

1 **REAUTHORIZATION OF HOSPITAL PROVIDER**

2 **ASSESSMENT ACT**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stewart E. Barlow**

6 Senate Sponsor: Allen M. Christensen

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends, reauthorizes, and adds a retrospective effective date to the Hospital
11 Provider Assessment Act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ repeals and reenacts the Hospital Provider Assessment Act with a retrospective
- 15 effective date;
- 16 ▶ amends provisions relating to the calculation of hospital provider assessment rates;
- 17 and
- 18 ▶ extends the sunset date for the Hospital Provider Assessment Act for five years.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides retrospective operation.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **63I-1-226**, as last amended by Laws of Utah 2018, Chapters 180, 281, 384, 430, and
26 468

27 REPEALS AND REENACTS:

28 **26-36d-101**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1

- 29 **26-36d-102**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 30 **26-36d-103**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 31 **26-36d-201**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 32 **26-36d-202**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 33 **26-36d-203**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 34 **26-36d-204**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 35 **26-36d-205**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 36 **26-36d-206**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 37 **26-36d-207**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1
- 38 **26-36d-208**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **26-36d-101** is repealed and reenacted to read:

42 **CHAPTER 36d. HOSPITAL PROVIDER ASSESSMENT ACT**

43 **Part 1. General Provisions**

44 **26-36d-101. Title.**

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

46 Section 2. Section **26-36d-102** is repealed and reenacted to read:

47 **26-36d-102. Legislative findings.**

48 (1) The Legislature finds that there is an important state purpose to improve the access
49 of Medicaid patients to quality care in Utah hospitals because of continuous decreases in state
50 revenues and increases in enrollment under the Utah Medicaid program.

51 (2) The Legislature finds that in order to improve this access to those persons described
52 in Subsection (1):

53 (a) the rates paid to Utah hospitals shall be adequate to encourage and support
54 improved access; and

55 (b) adequate funding shall be provided to increase the rates paid to Utah hospitals

56 providing services pursuant to the Utah Medicaid program.

57 Section 3. Section **26-36d-103** is repealed and reenacted to read:

58 **26-36d-103. Definitions.**

59 As used in this chapter:

60 (1) "Accountable care organization" means a managed care organization, as defined in
61 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section
62 26-18-405.

63 (2) "Assessment" means the Medicaid hospital provider assessment established by this
64 chapter.

65 (3) "Discharges" means the number of total hospital discharges reported on Worksheet
66 S-3 Part I, column 15, lines 12, 14, and 14.01 of the 2552-96 Medicare Cost Report or on
67 Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare Cost Report for
68 the applicable assessment year.

69 (4) "Division" means the Division of Health Care Financing of the department.

70 (5) "Hospital":

71 (a) means a privately owned:

72 (i) general acute hospital operating in the state as defined in Section 26-21-2; and

73 (ii) specialty hospital operating in the state, which shall include a privately owned

74 hospital whose inpatient admissions are predominantly:

75 (A) rehabilitation;

76 (B) psychiatric;

77 (C) chemical dependency; or

78 (D) long-term acute care services; and

79 (b) does not include:

80 (i) a human services program, as defined in Section 62A-2-101;

81 (ii) a hospital owned by the federal government, including the Veterans Administration

82 Hospital; or

83 (iii) a hospital that is owned by the state government, a state agency, or a political
84 subdivision of the state, including:

85 (A) a state-owned teaching hospital; and

86 (B) the Utah State Hospital.

87 (6) "Medicare Cost Report" means CMS-2552-96 or CMS-2552-10, the cost report for
88 electronic filing of hospitals.

89 (7) "State plan amendment" means a change or update to the state Medicaid plan.

90 Section 4. Section **26-36d-201** is repealed and reenacted to read:

91 **Part 2. Hospital Provider Assessment**

92 **26-36d-201. Application of chapter.**

93 (1) Other than for the imposition of the assessment described in this chapter, nothing in
94 this chapter shall affect the nonprofit or tax exempt status of any nonprofit charitable, religious,
95 or educational health care provider under:

96 (a) Section 501(c), as amended, of the Internal Revenue Code;

97 (b) other applicable federal law;

98 (c) any state law;

99 (d) any ad valorem property taxes;

100 (e) any sales or use taxes; or

101 (f) any other taxes, fees, or assessments, whether imposed or sought to be imposed by
102 the state or any political subdivision, county, municipality, district, authority, or any agency or
103 department thereof.

104 (2) All assessments paid under this chapter may be included as an allowable cost of a
105 hospital for purposes of any applicable Medicaid reimbursement formula.

106 (3) This chapter does not authorize a political subdivision of the state to:

107 (a) license a hospital for revenue;

108 (b) impose a tax or assessment upon hospitals; or

109 (c) impose a tax or assessment measured by the income or earnings of a hospital.

110 Section 5. Section **26-36d-202** is repealed and reenacted to read:

111 **26-36d-202. Assessment, collection, and payment of hospital provider assessment.**

112 (1) A uniform, broad based, assessment is imposed on each hospital as defined in

113 Subsection **26-36d-103**(5)(a):

114 (a) in the amount designated in Section **26-36d-203**; and

115 (b) in accordance with Section **26-36d-204**.

116 (2) (a) The assessment imposed by this chapter is due and payable on a quarterly basis

117 in accordance with Section **26-36d-204**.

