

By: Representatives Hamilton
(6th), Jennings, Mayhall

To: Medicaid; Ways and Means

HOUSE BILL NO. 11

1 AN ACT TO AMEND SECTION 43-13-145, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR AN ANNUAL ASSESSMENT IMPOSED ON EACH HOSPITAL
3 LICENSED IN THE STATE BASED UPON NON-MEDICARE HOSPITAL INPATIENT
4 DAYS IN THE 2006 MEDICARE COST REPORT WITH CERTAIN CONDITIONS; TO
5 PROVIDE THAT THE PRESENT PER BED ASSESSMENT LEVIED ON HOSPITALS
6 SHALL BE DELETED UNLESS THE HOSPITAL ASSESSMENT DOES NOT TAKE
7 EFFECT; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** Section 43-13-145, Mississippi Code of 1972, is
10 amended as follows:

11 43-13-145. (1) (a) Upon each nursing facility licensed by
12 the State of Mississippi, there is levied an assessment in an
13 amount set by the division, equal to the maximum rate allowed by
14 federal law or regulation, for each licensed and occupied bed of
15 the facility.

16 (b) A nursing facility is exempt from the assessment
17 levied under this subsection if the facility is operated under the
18 direction and control of * * * the United States Veterans
19 Administration or other agency or department of the United States
20 government.

21 * * *

22 (2) (a) Upon each intermediate care facility for the
23 mentally retarded licensed by the State of Mississippi, there is
24 levied an assessment in an amount set by the division, equal to
25 the maximum rate allowed by federal law or regulation, for each
26 licensed and occupied bed of the facility.

27 (b) An intermediate care facility for the mentally
28 retarded is exempt from the assessment levied under this
29 subsection if the facility is operated under the direction and



30 control of * * * the United States Veterans Administration or
31 other agency or department of the United States government.

32 * * *

33 (3) (a) Upon each psychiatric residential treatment
34 facility licensed by the State of Mississippi, there is levied an
35 assessment in an amount set by the division, equal to the maximum
36 rate allowed by federal law or regulation, for each licensed and
37 occupied bed of the facility.

38 (b) A psychiatric residential treatment facility is
39 exempt from the assessment levied under this subsection if the
40 facility is operated under the direction and control of:

41 (i) The United States Veterans Administration or
42 other agency or department of the United States government;

43 (ii) The University of Mississippi Medical Center;

44 (iii) A state agency or a state facility that
45 either provides its own state match through intergovernmental
46 transfer or certification of funds to the division.

47 **[Until June 30, 2013, unless the conditions specified in**
48 **paragraph (f) below are met, this subsection (4) shall read as**
49 **follows:]**

50 (4) Hospital Assessment.

51 (a) Subject to and upon fulfillment of the requirements
52 and conditions of paragraph (f) below, effective for state fiscal
53 years 2009 through 2013 an annual assessment on each hospital
54 licensed in the state is imposed on each non-Medicare hospital
55 inpatient day as defined below at a rate that is determined by
56 dividing One Hundred Four Million Dollars (\$104,000,000.00) plus
57 the non-federal share necessary to maximize the DSH/UPL payment as
58 described in the 2008 Medicaid State Plan Amendment by the total
59 number of non-Medicare hospital inpatient days as defined below
60 for all licensed Mississippi hospitals.

61 (b) Payment and definitions.



62 (i) Payment. Upon approval of the State Plan
63 Amendment for the division's DSH/UPL payment methodology by the
64 Centers for Medicare and Medicaid Services (CMS), the assessment
65 shall be paid in three (3) installments due no later than ten (10)
66 days before the payment of the Disproportionate Share Hospital
67 (DSH) and Medicare Upper Payment Limits (UPL) payments required by
68 Section 43-13-117(18), which shall be paid during the second,
69 third and fourth quarters of the state fiscal year.

