

By: Senator(s) Fillingane

To: Medicaid

SENATE BILL NO. 2391

1 AN ACT TO AMEND SECTION 43-13-145, MISSISSIPPI CODE OF 1972,
 2 TO REVISE HOSPITAL TAX ASSESSMENT RATES TO BE A PERCENTAGE OF NET
 3 REVENUE; TO PROVIDE THAT A LICENSED PSYCHIATRIC HOSPITAL SHALL BE
 4 ASSESSED IN THE AMOUNT OF 40% OF NET PATIENT REVENUE, THAT
 5 LICENSED HOSPITALS, OTHER THAN PSYCHIATRIC HOSPITALS, SHALL BE
 6 ASSESSED IN THE AMOUNT OF 1% OF NET PATIENT REVENUE, UP TO A
 7 MAXIMUM OF \$20,000,000.00 OF NET PATIENT REVENUE, IN THE AMOUNT OF
 8 9.28% OF NET PATIENT REVENUE IN EXCESS OF \$20,000,000.00 UP TO A
 9 MAXIMUM OF \$200,000,000.00 OF NET PATIENT REVENUE WITH ADDITIONAL
 10 ASSESSMENT RATES FOR REVENUE IN EXCESS OF \$200,000,000.00, AND
 11 THAT HOSPITALS OPERATED BY THE UNITED STATES DEPARTMENT OF
 12 VETERANS AFFAIRS AND HOSPITALS OPERATED BY THE STATE DEPARTMENT OF
 13 MENTAL HEALTH SHALL BE EXEMPT FROM SUCH ASSESSMENTS; TO DELETE AND
 14 DEFINE TERMS; AND FOR RELATED PURPOSES.

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

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

18 43-13-145. (1) (a) Upon each nursing facility licensed by
 19 the State of Mississippi, there is levied an assessment in an
 20 amount set by the division, equal to the maximum rate allowed by
 21 federal law or regulation, for each licensed and occupied bed of
 22 the facility.



23 (b) A nursing facility is exempt from the assessment
24 levied under this subsection if the facility is operated under the
25 direction and control of:

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

28 (ii) The State Veterans Affairs Board.

29 (2) (a) Upon each intermediate care facility for
30 individuals with intellectual disabilities licensed by the State
31 of Mississippi, there is levied an assessment in an amount set by
32 the division, equal to the maximum rate allowed by federal law or
33 regulation, for each licensed and occupied bed of the facility.

34 (b) An intermediate care facility for individuals with
35 intellectual disabilities is exempt from the assessment levied
36 under this subsection if the facility is operated under the
37 direction and control of:

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

40 (ii) The State Veterans Affairs Board; or

41 (iii) The University of Mississippi Medical
42 Center.

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



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

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

53 (ii) The University of Mississippi Medical Center;
54 or

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

58 (4) Hospital assessment.

59 (a) * * * Subject to and upon fulfillment of the
60 requirements and conditions of paragraph (f) * * * of this
61 subsection, and notwithstanding any other provisions of this
62 section, an annual assessment on each hospital licensed in the
63 state, except as provided in paragraph (d) of this subsection, is
64 imposed on an amount calculated as a percentage of each * * *
65 hospital's net patient revenue, as defined below and at * * *
66 the * * * respective rates set forth below. The total tax
67 assessed will encompass the nonfederal share necessary to maximize
68 the Disproportionate Share Hospital (DSH) and * * * Mississippi
69 Hospital Access Program * * * (MHAP) payments and such other
70 hospital supplemental payments as may be developed pursuant to
71 Section 43-13-117(A)(18) * * *. If the state-matching funds
72 percentage for the Mississippi Medicaid program is sixteen percent



