

# HOSPITAL PROVIDER ASSESSMENT ACT

Utah Code Title 26, Chapter 36A

## **26-36a-101. Title.**

This chapter is known as the "Hospital Provider Assessment Act."

## **26-36a-102. Legislative findings.**

- (1) The Legislature finds that there is an important state purpose to improve the access of Medicaid patients to quality care in Utah hospitals because of continuous decreases in state revenues and increases in enrollment under the Utah Medicaid program.
- (2) The Legislature finds that in order to improve this access to those persons described in Subsection (1):
  - (a) the rates paid to Utah hospitals shall be adequate to encourage and support improved access; and
  - (b) adequate funding shall be provided to increase the rates paid to Utah hospitals providing services pursuant to the Utah Medicaid program.

## **26-36a-103. Definitions.**

As used in this chapter:

- (1) "Accountable care organization" means a managed care organization, as defined in 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section 26-18-405.
- (2) "Assessment" means the Medicaid hospital provider assessment established by this chapter.
- (3) "Discharges" means the number of total hospital discharges reported on worksheet S-3 Part I, column 15, lines 12, 14, and 14.01 of the 2552-96 Medicare Cost Report or on Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare Cost Report for the applicable assessment year.
- (4) "Division" means the Division of Health Care Financing of the department.
- (5) "Hospital":
  - (a) means a privately owned:
    - (i) general acute hospital operating in the state as defined in Section 26-21-2; and
    - (ii) specialty hospital operating in the state, which shall include a privately owned hospital whose inpatient admissions are predominantly:
      - (A) rehabilitation;
      - (B) psychiatric;
      - (C) chemical dependency; or
      - (D) long-term acute care services; and
  - (b) does not include:
    - (i) a residential care or treatment facility as defined in Section 62A-2-101;
    - (ii) a hospital owned by the federal government, including the Veterans Administration Hospital; or
    - (iii) a hospital that is owned by the state government, a state agency, or a

political subdivision of the state, including:

- (A) a state-owned teaching hospital; and
- (B) the Utah State Hospital.

- (6) "Medicare cost report" means CMS-2552-96 or CMS-2552-10, the cost report for electronic filing of hospitals.
- (7) "State plan amendment" means a change or update to the state Medicaid plan.

**26-36a-201. Application of chapter.**

- (1) Other than for the imposition of the assessment described in this chapter, nothing in this chapter shall affect the nonprofit or tax exempt status of any nonprofit charitable, religious, or educational health care provider under:
  - (a) Section 501(c), as amended, of the Internal Revenue Code;
  - (b) other applicable federal law;
  - (c) any state law;
  - (d) any ad valorem property taxes;
  - (e) any sales or use taxes; or
  - (f) any other taxes, fees, or assessments, whether imposed or sought to be imposed by the state or any political subdivision, county, municipality, district, authority, or any agency or department thereof.
- (2) All assessments paid under this chapter may be included as an allowable cost of a hospital for purposes of any applicable Medicaid reimbursement formula.
- (3) This chapter does not authorize a political subdivision of the state to:
  - (a) license a hospital for revenue;
  - (b) impose a tax or assessment upon hospitals; or
  - (c) impose a tax or assessment measured by the income or earnings of a hospital.

**26-36a-202. Assessment, collection, and payment of hospital provider assessment.**

- (1) A uniform, broad based, assessment is imposed on each hospital as defined in Subsection 26-36a-103(5)(a):
  - (a) in the amount designated in Section 26-36a-203; and
  - (b) in accordance with Section 26-36a-204.
- (2)
  - (a) The assessment imposed by this chapter is due and payable on a quarterly basis in accordance with Section 26-36a-204.
  - (b) The collecting agent for this assessment is the department which is vested with the administration and enforcement of this chapter, including the right to adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to:
    - (i) implement and enforce the provisions of this act; and
    - (ii) audit records of a facility:
      - (A) that is subject to the assessment imposed by this chapter; and
      - (B) does not file a Medicare cost report.
  - (c) The department shall forward proceeds from the assessment imposed by this chapter to the state treasurer for deposit in the expendable special revenue fund as specified in Section 26-36a-207.
- (3) The department may, by rule, extend the time for paying the assessment.

**26-36a-203. Calculation of assessment.**

- (1)
  - (a) An annual assessment is payable on a quarterly basis for each hospital in an amount calculated at a uniform assessment rate for each hospital discharge, in accordance with this section.
  - (b) The uniform assessment rate shall be determined using the total number of hospital discharges for assessed hospitals divided into the total non-federal portion in an amount consistent with Section 26-36a-205 that is needed to support capitated rates for accountable care organizations for purposes of hospital services provided to Medicaid enrollees.
  - (c) Any quarterly changes to the uniform assessment rate shall be applied uniformly to all assessed hospitals.
  - (d) The annual uniform assessment rate may not generate more than:
    - (i) \$1,000,000 to offset Medicaid mandatory expenditures; and
    - (ii) the non-federal share to seed amounts needed to support capitated rates for accountable care organizations as provided for in Subsection (1)(b).
- (2)
  - (a) For each state fiscal year, discharges shall be determined using the data from each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file. The hospital's discharge data will be derived as follows:
    - (i) for state fiscal year 2013, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2009, and June 30, 2010;
    - (ii) for state fiscal year 2014, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2010, and June 30, 2011;
    - (iii) for state fiscal year 2015, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2011, and June 30, 2012; and
    - (iv) for state fiscal year 2016, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2012, and June 30, 2013.
  - (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file:
    - (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost Report applicable to the assessment year; and
    - (ii) the division shall determine the hospital's discharges.
  - (c) If a hospital is not certified by the Medicare program and is not required to file a Medicare Cost Report:
    - (i) the hospital shall submit to the division its applicable fiscal year discharges with supporting documentation;
    - (ii) the division shall determine the hospital's discharges from the information submitted under Subsection (2)(c)(i); and
    - (iii) the failure to submit discharge information shall result in an audit of the hospital's records and a penalty equal to 5% of the calculated assessment.
- (3) Except as provided in Subsection (4), if a hospital is owned by an organization that owns more than one hospital in the state:

