

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 562 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/5/09

A Bill

SENATE BILL 582

5 By: Senators Teague, G. Baker, Bledsoe, Bookout, Broadway, Bryles, Glover, Horn, G. Jeffress, J.
6 Jeffress, B. Johnson, D. Johnson, J. Key, Luker, Madison, Miller, Salmon, T. Smith, J. Taylor, R.
7 Thompson, Trusty, D. Wyatt
8 By: Representatives Reep, Pennartz, Betts, M. Burris, Cash, Cheatham, Cole, Cooper, Dunn, J. Edwards,
9 Flowers, Garner, Gaskill, Glidewell, R. Green, Hall, House, Ingram, Kidd, Maxwell, Moore, Overbey,
10 Pierce, Powers, Rainey, Reynolds, J. Roebuck, T. Rogers, Saunders, Shelby, Stewart, Tyler, Webb, Wells,
11 B. Wilkins
12
13

For An Act To Be Entitled

14 AN ACT TO LEVY AN ASSESSMENT FEE ON HOSPITALS TO
15 IMPROVE HEALTH CARE ACCESS FOR THE CITIZENS OF
16 ARKANSAS; AND FOR OTHER PURPOSES.
17

Subtitle

18 AN ACT TO LEVY AN ASSESSMENT FEE ON
19 HOSPITALS TO IMPROVE HEALTH CARE ACCESS
20 FOR THE CITIZENS OF ARKANSAS.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 20, Chapter 77 is amended to add an
28 additional subchapter to read as follows:

29 20-77-1901. Definitions.

30 As used in this subchapter:

31 (1) "Division" means the Division of Medical Services of the
32 Department of Human Services;

33 (2) "Hospital" means a health care facility licensed as a
34 hospital by the Division of Health Facility Services of the Department of
35 Health under § 20-9-213;



1 (3) "Medicare Cost Report" means CMS-2552-96, the Cost Report
2 for Electronic Filing of Hospitals, as it existed on January 1, 2009;

3 (4) "Net patient revenue" means the amount calculated in
4 accordance with generally accepted accounting principles for hospitals that
5 is reported on Worksheet G-3, Column 1, Line 3, of the Medicare Cost Report
6 adjusted to exclude nonhospital revenue;

7 (5)(A) "Non-state-government-owned hospital" means a hospital
8 that is owned and operated by an agency or a unit of a county or municipal
9 government, including without limitation a hospital owned and operated by:

10 (i) A county under § 14-263- 101 et seq. ; or

11 (ii) A city under § 14-264- 101 et seq..

12 (B) "Non-state-government-owned-hospital" does not include
13 a hospital that is owned by an agency or unit of county or municipal
14 government but is contracted or leased to an individual, firm, or corporation
15 that is not a government entity;

16 (6) "Privately operated hospital" means a licensed hospital in
17 Arkansas other than:

18 (A) Any hospital that is owned and operated by the federal
19 government;

20 (B) Any hospital that is an agency or a unit of state
21 government, including without limitation a hospital owned by a state agency
22 or a state university; and

23 (C) Any non-state government owned hospital;

24 (7) "Specialty hospital" means an acute care general hospital
25 that:

26 (D) Limits services primarily to children and qualifies as
27 exempt from the Medicare prospective payment system regulation; or

28 (E) Is primarily or exclusively engaged in the care and
29 treatment of patients with cardiac conditions;

30 (8) "State plan amendment" means a change or update to the state
31 Medicaid plan;

32 (9) "Upper payment limit" means the maximum ceiling imposed by
33 federal regulation on privately owned hospital Medicaid reimbursement for
34 inpatient services under 42 C.F.R § 447.272 and outpatient services under 42
35 C.F.R § 447.321; and

36 (10) "Upper payment limit gap" means the difference between the

1 upper payment limit and Medicaid payments not financed using hospital
2 assessments made to all privately operated hospitals.

3 (A) The upper payment limit gap shall be calculated
4 separately for hospital inpatient and outpatient services.

