid
2 reimbursement has occurred, or will occur, the agency shall
3 report its findings to the Chairman of the House Ways and
4 Means General Fund Committee who shall propose an amendment to
5 Article 5, ~~of chapter~~ Chapter 26B, Title 40 Code of Alabama
6 1975 during any legislative session prior to the start of the
7 upcoming fiscal year from the year the report was made, to
8 address the adverse impact. The assessment imposed on each
9 private hospital under this section shall be reduced pro rata,
10 if the total disproportionate share allotment for all
11 hospitals is reduced before or during the ~~2019~~ 2022 fiscal
12 year, as a result of any action by Alabama Medicaid Agency or
13 the Centers for Medicare and Medicaid Services, and only to
14 the extent that the Hospital Assessment Account is more than
15 necessary to fund some or all hospital payments under the
16 Article.

17 " (b) (1) For state fiscal years ~~2019~~ 2020, 2021, and
18 2022, net patient revenue shall be determined using the data
19 from each private hospital's fiscal year ending ~~2016~~ 2017
20 Medicare Cost Report contained in the Centers for Medicare and
21 Medicaid Services Healthcare Cost Information System, which
22 shall be reviewed and updated annually subject to limitations
23 in this Article on the use of funds in the Hospital Assessment
24 Account. ~~(2)~~ The Medicare Cost Report for ~~2016~~ 2017 for each
25 private hospital, which shall be reviewed and updated

1 annually, shall be used for fiscal years ~~2019~~ 2020, 2021, and
2 2022. If the Medicare Cost Report is not available in Centers
3 for Medicare and Medicaid Services' Healthcare Cost Report
4 Information System, the hospital shall submit a copy to the
5 department to determine the hospital's net patient revenue for
6 fiscal year ~~2016~~ 2017.

7 ~~"(3)~~ (2) If a privately operated hospital commenced
8 operations after the due date for a ~~2016~~ 2017 Medicare Cost
9 Report, the hospital shall submit its most recent Medicare
10 Cost Report to the department in order to allow the department
11 to determine the hospital's net patient revenue.

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

16 "§40-26B-73.

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

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

23 "(3) If the Medicaid Agency begins making payments
24 under Title 22, Chapter 6, Article 9, while Act 2017-382 is in
25 force, the hospital intergovernmental transfers imposed under

1 this article shall be deposited into the Hospital Assessment
2 Account.

3 "(b) Moneys in the Hospital Assessment Account shall
4 consist of:

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

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

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

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

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

20 "(d) Moneys in the Hospital Assessment Account shall
21 not be used to replace other general revenues appropriated and
22 funded by the Legislature or other revenues used to support
23 Medicaid.

24 "(e) The Hospital Assessment Account shall be exempt
25 from budgetary cuts, reductions, or eliminations caused by a

1 deficiency of State General Fund revenues to the extent
2 permissible under Amendment 26 to the Constitution of Alabama
3 of 1901, now appearing as Section 213 of the Official
4 Recompilation of the Constitution of Alabama of 1901, as
5 amended.

6 " (f) (1) Except as necessary to reimburse any funds
7 borrowed to supplement funds in the Hospital Assessment
8 Account, the moneys in the Hospital Assessment Account shall
9 be used only as follows:

10 "a. To make public, private, and state inpatient and
11 outpatient hospital payments.

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

14 (2)a. The Hospital Assessment Account shall retain
15 account balances remaining each fiscal year.

16 "b. On September 30, 2014 and each year thereafter,
17 any positive balance remaining in the Hospital Assessment
18 Account which was not used by Alabama Medicaid to obtain
19 federal matching funds and paid out for hospital payments,
20 shall be factored into the calculation of any new assessment
21 rate by reducing the amount of hospital assessment funds that
22 must be generated during the next fiscal year. If there is no
23 new assessment beginning October 1, ~~2019~~ 2022, the funds
24 remaining shall be refunded to the hospital that paid the

1 assessment or made an intergovernmental transfer in proportion
2 to the amount remaining.

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

6 "§40-26B-77.1.

7 "(a) Beginning on October 1, 2016, and ending on
8 September 30, ~~2019~~ 2022, publicly owned and state-owned
9 hospitals will begin making intergovernmental transfers to the
10 Medicaid Agency. If Medicaid begins making payments pursuant
11 to Title 22, Chapter 6, Article 9, on or before September 30,
12 2019, the amount of these intergovernmental transfers shall be
13 calculated for each hospital using a pro-rata basis based on
14 the hospitals IGT contribution for FY 2018 in relation to the
15 total IGT for FY 2018. Total IGTs for any given fiscal year
16 shall not exceed \$333,434,048 with the exception of an
17 adjustment as described in subsection (d) and to the extent
18 adjustments are required to comply with federal regulations or
19 terms of any waiver issued by the federal government relating
20 to the state's Medicaid program. The total intergovernmental
21 transfers shall equal and shall not exceed the amount of state
22 funds necessary for the Medicaid Agency to obtain only those
23 federal matching funds necessary to pay publicly owned and
24 state-owned hospitals for hospital payments. If Medicaid does
25 not begin making payments pursuant to Title 22, Chapter 6,