- (a) the assessment for each hospital shall be separately calculated by the department; and
- (b) each separate hospital shall pay the assessment imposed by this chapter.
- (4) Notwithstanding the requirement of Subsection (3), if multiple hospitals use the same Medicaid provider number:
  - (a) the department shall calculate the assessment in the aggregate for the hospitals using the same Medicaid provider number; and
  - (b) the hospitals may pay the assessment in the aggregate.

**26-36a-204. Quarterly notice -- Collection.**

Quarterly assessments imposed by this chapter shall be paid to the division within 15 business days after the original invoice date that appears on the invoice issued by the division.

**26-36a-205. Medicaid hospital adjustment under accountable care organization rates.**

To preserve and improve access to hospital services, the division shall, for accountable care organization rates effective on or after April 1, 2013, incorporate an annualized amount equal to \$154 million into the accountable care organization rate structure calculation consistent with the certified actuarial rate range.

**26-36a-206. Penalties and interest.**

- (1) A facility that fails to pay any assessment or file a return as required under this chapter, within the time required by this chapter, shall pay, in addition to the assessment, penalties and interest established by the department.
- (2)
  - (a) Consistent with Subsection (2)(b), the department shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish reasonable penalties and interest for the violations described in Subsection (1).
  - (b) If a hospital fails to timely pay the full amount of a quarterly assessment, the department shall add to the assessment:
    - (i) a penalty equal to 5% of the quarterly amount not paid on or before the due date; and
    - (ii) on the last day of each quarter after the due date until the assessed amount and the penalty imposed under Subsection (2)(b)(i) are paid in full, an additional 5% penalty on:
      - (A) any unpaid quarterly assessment; and
      - (B) any unpaid penalty assessment.
  - (c) Upon making a record of its actions, and upon reasonable cause shown, the division may waive, reduce, or compromise any of the penalties imposed under this part.

**26-36a-207. Hospital Provider Assessment Expendable Revenue Fund.**

- (1) There is created an expendable special revenue fund known as the "Hospital Provider Assessment Expendable Revenue Fund."
- (2) The fund shall consist of:
  - (a) the assessments collected by the department under this chapter;

- (b) any interest and penalties levied with the administration of this chapter; and
  - (c) any other funds received as donations for the fund and appropriations from other sources.
- (3) Money in the fund shall be used:
- (a) to support capitated rates consistent with Subsection 26-36a-203(1)(d) for accountable care organizations; and
  - (b) to reimburse money collected by the division from a hospital through a mistake made under this chapter.

**26-36a-208. Repeal of assessment.**

- (1) The repeal of the assessment imposed by this chapter shall occur upon the certification by the executive director of the department that the sooner of the following has occurred:
- (a) the effective date of any action by Congress that would disqualify the assessment imposed by this chapter from counting towards state Medicaid funds available to be used to determine the federal financial participation;
  - (b) the effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, or agency of the state, or of the federal government that has the effect of:
    - (i) disqualifying the assessment from counting towards state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds; or
    - (ii) creating for any reason a failure of the state to use the assessments for the Medicaid program as described in this chapter;
  - (c) the effective date of:
    - (i) an appropriation for any state fiscal year from the General Fund for hospital payments under the state Medicaid program that is less than the amount appropriated for state fiscal year 2012;
    - (ii) the annual revenues of the state General Fund budget return to the level that was appropriated for fiscal year 2008;
    - (iii) approval of any change in the state Medicaid plan that requires a greater percentage of Medicaid patients to enroll in Medicaid managed care plans than what is required:
      - (A) to implement accountable care organizations in the state plan; and
      - (B) by other managed care enrollment requirements in effect on or before January 1, 2012;
    - (iv) a division change in rules that reduces any of the following below July 1, 2011 payments:
      - (A) aggregate hospital inpatient payments;
      - (B) adjustment payment rates; or
      - (C) any cost settlement protocol; or
    - (v) a division change in rules that reduces the aggregate outpatient payments below July 1, 2011 payments; and
  - (d) the sunset of this chapter in accordance with Section 631-1-226.

- (2) If the assessment is repealed under Subsection (1), money in the fund that was derived from assessments imposed by this chapter, before the determination made under Subsection (1), shall be disbursed under Section 26-36a-205 to the extent federal matching is not reduced due to the impermissibility of the assessments. Any funds remaining in the special revenue fund shall be refunded to the hospitals in proportion to the amount paid by each hospital.