5 (B) Medicaid disproportionate share payments shall be
6 excluded from the calculation of the upper payment limit gap.

7
8 20-77-1902. Assessment.

9 (a)(1) An assessment is imposed on each hospital except those exempted
10 under § 20-77-1905 for each state fiscal year in an amount calculated as a
11 percentage of each hospital's net patient revenue.

12 (2) The assessment rate shall be determined annually based upon
13 the percentage of net patient revenue needed to generate an amount up to the
14 non-federal portion of the upper payment limit gap plus the annual fee to be
15 paid to Medicaid under § 20-77-1904(f)(1)(C), but in no case greater than one
16 percent (1%) of net patient revenue.

17 (b)(1)(A) Except as set forth in subdivision (b)(1)(B) or (b)(1)(C),
18 for state fiscal year 2010, net patient revenue shall be determined using the
19 data from each hospital's fiscal year 2007 Medicare Cost Report contained in
20 the Centers for Medicare and Medicaid Services' Healthcare Cost Report
21 Information System file dated June 30, 2008.

22 (B) If a hospital's fiscal year 2007 Medicare Cost Report
23 is not contained in the Centers for Medicare and Medicaid Services'
24 Healthcare Cost Report Information System file dated June 30, 2008, the
25 hospital shall submit a copy of the hospital's 2007 Medicare Cost Report to
26 the division in order to allow the division to determine the hospital's net
27 patient revenue for state fiscal year 2010.

28 (C) If a hospital commenced operations after the due date
29 for a 2007 Medicare Cost Report, the hospital shall submit its 2008 Medicare
30 Cost Report to the division in order to allow the division to determine the
31 hospital's net patient revenue for state fiscal year 2010.

32 (2) For each subsequent state fiscal year, net patient revenue
33 shall be calculated using the data from each hospital's most recent audited
34 Medicare Cost Report available at the time of the calculation.

35 (c) This subchapter does not authorize a unit of county or local
36 government to license for revenue or impose a tax or assessment upon

1 hospitals or a tax or assessment measured by the income or earnings of a
2 hospital.

3
4 20-77-1903. Program administration.

5 (a) The Director of the Division of Medical Services of the Department
6 of Human Services shall administer the assessment program created in this
7 subchapter.

8 (b)(1) The division shall adopt rules to implement this subchapter.

9 (2) Unless otherwise provided in this subchapter, the rules
10 adopted under subdivision (b)(1) of this section shall not grant any
11 exceptions to or exemptions from the hospital assessment imposed under § 20-
12 77-1902.

13 (3) The rules adopted under subdivision (b)(1) of this section
14 shall include forms for:

15 (A) The proper imposition and collection of the assessment
16 imposed under § 20-77-1902;

17 (B) Enforcement of this subchapter, including without
18 limitation letters of caution or sanctions; and

19 (C) Reporting of net patient revenue.

20 (c) To the extent practicable, the division shall administer and
21 enforce this subchapter and collect the assessments, interest, and penalty
22 assessments imposed under this subchapter using procedures generally employed
23 in the administration of the division's other powers, duties, and functions.

24
25 20-77-1904. Hospital Assessment Account.

26 (a)(1) There is created within the Arkansas Medicaid Program Trust
27 Fund, § 19-5-985, a designated account known as the Hospital Assessment
28 Account.

29 (2) The hospital assessments imposed under § 20-77-1902 shall be
30 deposited into the Hospital Assessment Account.

31 (b) Moneys in the Hospital Assessment Account shall consist of:

32 (1) All moneys collected or received by the division from
33 hospital assessments imposed under § 20-77-1902;

34 (2) Any interest or penalties levied in conjunction with the
35 administration of this subchapter; and

36 (3) Any appropriations, transfers, donations, gifts, or moneys

1 from other sources, as applicable.

2 (c) The Hospital Assessment Account shall be separate and distinct
3 from the general fund and shall be supplementary to the Arkansas Medicaid
4 Program Trust Fund.