70 (ii) Definitions. For purposes of this subsection
71 (4):

72 1. "Non-Medicare hospital inpatient day"
73 means total hospital inpatient days including subcomponent days
74 but excluding Medicare inpatient days as identified on Worksheet
75 S-3, Part 1, column 6 row 12, column 6 row 14.00, and column 6 row
76 14.01, less column 6 row 3 and column 6 row 4 of the most recently
77 approved 2006 hospital Medicare Cost Report filed as of May 31,
78 2008.

79 2. "Hospital inpatient day" means the number
80 of days of care charged to a beneficiary for inpatient hospital
81 care services in units of full days. A day begins at midnight and
82 ends twenty-four (24) hours later. A part of a day, including the
83 day of admission and day on which a patient returns from leave of
84 absence, counts as a full day. However, the day of discharge,
85 death, or a day on which a patient begins a leave of absence is
86 not counted as a day unless discharge or death occur on the day of
87 admission. If admission and discharge or death occur on the same
88 day, the day is considered a day of admission and counts as one
89 (1) inpatient day.

90 3. "Subcomponent inpatient day" means the
91 number of days of care charged to a beneficiary for inpatient
92 hospital rehabilitation and psychiatric care services in units of
93 full days. A day begins at midnight and ends twenty-four (24)
94 hours later. A part of a day, including the day of admission and



95 day on which a patient returns from leave of absence, counts as a
96 full day. However, the day of discharge, death, or a day on which
97 a patient begins a leave of absence is not counted as a day unless
98 discharge or death occur on the day of admission. If admission
99 and discharge or death occur on the same day, the day is
100 considered a day of admission and counts as one (1) subcomponent
101 inpatient day.

102 (c) The assessment provided in this paragraph is
103 intended to satisfy and not be in addition to the assessment and
104 intergovernmental transfers provided in Section 43-13-117(18).
105 Nothing in this act shall be construed to authorize any state
106 agency, division or department, or county, municipality or other
107 local governmental unit to license for revenue, levy or impose any
108 other tax, fee or assessment upon hospitals in this state not
109 authorized by a specific statute.

110 (d) Hospitals operated by the United States Department
111 of Veterans Affairs shall not be subject to the hospital
112 assessment provided in this subsection.

113 (e) Multihospital systems, closure, merger and new
114 hospitals.

115 (i) If a hospital conducts, operates or maintains
116 more than one (1) hospital licensed by the State Department of
117 Health, the provider shall pay the hospital assessment for each
118 hospital separately.

119 (ii) Notwithstanding any other provision in this
120 section, if a hospital subject to this assessment operates or
121 conducts business only for a portion of a fiscal year, the
122 assessment for the state fiscal year shall be adjusted by
123 multiplying the assessment by a fraction, the numerator of which
124 is the number of days in the year during which the hospital
125 operates, and the denominator of which is three hundred sixty-five
126 (365). Immediately upon ceasing to operate, the hospital shall



127 pay the assessment for the year as so adjusted (to the extent not
128 previously paid).

129 (f) Applicability.

130 The hospital assessment imposed by this subsection shall not
131 take effect and/or shall cease to be imposed if:

132 (i) The assessment is determined to be an
133 impermissible tax under Title XIX of the Social Security Act; or,

134 (ii) CMS does not approve the division's 2008
135 Medicaid State Plan Amendment for its methodology for DSH and UPL
136 payments to hospitals under Section 43-13-117(18).

137 (g) Monies in the Medical Care Fund derived from
138 hospital assessments imposed before that determination shall be
139 disbursed in accordance with the State Plan to the extent that
140 federal matching is not reduced due to the impermissibility of the
141 assessments, and any remaining monies shall be refunded to
142 hospitals in proportion to the amounts paid by them.

143 This subsection (4) is repealed on June 30, 2013.

144 **[If the hospital assessment imposed on non-Medicare hospital**
145 **inpatient days provided in subsection (4) above is not approved by**
146 **the Centers for Medicare and Medicaid Services or otherwise does**
147 **not take effect, subsection (4) shall read as follows:]**

148 (4) (a) Upon each hospital licensed by the State of
149 Mississippi, there is levied an assessment in the amount of Three
150 Dollars and Twenty-five Cents (\$3.25) per bed for each licensed
151 inpatient acute care bed of the hospital.

