1 HB322

2 190496-2

3 By Representative Clouse

4 RFD: Ways and Means General Fund

5 First Read: 30-JAN-18

ENROLLED, 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, and 40-26B-88, Code of Alabama 1975, to extend the private hospital assessment and Medicaid funding program for fiscal year 2019.

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

"§40-26B-71.

"(a) For state fiscal year ~~2018~~ 2019, an assessment is imposed on each privately operated hospital in the amount of ~~5.50~~ 5.75 percent of net patient revenue in fiscal year ~~2014~~ 2016. The assessment is a cost of doing business as a privately operated hospital in the State of Alabama. Annually, the Medicaid Agency shall make a determination of whether changes in federal law or regulation have adversely affected hospital Medicaid reimbursement ~~since October 1, 2015~~ during the most recently completed fiscal year, or a reduction in ~~capitation~~ payment rates has occurred. If the agency determines that adverse impact to hospital Medicaid reimbursement has occurred, or will occur, the agency shall

report its findings to the Chairman of the House Ways and Means General Fund Committee who shall propose an amendment to ~~Act 2013-246~~ Article 5 of Title 40 of the Alabama Code during any legislative session prior to the start of the upcoming fiscal year from the year the report was made, to address the adverse impact. The assessment imposed on each private hospital under this section shall be reduced pro rata, if the total disproportionate share allotment for all hospitals is reduced before or during the ~~2018~~ 2019 fiscal year, as a result of any action by Alabama Medicaid Agency or the Centers for Medicare and Medicaid Services.

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

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

"(3) If a privately operated hospital commenced operations after the due date for a ~~2014~~ 2016 Medicare Cost

1 Report, the hospital shall submit its most recent Medicare
2 Cost Report to the department in order to allow the department
3 to determine the hospital's net patient revenue.
4 "(c) This article does not authorize a unit of
5 county or local government to license for revenue or impose a
6 tax or assessment upon hospitals or a tax or assessment
7 measured by the income or earnings of a hospital.
8 "§40-26B-73.
9 "(a)(1) There is created within the Health Care
10 Trust Fund referenced in Article 3, Chapter 6, Title 22, a
11 designated account known as the Hospital Assessment Account.
12 "(2) The hospital assessments imposed under this
13 article shall be deposited into the Hospital Assessment
14 Account.
15 "(3) If the Medicaid Agency begins making payments
16 under Title 22, Chapter 6, Article 9, while Act 2017-382 is in
17 force, the hospital intergovernmental transfers imposed under
18 this article shall be deposited into the Hospital Assessment
19 Account.
20 "(b) Moneys in the Hospital Assessment Account shall
21 consist of:
22 "(1) All moneys collected or received by the
23 department from privately operated hospital assessments
24 imposed under this article;

1 "(2) Any interest or penalties levied in conjunction
2 with the administration of this article; and
3 "(3) Any appropriations, transfers, donations,
4 gifts, or moneys from other sources, as applicable; and
5 "(4) If the Medicaid Agency begins making payments
6 under Title 22, Chapter 6, Article 9, while Act 2017-382 is in
7 force, all moneys collected or received by the department from
8 publicly owned and state-owned hospital intergovernmental
9 transfers imposed under this article.
10 "(c) The Hospital Assessment Account shall be
11 separate and distinct from the State General Fund and shall be
12 supplementary to the Health Care Trust Fund.
13 "(d) Moneys in the Hospital Assessment Account shall
14 not be used to replace other general revenues appropriated and
15 funded by the Legislature or other revenues used to support
16 Medicaid.
17 "(e) The Hospital Assessment Account shall be exempt
18 from budgetary cuts, reductions, or eliminations caused by a
19 deficiency of State General Fund revenues to the extent
20 permissible under Amendment 26 to the Constitution of Alabama
21 of 1901, now appearing as Section 213 of the Official
22 Recompilation of the Constitution of Alabama of 1901, as
23 amended.
24 "(f)(1) Except as necessary to reimburse any funds
25 borrowed to supplement funds in the Hospital Assessment