5 (d) Moneys in the Hospital Assessment Account shall not be used to
6 replace other general revenues appropriated and funded by the General
7 Assembly or other revenues used to support Medicaid.

8 (e) The Hospital Assessment Account shall be exempt from budgetary
9 cuts, reductions, or eliminations caused by a deficiency of general revenues.

10 (f)(1) Except as necessary to reimburse any funds borrowed to
11 supplement funds in the Hospital Assessment Account, the moneys in the
12 Hospital Assessment Account shall be used only as follows:

13 (A) To make inpatient and outpatient hospital access
14 payments under § 20-77-1908; or

15 (B) To reimburse moneys collected by the division from
16 hospitals through error or mistake or under this subchapter; or

17 (C) To pay an annual fee to the Division of Medical
18 Services of the Department of Human Services in the amount of three and
19 three-quarters percent (3.75%) of the assessments collected from hospitals
20 under § 20-77-1902 each state fiscal year.

21 (2)(A) The Hospital Assessment Account shall retain account
22 balances remaining each fiscal year.

23 (B) At the end of each fiscal year, any positive balance
24 remaining in the Hospital Assessment Account shall be factored into the
25 calculation of the new assessment rate by reducing the amount of hospital
26 assessment funds that must be generated during the subsequent fiscal year.

27 (3) A hospital shall not be guaranteed that its inpatient and
28 outpatient hospital access payments will equal or exceed the amount of its
29 hospital assessment.

30
31 20-77-1905. Exemptions.

32 (a) The following hospitals shall be exempt from the assessment
33 imposed under § 20-77-1902 unless the exemption is adjudged to be
34 unconstitutional or otherwise determined to be invalid:

35 (1) Hospitals that are not privately operated hospitals;

36 (2) Hospitals licensed by the Department of Health as

1 rehabilitation hospitals; and

2 (3) Specialty hospitals.

3 (b) If an exemption under subdivision (a) of this section is adjudged
4 to be unconstitutional or otherwise determined to be invalid, the applicable
5 hospitals shall pay the assessment imposed under § 20-77-1902.

6
7 20-77-1906. Quarterly notice and collection.

8 (a)(1) The annual assessment imposed under § 20-77-1902 shall be due
9 and payable on a quarterly basis.

10 (2) However, an installment payment of an assessment imposed by
11 § 20-77-1902 shall not be due and payable until:

12 (A) The division issues the written notice required by §
13 20-77-1907(a) stating that the payment methodologies to hospitals required
14 under § 20-77-1908 have been approved by the Centers for Medicare and
15 Medicaid Services and the waiver under 42 C.F.R. § 433.68 for the assessment
16 imposed by § 20-77-1902, if necessary, has been granted by the Centers for
17 Medicare and Medicaid Services; and

18 (B) The thirty-day verification period required by § 20-
19 77-1907(b) has expired; and

20 (C) The division has made all quarterly installments of
21 inpatient and outpatient hospital access payments that were otherwise due
22 under § 20-77-1908 consistent with the effective date of the approved state
23 plan amendment and waiver.

24 (3) After the initial installment has been paid under this
25 section, each subsequent quarterly installment payment of an assessment
26 imposed by § 20-77-1902 shall be due and payable within ten (10) business
27 days after the hospital has received its inpatient and outpatient hospital
28 access payments due under § 20-77-1908 for the applicable quarter.

29 (b) The payment by the hospital of the assessment created in this
30 subchapter shall be reported as an allowable cost for Medicaid reimbursement
31 purposes.

32 (c)(1) If a hospital fails to timely pay the full amount of a
33 quarterly assessment, the division shall add to the assessment:

34 (A) A penalty assessment equal to five percent (5%) of the
35 quarterly amount not paid on or before the due date; and

36 (B) On the last day of each quarter after the due date

1 until the assessed amount and the penalty imposed under subdivision (c)(1)(A)
2 of this section are paid in full, an additional five percent (5%) penalty
3 assessment on any unpaid quarterly and unpaid penalty assessment amounts.