152 (b) A hospital is exempt from the assessment levied
153 under this subsection if the hospital is operated under the
154 direction and control of:

155 (i) The United States Veterans Administration or
156 other agency or department of the United States government;

157 (ii) The University of Mississippi Medical Center;

158 or



159 (iii) A state agency or a state facility that
160 either provides its own state match through intergovernmental
161 transfer or certification of funds to the division.

162 This subsection (4) is repealed on June 30, 2013.

163 (5) Each health care facility that is subject to the
164 provisions of this section shall keep and preserve such suitable
165 books and records as may be necessary to determine the amount of
166 assessment for which it is liable under this section. The books
167 and records shall be kept and preserved for a period of not less
168 than five (5) years, and those books and records shall be open for
169 examination during business hours by the division, the State Tax
170 Commission, the Office of the Attorney General and the State
171 Department of Health.

172 (6) The assessment levied under this section shall be
173 collected by the division each month beginning on March 31, 2005.

174 (7) All assessments collected under this section shall be
175 deposited in the Medical Care Fund created by Section 43-13-143.

176 (8) The assessment levied under this section shall be in
177 addition to any other assessments, taxes or fees levied by law,
178 and the assessment shall constitute a debt due the State of
179 Mississippi from the time the assessment is due until it is paid.

180 (9) (a) If a health care facility that is liable for
181 payment of an assessment levied by the division does not pay the
182 assessment when it is due, the division shall give written notice
183 to the health care facility by certified or registered mail
184 demanding payment of the assessment within ten (10) days from the
185 date of delivery of the notice. If the health care facility
186 fails or refuses to pay the assessment after receiving the notice
187 and demand from the division, the division shall withhold from any
188 Medicaid reimbursement payments that are due to the health care
189 facility the amount of the unpaid assessment and a penalty of ten
190 percent (10%) of the amount of the assessment, plus the legal rate
191 of interest until the assessment is paid in full. If the health



192 care facility does not participate in the Medicaid program, the
193 division shall turn over to the Office of the Attorney General the
194 collection of the unpaid assessment by civil action. In any such
195 civil action, the Office of the Attorney General shall collect the
196 amount of the unpaid assessment and a penalty of ten percent (10%)
197 of the amount of the assessment, plus the legal rate of interest
198 until the assessment is paid in full.

199 (b) As an additional or alternative method for
200 collecting unpaid assessments levied by the division, if a health
201 care facility fails or refuses to pay the assessment after
202 receiving notice and demand from the division, the division may
203 file a notice of a tax lien with the chancery clerk of the county
204 in which the health care facility is located, for the amount of
205 the unpaid assessment and a penalty of ten percent (10%) of the
206 amount of the assessment, plus the legal rate of interest until
207 the assessment is paid in full. Immediately upon receipt of
208 notice of the tax lien for the assessment, the chancery clerk
209 shall forward the notice to the circuit clerk, who shall enter the
210 notice of the tax lien as a judgment upon the judgment roll and
211 show in the appropriate columns the name of the health care
212 facility as judgment debtor, the name of the division as judgment
213 creditor, the amount of the unpaid assessment, and the date and
214 time of enrollment. The judgment shall be valid as against
215 mortgagees, pledgees, entrusters, purchasers, judgment creditors
216 and other persons from the time of filing with the clerk. The
217 amount of the judgment shall be a debt due the State of
218 Mississippi and remain a lien upon the tangible property of the
219 health care facility until the judgment is satisfied. The
220 judgment shall be the equivalent of any enrolled judgment of a
221 court of record and shall serve as authority for the issuance of
222 writs of execution, writs of attachment or other remedial writs.

223 **SECTION 2.** This act shall take effect and be in force from
224 and after July 1, 2008.