1 Account, the moneys in the Hospital Assessment Account shall
2 be used only as follows:
3 "a. To make public, private, and state inpatient and
4 outpatient hospital payments.
5 "b. To reimburse moneys collected by the department
6 from hospitals through error or mistake or under this article.
7 "(2)a. The Hospital Assessment Account shall retain
8 account balances remaining each fiscal year.
9 "b. On September 30, 2014 and each year thereafter,
10 any positive balance remaining in the Hospital Assessment
11 Account which was not used by Alabama Medicaid to obtain
12 federal matching funds and paid out for hospital payments,
13 shall be factored into the calculation of any new assessment
14 rate by reducing the amount of hospital assessment funds that
15 must be generated during the next fiscal year. If there is no
16 new assessment beginning October 1, ~~2018~~ 2019, the funds
17 remaining shall be refunded to the hospital that paid the
18 assessment or made an intergovernmental transfer in proportion
19 to the amount remaining.
20 "(3) A privately operated hospital shall not be
21 guaranteed that its inpatient and outpatient hospital payments
22 will equal or exceed the amount of its hospital assessment.
23 "§40-26B-77.1.
24 "(a) Beginning on October 1, 2016, and ending on
25 September 30, ~~2018~~ 2019, publicly owned and state-owned

hospitals will begin making intergovernmental transfers to the Medicaid Agency. If Medicaid begins making payments pursuant to Title 22, Chapter 6, Article 9, on or before ~~October 1, 2018~~ September 30, 2019, the amount of these intergovernmental transfers shall be calculated for each hospital using a pro-rata basis based on the hospitals IGT contribution for FY ~~2017~~ 2018 in relation to the total IGT for FY ~~2017~~ 2018. Total IGTs for any given fiscal year shall not exceed $333,434,048 with the exception of an adjustment as described in subsection (d) and to the extent 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, ~~2018~~ 2019, 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).

1 "(c) If a publicly or state-owned hospital commences
2 operations after October 1, 2013, the hospital shall commence
3 making intergovernmental transfers to the Medicaid Agency in
4 the first full month of operation of the hospital after
5 October 1, 2013.
6 "(d) If Medicaid begins making payments pursuant to
7 Title 22, Chapter 6, Article 9, on or before September 30,
8 ~~2018~~ 2019, notwithstanding any other provision of this
9 article, a private hospital that is subject to payment of the
10 assessment pursuant to this article at the beginning of a
11 state fiscal year, but during the state fiscal year
12 experiences a change in status so that it is subject to the
13 intergovernmental transfer computed under this article, it
14 shall continue to pay the same amount as calculated in Section
15 40-26B-71, but in the form of an Intergovernmental Transfer.
16 "§40-26B-79.
17 "If Medicaid begins making payments pursuant to
18 Title 22, Chapter 6, Article 9, on or before September 30,
19 ~~2018~~ 2019, Medicaid shall pay hospitals as a base amount for
20 state fiscal year ~~2018~~ 2019, for inpatient services an APR-DRG
21 payment that is equal to the total modeled UPL submitted and
22 approved by CMS during fiscal year ~~2017~~ 2019. If Medicaid
23 begins making payments pursuant to Title 22, Chapter 6,
24 Article 9, on a date other than the first day of fiscal year
25 ~~2018~~ 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, ~~2017~~ 2018. If Medicaid does not begin making payments pursuant to Title 22, Chapter 6, Article 9, on or before September 30, ~~2018~~ 2019, Medicaid shall pay hospitals as a base amount for fiscal year ~~2018~~ 2019 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 year ~~2018~~ 2019. 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 year 2017 or~~ fiscal year ~~2018~~ 2019, only if the Hospital Services and Reimbursement Panel approves the change in Hospital Payments.

"§40-26B-80.

"If Medicaid begins making payments pursuant to Title 22, Chapter 6, Article 9, on or before September 30, ~~2018~~ 2019, Medicaid shall pay hospitals as a base amount for fiscal year ~~2018~~ 2019 for outpatient services based upon a fee for service and access payments or OPPS schedule. If Medicaid begins making payments pursuant to Title 22, Chapter 6,

Article 9, on a date other than the first day of fiscal year ~~2018~~ 2019, there shall be no retroactive adjustment to payments already made to hospitals in accordance with the approved State Plan.

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

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

"§40-26B-81.

"(a) If Medicaid begins making payments pursuant to Title 22, Chapter 6, Article 9, on or before September 30, ~~2018~~ 2019, to preserve and improve access to hospital services, for hospital inpatient and outpatient services rendered on or after October 1, ~~2016~~ 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.