4 (2) Payments shall be credited first to unpaid quarterly
5 amounts, rather than to penalty or interest amounts, beginning with the most
6 delinquent installment.

7
8 20-77-1907. Notice of assessment.

9 (a)(1) The division shall send a notice of assessment to each hospital
10 informing the hospital of the assessment rate, the hospital's net patient
11 revenue calculation, and the estimated assessment amount owed by the hospital
12 for the applicable fiscal year.

13 (2) Except as set forth in subdivision (a)(3) of this section,
14 annual notices of assessment shall be sent at least forty-five (45) days
15 before the due date for the first quarterly assessment payment of each fiscal
16 year.

17 (3) The first notice of assessment shall be sent within forty-
18 five (45) days after receipt by the division of notification from the Centers
19 for Medicare and Medicaid Services that the payments required under § 20-77-
20 1908 and, if necessary, the waiver granted under 42 C.F.R. § 433.68 have been
21 approved.

22 (b) The hospital shall have thirty (30) days from the date of its
23 receipt of a notice of assessment to review and verify the assessment rate,
24 the hospital's net patient revenue calculation, and the estimated assessment
25 amount.

26 (c)(1) If a hospital provider operates, conducts, or maintains more
27 than one (1) hospital in the state, the hospital provider shall pay the
28 assessment for each hospital separately.

29 (2) However, if the hospital provider operates more than one (1)
30 hospital under one (1) Medicaid provider number, the hospital provider may
31 pay the assessment for the hospitals in the aggregate.

32 (d)(1) For a hospital subject to the assessment imposed under § 20-77-
33 1902 that ceases to conduct hospital operations or maintain its state license
34 or did not conduct hospital operations throughout a state fiscal year, the
35 assessment for the state fiscal year in which the cessation occurs shall be
36 adjusted by multiplying the annual assessment computed under § 20-77-1902 by

1 a fraction, the numerator of which is the number of days during the year that
2 the hospital operated and the denominator of which is three hundred sixty-
3 five (365).

4 (2)(A) Immediately upon ceasing to operate, the hospital shall
5 pay the adjusted assessment for that state fiscal year to the extent not
6 previously paid.

7 (B) The hospital also shall receive payments under § 20-
8 77-1908 for the state fiscal year in which the cessation occurs, which shall
9 be adjusted by the same fraction as its annual assessment.

10 (e) A hospital subject to an assessment under this subchapter that has
11 not been previously licensed as a hospital in Arkansas and that commences
12 hospital operations during a state fiscal year shall pay the required
13 assessment computed under § 20-77-1902 and shall be eligible for hospital
14 access payments under § 20-77-1908 on the date specified in rules promulgated
15 by the division under the Arkansas Administrative Procedure Act, § 25-15-201
16 et seq.

17 (f) A hospital that is exempted from payment of the assessment under §
18 20-77-1905 at the beginning of a state fiscal year but during the state
19 fiscal year experiences a change in status so that it becomes subject to the
20 assessment shall pay the required assessment computed under § 20-77-1902 and
21 shall be eligible for hospital access payments under § 20-77-1908 on the date
22 specified in rules promulgated by the division under the Arkansas
23 Administrative Procedure Act, § 25-15-201 et seq.

24 (g) A hospital that is subject to payment of the assessment computed
25 under § 20-77-1902 at the beginning of a state fiscal year but during the
26 state fiscal year experiences a change in status so that it becomes exempted
27 from payment under § 20-77-1905 shall be relieved of its obligation to pay
28 the hospital assessment and shall become ineligible for hospital access
29 payments under § 20-77-1908 on the date specified in rules promulgated by the
30 division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

31
32 20-77-1908. Medicaid hospital access payments.

33 (a) To preserve and improve access to hospital services, for hospital
34 inpatient and outpatient services rendered on or after July 1, 2009, the
35 division shall make hospital access payments as set forth in this section.

36 (b) The division shall calculate the hospital access payment amount up

1 to but not to exceed the upper payment limit gap for inpatient and outpatient
2 services.