1 Article 9, on or before September 30, ~~2019~~ 2022, the total
 2 intergovernmental transfers shall equal the amount of state
 3 funds necessary for the agency to obtain only those federal
 4 matching funds necessary to pay publicly owned and state-owned
 5 hospitals for hospital 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 2019, notwithstanding any other provision of this article, a
 16 private hospital that is subject to payment of the assessment
 17 pursuant to this article at the beginning of a state fiscal
 18 year, but during the state fiscal year experiences a change in
 19 status so that it is subject to the intergovernmental transfer
 20 computed under this article, it shall continue to pay the same
 21 amount as calculated in Section 40-26B-71, but in the form of
 22 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,

1 2019, Medicaid shall pay hospitals as a base amount for state
2 fiscal year 2019, for inpatient services an APR-DRG payment
3 that is equal to the total modeled UPL submitted and approved
4 by CMS during fiscal year 2019. If Medicaid begins making
5 payments pursuant to Title 22, Chapter 6, Article 9, on a date
6 other than the first day of fiscal year 2019, there shall be
7 no retroactive adjustment to payments already made to
8 hospitals in accordance with the approved State Plan. If
9 approved by CMS, Medicaid shall publish the APR-DRG rates for
10 each hospital prior to September 30, 2018. If Medicaid does
11 not begin making payments pursuant to Title 22, Chapter 6,
12 Article 9, on or before September 30, ~~2019~~ 2022, Medicaid
13 shall pay hospitals as a base amount for fiscal years ~~2019~~
14 2020, 2021, and 2022, the total inpatient payments made by
15 Medicaid during state fiscal year 2007, divided by the total
16 patient days paid in state fiscal year 2007, multiplied by
17 patient days paid during fiscal years ~~2019~~ 2020, 2021, and
18 2022. This payment to be paid using Medicaid's published check
19 write table is in addition to any hospital access payments
20 Medicaid may elect to pay hospitals inpatient payments other
21 than per diems and access payments, if Medicaid does not make
22 payments pursuant to Title 22, Chapter 6, Article 9 in fiscal
23 year 2019, only if the Hospital Services and Reimbursement
24 Panel approves the change in Hospital Payments.

25 "§40-26B-80.

1 "If Medicaid begins making payments pursuant to
2 Title 22, Chapter 6, Article 9, on or before September 30,
3 2019, Medicaid shall pay hospitals as a base amount for fiscal
4 year 2019 for outpatient services based upon a fee for service
5 and access payments or OPPS schedule. If Medicaid begins
6 making payments pursuant to Title 22, Chapter 6, Article 9, on
7 a date other than the first day of fiscal year ~~2019~~ 2022,
8 there shall be no retroactive adjustment to payments already
9 made to hospitals in accordance with the approved State Plan.

10 "Should Medicaid implement OPPS, the total amount
11 budgeted (total base rate) for OPPS shall not be less than the
12 total outpatient UPL.

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

20 "§40-26B-81.

21 "(a) If Medicaid begins making payments pursuant to
22 Title 22, Chapter 6, Article 9, on or before September 30,
23 2019, to preserve and improve access to hospital services, for
24 hospital inpatient and outpatient services rendered on or
25 after October 1, 2018, Medicaid shall consider the published

1 inpatient and outpatient rates as defined in Sections
2 40-26B-79 and 40-26B-80 as the minimum payment allowed.

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

12 "(1) In addition to any other funds paid to
13 hospitals for inpatient hospital services to Medicaid
14 patients, each eligible hospital shall receive inpatient
15 hospital access payments each state fiscal year. Publicly and
16 state-owned hospitals shall receive total payments, including
17 hospital base payments, that, in the aggregate, equal the
18 upper payment limit for publicly and state-owned hospitals,
19 until the Hospital Assessment Account is exhausted. Privately
20 operated hospitals shall receive total payments, including
21 hospital base payments that, in the aggregate, equal the upper
22 payment limit for privately operated hospitals, until the
23 Hospital Assessment Account is exhausted. Any
24 intergovernmental transfers and hospital provider taxes shall
25 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

1 described in the state plan amendment to be submitted to and
 2 approved by the Centers for Medicare and Medicaid Services.

3 "§40-26B-82.

4 "(a) The assessment imposed under this article shall
 5 not take effect or shall cease to be imposed and any moneys
 6 remaining in the Hospital Assessment Account in the Alabama
 7 Medicaid Program Trust Fund shall be refunded to hospitals in
 8 proportion to the amounts paid by them if any of the following
 9 occur:

10 "(1) Expenditures for hospital inpatient and
 11 outpatient services paid for by the Alabama Medicaid Program
 12 for fiscal years 2019 2020, 2021, and 2022, are less than the
 13 amount paid during fiscal year 2017. Reimbursement rates under
 14 this article for fiscal years 2019 2020, 2021, and 2022, are
 15 less than the rates approved by CMS in Sections 40-26B-79 and
 16 40-26B-80.