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

1 state-owned hospitals shall receive payments, including
2 hospital base payments, that, in the aggregate, equal the
3 upper payment limit for publicly and state-owned hospitals.
4 Privately operated hospitals shall receive payments, including
5 hospital base payments that, in the aggregate, equal the upper
6 payment limit for privately operated hospitals.
7 "(4) Outpatient hospital access payments shall be
8 made on a quarterly basis.
9 "(c) A hospital access payment shall not be used to
10 offset any other payment by Medicaid for hospital inpatient or
11 outpatient services to Medicaid beneficiaries, including,
12 without limitation, any fee-for-service, per diem, private or
13 public hospital inpatient adjustment, or hospital cost
14 settlement payment.
15 "(d) The specific hospital payments for publicly,
16 state-owned, and privately operated hospitals shall be
17 described in the state plan amendment to be submitted to and
18 approved by the Centers for Medicare and Medicaid Services.
19 "§40-26B-82.
20 "(a) The assessment imposed under this article shall
21 not take effect or shall cease to be imposed and any moneys
22 remaining in the Hospital Assessment Account in the Alabama
23 Medicaid Program Trust Fund shall be refunded to hospitals in
24 proportion to the amounts paid by them if any of the following
25 occur:

"(1) Expenditures for hospital inpatient and outpatient services paid for by the Alabama Medicaid Program for fiscal year ~~2018~~ 2019 are less than the amount paid during fiscal year 2017. Reimbursement rates under this article for fiscal year ~~2018~~ 2019 are less than the rates approved by CMS in Sections 40-26B-79 and 40-26B-80.

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

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

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

"a. If a regional care organization or alternate care provider failed to provide adequate service pursuant to its contract, or had its certification terminated, or if the Medicaid Agency could not award a contract to a regional care organization under its quality, efficiency, and cost

1 conditions, or if no organization had been awarded a regional
2 care organization certificate by October 1, 2016, or the date
3 of extension as set out in Act No. 2016-377, then the Medicaid
4 Agency shall first offer a contract, to resume interrupted
5 service or to assume service in the region, under its quality,
6 efficiency and cost conditions to any other regional care
7 organization that Medicaid judged would meet its quality
8 criteria.
9 "b. If by October 1, 2014, no organization had a
10 probationary regional care organization certification in a
11 region. However, the Medicaid Agency could extend the deadline
12 until January 1, 2015, if it judged an organization was making
13 reasonable progress toward getting probationary certification.
14 If Medicaid judged that no organization in the region likely
15 would achieve probationary certification by January 1, 2015,
16 then the Medicaid Agency shall let any organization with
17 probationary or full regional care organization certification
18 apply to develop a regional care organization in the region.
19 If at least one organization made such an application, the
20 agency no sooner than October 1, 2015, would decide whether
21 any organization could reasonably be expected to become a
22 fully certified regional care organization in the region and
23 its initial region.
24 "c. If an organization lost its probationary
25 certification before October 1, 2016, or the date of the

extension as set out in Act No. 2016-377, Medicaid shall offer any other organization with probationary or full regional care organization certification, which it judged could successfully provide service in the region and its initial region, the opportunity to serve Medicaid beneficiaries in both regions.

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

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

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

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

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

"(2) Moneys in the Hospital Assessment Account in the Alabama Medicaid Program Trust Fund derived from assessments imposed before the determination described in subdivision (1) shall be disbursed under this article to the extent federal matching is not reduced due to the impermissibility of the assessments, and any remaining moneys shall be refunded to hospitals in proportion to the amounts paid by them.

"§40-26B-84.

"This article shall be of no effect if federal financial participation under Title XIX of the Social Security Act is not available to Medicaid at the approved federal medical assistance percentage, established under Section 1905 of the Social Security Act, for the state fiscal year ~~2018~~ <u>2019</u>.

1 "§40-26B-88.

2 "This article shall automatically terminate and

3 become null and void by its own terms on September 30, ~~2018~~

4 2019, unless a later act is enacted extending the article to

5 future state fiscal years."

6 Section 2. This Act shall become effective on

7 October 1 2018.

1
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3 ______________________________________

4 Speaker of the House of Representatives

5 ____

6 President and Presiding Officer of the Senate

7 House of Representatives
8 I hereby certify that the within Act originated in
9 and was passed by the House 13-FEB-18.
10
11 Jeff Woodard
12 Clerk
13

14 ___________________________
15
16 Senate 28-MAR-18 Passed
17