3 (c) All hospitals shall be eligible for inpatient and outpatient
4 hospital access payments each state fiscal year as set forth in this
5 subsection other than hospitals described in § 20-77-1905.

6 (1)(A) A portion of the hospital access payment amount, not to
7 exceed the upper payment limit gap for inpatient services, shall be
8 designated as the inpatient hospital access payment pool.

9 (B) In addition to any other funds paid to hospitals for
10 inpatient hospital services to Medicaid patients, each eligible hospital
11 shall receive inpatient hospital access payments each state fiscal year equal
12 to the hospital's pro rata share of the inpatient hospital access payment
13 pool based upon the hospital's Medicaid discharges for the most recent
14 audited fiscal period divided by the total number of Medicaid discharges of
15 all eligible hospitals.

16 (C) Inpatient hospital access payments shall be made on a
17 quarterly basis; and

18 (2)(A) A portion of the hospital access payment amount, not to
19 exceed the upper payment limit gap for outpatient services, shall be
20 designated as the outpatient hospital access payment pool.

21 (B)(i) In addition to any other funds paid to hospitals
22 for outpatient hospital services to Medicaid patients, each eligible hospital
23 shall receive outpatient hospital access payments each state fiscal year
24 equal to a percentage adjustment determined by dividing the outpatient
25 hospital access payment pool by Medicaid payments for outpatient services
26 paid to all eligible hospitals.

27 (ii) The percentage adjustment shall be multiplied
28 by the Medicaid payments for outpatient services paid to the eligible
29 hospital in order to determine the amount of each eligible hospital's
30 outpatient hospital access payment.

31 (C) Outpatient hospital access payments shall be made on a
32 quarterly basis.

33 (d) A hospital access payment shall not be used to offset any other
34 payment by Medicaid for hospital inpatient or outpatient services to Medicaid
35 beneficiaries, including without limitation any fee-for-service, per diem,
36 private hospital inpatient adjustment, or cost settlement payment.

1
2 20-77-1909. Effectiveness and cessation.

3 (a) The assessment imposed under § 20-77-1902 shall not take effect or
4 shall cease to be imposed and any moneys remaining in the Hospital Assessment
5 Account in the Arkansas Medicaid Program Trust Fund shall be refunded to
6 hospitals in proportion to the amounts paid by them if:

7 (1) The appropriations for any state fiscal year from the
8 General Revenue Fund Account of the State Apportionment Fund for hospital
9 payments under the state Medicaid program are less than the preceding state
10 fiscal year;

11 (2) The division makes changes in its rules that reduce hospital
12 inpatient payment rates, outpatient payment rates, or adjustment payments,
13 including any cost settlement protocol, that were in effect on January 1,
14 2009; or

15 (3) The inpatient or outpatient hospital access payments
16 required under § 20-77-1908 are changed or the assessments imposed under §
17 20-77-1902 are not eligible for federal matching funds under Title XIX of the
18 Social Security Act, 42 U.S.C. § 1396 et seq., or Title XXI of the Social
19 Security Act, 42 U.S.C. § 1397aa et seq.

20 (b)(1) The assessment imposed under § 20-77-1902 shall not take effect
21 or shall cease to be imposed if the assessment is determined to be an
22 impermissible tax under Title XIX of the Social Security Act, 42 U.S.C. §
23 1396 et seq.

24 (2) Moneys in the Hospital Assessment Account in the Arkansas
25 Medicaid Program Trust Fund derived from assessments imposed before the
26 determination described in subdivision (b)(1) of this section shall be
27 disbursed under § 20-77-1908 to the extent federal matching is not reduced
28 due to the impermissibility of the assessments, and any remaining moneys
29 shall be refunded to hospitals in proportion to the amounts paid by them.

30
31 20-77-1910. State plan amendment.

32 (a) The division shall file with the Centers for Medicare and Medicaid
33 Services a state plan amendment to implement the requirements of this
34 subchapter, including the payment of hospital access payments under § 20-77-
35 1908 no later than forty-five (45) days after the effective date of this
36 subchapter.