73 (16%) or less, the sum used in the formula under this * * *
74 paragraph shall be Seventy-four Million Dollars (\$74,000,000.00).
75 If the state-matching funds percentage for the Mississippi
76 Medicaid program is twenty-four percent (24%) or higher, the sum
77 used in the formula under this * * * paragraph shall be One
78 Hundred Four Million Dollars (\$104,000,000.00). If the
79 state-matching funds percentage for the Mississippi Medicaid
80 program is between sixteen percent (16%) and twenty-four percent
81 (24%), the sum used in the formula under this * * * paragraph
82 shall be a pro rata amount determined as follows: the current
83 state-matching funds percentage rate minus sixteen percent (16%)
84 divided by eight percent (8%) multiplied by Thirty Million Dollars
85 (\$30,000,000.00) and add that amount to Seventy-four Million
86 Dollars (\$74,000,000.00). However, no assessment in a quarter
87 under this * * * paragraph may exceed the assessment in the
88 previous quarter by more than Three Million Seven Hundred Fifty
89 Thousand Dollars (\$3,750,000.00) (which would be Fifteen Million
90 Dollars (\$15,000,000.00) on an annualized basis). The division
91 shall publish the state-matching funds percentage rate applicable
92 to the Mississippi Medicaid program on the tenth day of the first
93 month of each quarter and the assessment determined under the
94 formula prescribed above shall be applicable in the quarter
95 following any adjustment in that state-matching funds percentage
96 rate. The division shall notify each hospital licensed in the
97 state as to any projected increases or decreases in the assessment



98 determined under this * * * paragraph. However, if the Centers
99 for Medicare and Medicaid Services (CMS) does not approve the
100 provision in Section 43-13-117(39) requiring the division to
101 reimburse crossover claims for inpatient hospital services and
102 crossover claims covered under Medicare Part B for dually eligible
103 beneficiaries in the same manner that was in effect on January 1,
104 2008, the sum that otherwise would have been used in the formula
105 under this * * * paragraph shall be reduced by Seven Million
106 Dollars (\$7,000,000.00).

107 (* * * i) * * * Each licensed psychiatric hospital
108 shall be assessed in the amount of forty percent (40%) of net
109 patient revenue.

110 (* * * ii) * * * Each licensed hospital, other
111 than psychiatric hospitals, shall be assessed in the amount of one
112 percent (1%) of net patient revenue, up to a maximum of Twenty
113 Million Dollars (\$20,000,000.00) of net patient revenue.

114 (iii) Each licensed hospital, other than
115 psychiatric hospitals, shall be assessed in the amount of nine and
116 twenty-eight one hundredths percent (9.28%) of net patient revenue
117 in excess of Twenty Million Dollars (\$20,000,000.00) up to a
118 maximum of Two Hundred Million Dollars (\$200,000,000.00) of net
119 patient revenue.

120 (iv) Each licensed hospital, other than
121 psychiatric hospitals, shall be assessed on net patient revenue in
122 excess of Two Hundred Million Dollars (\$200,000,000.00)



123 proportionately in an amount to be determined annually to fund the
124 remaining balance of the assessment as provided for in paragraph
125 (a) of this subsection. The additional annual assessment shall be
126 based on a uniform percentage of each of such licensed hospital's
127 net patient revenue in excess of Two Hundred Million Dollars
128 (\$200,000,000.00).

129 (v) Hospitals operated by the United States
130 Department of Veterans Affairs and hospitals operated by the State
131 Department of Mental Health shall be exempt from the assessments
132 set forth in this subsection.

133 (b) Definitions.

134 (i) [Deleted]

135 (ii) For purposes of this subsection (4):

136 1. * * * "Net patient revenue" means net
137 hospital patient revenue, exclusive of non-Hospital revenue, as
138 defined on the annual Hospital Medicaid DSH survey.

139 2. * * * "Psychiatric hospital" means a
140 freestanding facility which is licensed as a psychiatric hospital
141 and does not include hospitals operated by the State Department of
142 Mental Health.