17 "(2) Medicaid makes changes in its rules that reduce
 18 hospital inpatient payment rates, outpatient payment rates, or
 19 adjustment payments, including any cost settlement protocol,
 20 that were in effect on September 30, ~~2018~~ 2019.

21 "(3) The inpatient or outpatient hospital access
 22 payments required under this article are changed or the
 23 assessments imposed or certified public expenditures, or
 24 intergovernmental transfers recognized under this article are
 25 not eligible for federal matching funds under Title XIX of the

1 Social Security Act, 42 U.S.C. §1396 et seq., or 42 U.S.C.
2 §1397aa et seq.

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

6 "a. If a regional care organization or alternate
7 care provider failed to provide adequate service pursuant to
8 its contract, or had its certification terminated, or if the
9 Medicaid Agency could not award a contract to a regional care
10 organization under its quality, efficiency, and cost
11 conditions, or if no organization had been awarded a regional
12 care organization certificate by October 1, 2016, or the date
13 of extension as set out in Act No. 2016-377, then the Medicaid
14 Agency shall first offer a contract, to resume interrupted
15 service or to assume service in the region, under its quality,
16 efficiency and cost conditions to any other regional care
17 organization that Medicaid judged would meet its quality
18 criteria.

19 "b. If by October 1, 2014, no organization had a
20 probationary regional care organization certification in a
21 region. However, the Medicaid Agency could extend the deadline
22 until January 1, 2015, if it judged an organization was making
23 reasonable progress toward getting probationary certification.
24 If Medicaid judged that no organization in the region likely
25 would achieve probationary certification by January 1, 2015,

1 then the Medicaid Agency shall let any organization with
2 probationary or full regional care organization certification
3 apply to develop a regional care organization in the region.
4 If at least one organization made such an application, the
5 agency no sooner than October 1, 2015, would decide whether
6 any organization could reasonably be expected to become a
7 fully certified regional care organization in the region and
8 its initial region.

9 "c. If an organization lost its probationary
10 certification before October 1, 2016, or the date of the
11 extension as set out in Act No. 2016-377, Medicaid shall offer
12 any other organization with probationary or full regional care
13 organization certification, which it judged could successfully
14 provide service in the region and its initial region, the
15 opportunity to serve Medicaid beneficiaries in both regions.

16 "d. Medicaid may contract with an alternate care
17 provider only if no regional care organization accepted a
18 contract under the terms of paragraph a., or no organization
19 was granted the opportunity to develop a regional care
20 organization in the affected region under the terms of
21 paragraph b., or no organization was granted the opportunity
22 to serve Medicaid beneficiaries under the terms of paragraph
23 c.

24 "e. The Medicaid Agency may contract with an
25 alternate care provider under the terms of paragraph d. only

1 if, in the judgment of the Medicaid Agency, care of Medicaid
2 enrollees would be better, more efficient, and less costly
3 than under the then existing care delivery system. Medicaid
4 may contract with more than one alternate care provider in a
5 Medicaid region.

6 "f.1. If the Medicaid Agency were to contract with
7 an alternate care provider under the terms of this section,
8 that provider would have to pay reimbursements for hospital
9 inpatient or outpatient care at rates at least equal to those
10 published as of October 1, 2017, pursuant to Sections
11 40-26B-79 and 40-26B-80.

12 "2. If more than a year had elapsed since the
13 Medicaid Agency directly paid reimbursements to hospitals, the
14 minimum reimbursement rates paid by the alternate care
15 provider would have to be changed to reflect any percentage
16 increase in the national medical consumer price index minus
17 100 basis points.

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

22 "(2) Moneys in the Hospital Assessment Account in
23 the Alabama Medicaid Program Trust Fund derived from
24 assessments imposed before the determination described in
25 subdivision (1) shall be disbursed under this article to the

1 extent federal matching is not reduced due to the
2 impermissibility of the assessments, and any remaining moneys
3 shall be refunded to hospitals in proportion to the amounts
4 paid by them.

5 "§40-26B-84.

6 "This article shall be of no effect if federal
7 financial participation under Title XIX of the Social Security
8 Act is not available to Medicaid at the approved federal
9 medical assistance percentage, established under Section 1905
10 of the Social Security Act, for the state fiscal years 2019
11 2020 2021, and 2022.

12 "§40-26B-85.

13 "Except for Medicaid expansion under the Affordable
14 Care Act; as amended, if if Medicaid elects to liberalize the
15 eligibility criteria for individuals who apply for Medicaid
16 services or to expand or increase the medical assistance
17 benefits as defined in Title XIX of the Social Security Act
18 which it currently provides to Medicaid beneficiaries, the
19 state share of such funds necessary to increase medical
20 assistance benefits or allow more persons to become eligible
21 for Medicaid shall only be appropriated from the State General
22 Fund and not from any funds produced or segregated for
23 hospital payments under this article.

24 "§40-26B-88.

1 "This article shall automatically terminate and
2 become null and void by its own terms on September 30, ~~2019~~
3 2022, unless a later act is enacted extending the article to
4 future state fiscal years."

5 Section 2. This act shall become effective on
6 October 1, 2019.