143 (c) The assessment provided in this subsection is
144 intended to satisfy and not be in addition to the assessment and
145 intergovernmental transfers provided in Section 43-13-117(A)(18).
146 Nothing in this section shall be construed to authorize any state
147 agency, division or department, or county, municipality or other



148 local governmental unit to license for revenue, levy or impose any
149 other tax, fee or assessment upon hospitals in this state not
150 authorized by a specific statute.

151 (d) Hospitals operated by the United States Department
152 of Veterans Affairs and state-operated facilities that provide
153 only inpatient and outpatient psychiatric services shall not be
154 subject to the hospital assessment provided in this subsection.

155 (e) Multihospital systems, closure, merger, change of
156 ownership and new hospitals.

157 (i) If a hospital conducts, operates or maintains
158 more than one (1) hospital licensed by the State Department of
159 Health, the provider shall pay the hospital assessment for each
160 hospital separately.

161 (ii) Notwithstanding any other provision in this
162 section, if a hospital subject to this assessment operates or
163 conducts business only for a portion of a fiscal year, the
164 assessment for the state fiscal year shall be adjusted by
165 multiplying the assessment by a fraction, the numerator of which
166 is the number of days in the year during which the hospital
167 operates, and the denominator of which is three hundred sixty-five
168 (365). Immediately upon ceasing to operate, the hospital shall
169 pay the assessment for the year as so adjusted (to the extent not
170 previously paid).

171 (iii) The division shall determine the tax for new
172 hospitals and hospitals that undergo a change of ownership in



173 accordance with this section, using the best available
174 information, as determined by the division.

175 (f) Applicability.

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

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

180 (ii) CMS revokes its approval of the division's
181 2009 Medicaid State Plan Amendment for the methodology for DSH
182 payments to hospitals under Section 43-13-117(A) (18).

183 (5) Each health care facility that is subject to the
184 provisions of this section shall keep and preserve such suitable
185 books and records as may be necessary to determine the amount of
186 assessment for which it is liable under this section. The books
187 and records shall be kept and preserved for a period of not less
188 than five (5) years, during which time those books and records
189 shall be open for examination during business hours by the
190 division, the Department of Revenue, the Office of the Attorney
191 General and the State Department of Health.

192 (6) [Deleted]

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

195 (8) The assessment levied under this section shall be in
196 addition to any other assessments, taxes or fees levied by law,



197 and the assessment shall constitute a debt due the State of
198 Mississippi from the time the assessment is due until it is paid.

199 (9) (a) If a health care facility that is liable for
200 payment of an assessment levied by the division does not pay the
201 assessment when it is due, the division shall give written notice
202 to the health care facility demanding payment of the assessment
203 within ten (10) days from the date of delivery of the notice. If
204 the health care facility fails or refuses to pay the assessment
205 after receiving the notice and demand from the division, the
206 division shall withhold from any Medicaid reimbursement payments
207 that are due to the health care facility the amount of the unpaid
208 assessment and a penalty of ten percent (10%) of the amount of the
209 assessment, plus the legal rate of interest until the assessment
210 is paid in full. If the health care facility does not participate
211 in the Medicaid program, the division shall turn over to the
212 Office of the Attorney General the collection of the unpaid
213 assessment by civil action. In any such civil action, the Office
214 of the Attorney General shall collect the amount of the unpaid
215 assessment and a penalty of ten percent (10%) of the amount of the
216 assessment, plus the legal rate of interest until the assessment
217 is paid in full.

218 (b) As an additional or alternative method for
219 collecting unpaid assessments levied by the division, if a health
220 care facility fails or refuses to pay the assessment after
221 receiving notice and demand from the division, the division may



222 file a notice of a tax lien with the chancery clerk of the county
223 in which the health care facility is located, for the amount of
224 the unpaid assessment and a penalty of ten percent (10%) of the
225 amount of the assessment, plus the legal rate of interest until
226 the assessment is paid in full. Immediately upon receipt of
227 notice of the tax lien for the assessment, the chancery clerk
228 shall forward the notice to the circuit clerk who shall enter the
229 notice of the tax lien as a judgment upon the judgment roll and
230 show in the appropriate columns the name of the health care
231 facility as judgment debtor, the name of the division as judgment
232 creditor, the amount of the unpaid assessment, and the date and
233 time of enrollment. The judgment shall be valid as against
234 mortgagees, pledgees, entrusters, purchasers, judgment creditors
235 and other persons from the time of filing with the clerk. The
236 amount of the judgment shall be a debt due the State of
237 Mississippi and remain a lien upon the tangible property of the
238 health care facility until the judgment is satisfied. The
239 judgment shall be the equivalent of any enrolled judgment of a
240 court of record and shall serve as authority for the issuance of
241 writs of execution, writs of attachment or other remedial writs.

242 (10) (a) To further the provisions of Section
243 43-13-117(A)(18), the Division of Medicaid shall submit to the
244 Centers for Medicare and Medicaid Services (CMS) any documents
245 regarding the hospital assessment established under subsection (4)
246 of this section. In addition to defining the assessment



247 established in subsection (4) of this section if necessary, the
248 documents shall describe any supplement payment programs and/or
249 payment methodologies as authorized in Section 43-13-117(A) (18) if
250 necessary.

251 (b) All hospitals satisfying the minimum federal DSH
252 eligibility requirements (Section 1923(d) of the Social Security
253 Act) may, subject to OBRA 1993 payment limitations, receive a DSH
254 payment. This DSH payment shall expend the balance of the federal
255 DSH allotment and associated state share not utilized in DSH
256 payments to state-owned institutions for treatment of mental
257 diseases. The payment to each hospital shall be calculated by
258 applying a uniform percentage to the uninsured costs of each
259 eligible hospital, excluding state-owned institutions for
260 treatment of mental diseases; however, that percentage for a
261 state-owned teaching hospital located in Hinds County shall be
262 multiplied by a factor of two (2).

263 (11) The division shall implement DSH and supplemental
264 payment calculation methodologies that result in the maximization
265 of available federal funds.

266 (12) The DSH payments shall be paid on or before December
267 31, March 31, and June 30 of each fiscal year, in increments of
268 one-third (1/3) of the total calculated DSH amounts. Supplemental
269 payments developed pursuant to Section 43-13-117(A) (18) shall be
270 paid monthly.

271 (13) Payment.



272 (a) The hospital assessment as described in subsection
273 (4) for the nonfederal share necessary to maximize the Medicare
274 Upper Payments Limits (UPL) Program payments and hospital access
275 payments and such other supplemental payments as may be developed
276 pursuant to Section 43-3-117(A) (18) shall be assessed and
277 collected monthly no later than the fifteenth calendar day of each
278 month.

279 (b) The hospital assessment as described in subsection
280 (4) for the nonfederal share necessary to maximize the
281 Disproportionate Share Hospital (DSH) payments shall be assessed
282 and collected on December 15, March 15 and June 15.

283 (c) The annual hospital assessment and any additional
284 hospital assessment as described in subsection (4) shall be
285 assessed and collected on September 15 and on the 15th of each
286 month from December through June.

287 (14) If for any reason any part of the plan for annual DSH
288 and supplemental payment programs to hospitals provided under
289 subsection (10) of this section and/or developed pursuant to
290 Section 43-13-117(A) (18) is not approved by CMS, the remainder of
291 the plan shall remain in full force and effect.

292 (15) Nothing in this section shall prevent the Division of
293 Medicaid from facilitating participation in Medicaid supplemental
294 hospital payment programs by a hospital located in a county
295 contiguous to the State of Mississippi that is also authorized by
296 federal law to submit intergovernmental transfers (IGTs) to the



297 State of Mississippi to fund the state share of the hospital's
298 supplemental and/or MHAP payments.

299 (16) This section shall stand repealed on July 1, 2028.

300 **SECTION 2.** This act shall take effect and be in force from
301 and after July 1, 2025.