118 (b) The collecting agent for this assessment is the department which is vested with the

119 administration and enforcement of this chapter, including the right to adopt administrative rules

120 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to:

121 (i) implement and enforce the provisions of this act; and

122 (ii) audit records of a facility:

123 (A) that is subject to the assessment imposed by this chapter; and

124 (B) does not file a Medicare Cost Report.

125 (c) The department shall forward proceeds from the assessment imposed by this

126 chapter to the state treasurer for deposit in the expendable special revenue fund as specified in

127 Section **26-36d-207**.

128 (3) The department may, by rule, extend the time for paying the assessment.

129 Section 6. Section **26-36d-203** is repealed and reenacted to read:

130 **26-36d-203. Calculation of assessment.**

131 (1) (a) An annual assessment is payable on a quarterly basis for each hospital in an
132 amount calculated at a uniform assessment rate for each hospital discharge, in accordance with
133 this section.

134 (b) The uniform assessment rate shall be determined using the total number of hospital
135 discharges for assessed hospitals divided into the total non-federal portion in an amount
136 consistent with Subsections **26-36d-205**(1)(a) and (b) that is needed to support capitated rates

137 for accountable care organizations for purposes of hospital services provided to Medicaid
138 enrollees.

139 (c) Any quarterly changes to the uniform assessment rate shall be applied uniformly to
140 all assessed hospitals.

141 (d) The annual uniform assessment rate may not generate more than:

142 (i) \$1,000,000 to offset Medicaid mandatory expenditures; and

143 (ii) the non-federal share to seed amounts needed to support capitated rates for
144 accountable care organizations as provided for in Subsection (1)(b).

145 (2) (a) For each state fiscal year, discharges shall be determined using the data from
146 each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid
147 Services' Healthcare Cost Report Information System file. The hospital's discharge data will be
148 derived as follows:

149 (i) for state fiscal year 2013, the hospital's cost report data for the hospital's fiscal year
150 ending between July 1, 2009, and June 30, 2010;

151 (ii) for state fiscal year 2014, the hospital's cost report data for the hospital's fiscal year
152 ending between July 1, 2010, and June 30, 2011;

153 (iii) for state fiscal year 2015, the hospital's cost report data for the hospital's fiscal year
154 ending between July 1, 2011, and June 30, 2012;

155 (iv) for state fiscal year 2016, the hospital's cost report data for the hospital's fiscal year
156 ending between July 1, 2012, and June 30, 2013; and

157 (v) for each subsequent state fiscal year, the hospital's cost report data for the hospital's
158 fiscal year that ended in the state fiscal year two years prior to the assessment fiscal year.

159 (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for
160 Medicare and Medicaid Services' Healthcare Cost Report Information System file:

161 (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost
162 Report applicable to the assessment year; and

163 (ii) the division shall determine the hospital's discharges.

164 (c) If a hospital is not certified by the Medicare program and is not required to file a
165 Medicare Cost Report:

166 (i) the hospital shall submit to the division its applicable fiscal year discharges with
167 supporting documentation;

168 (ii) the division shall determine the hospital's discharges from the information
169 submitted under Subsection (2)(c)(i); and

170 (iii) the failure to submit discharge information shall result in an audit of the hospital's
171 records and a penalty equal to 5% of the calculated assessment.

172 (3) Except as provided in Subsection (4), if a hospital is owned by an organization that
173 owns more than one hospital in the state:

174 (a) the assessment for each hospital shall be separately calculated by the department;
175 and

176 (b) each separate hospital shall pay the assessment imposed by this chapter.

177 (4) Notwithstanding the requirement of Subsection (3), if multiple hospitals use the
178 same Medicaid provider number:

179 (a) the department shall calculate the assessment in the aggregate for the hospitals
180 using the same Medicaid provider number; and

181 (b) the hospitals may pay the assessment in the aggregate.

182 Section 7. Section **26-36d-204** is repealed and reenacted to read:

183 **26-36d-204. Quarterly notice -- Collection.**

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

186 Section 8. Section **26-36d-205** is repealed and reenacted to read:

187 **26-36d-205. Medicaid hospital adjustment under accountable care organization**
188 **rates.**

189 To preserve and improve access to hospital services, the division shall, for accountable
190 care organization rates effective on or after April 1, 2013, incorporate into the accountable care

191 organization rate structure calculation consistent with the certified actuarial rate range:

192 (1) \$154,000,000 to be allocated toward the hospital inpatient directed payments for
193 the Medicaid eligibility categories covered in Utah before January 1, 2019; and

194 (2) an amount equal to the difference between payments made to hospitals by
195 accountable care organizations for the Medicaid eligibility categories covered in Utah before
196 January 1, 2019, based on submitted encounter data and the maximum amount that could be
197 paid for those services using Medicare payment principles to be used for directed payments to
198 hospitals for outpatient services.

199 Section 9. Section 26-36d-206 is repealed and reenacted to read:

200 **26-36d-206. Penalties and interest.**

201 (1) A facility that fails to pay any assessment or file a return as required under this
202 chapter, within the time required by this chapter, shall pay, in addition to the assessment,
203 penalties and interest established by the department.

204 (2) (a) Consistent with Subsection (2)(b), the department shall adopt rules in
205 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish
206 reasonable penalties and interest for the violations described in Subsection (1).

207 (b) If a hospital fails to timely pay the full amount of a quarterly assessment, the
208 department shall add to the assessment:

209 (i) a penalty equal to 5% of the quarterly amount not paid on or before the due date;

210 and

211 (ii) on the last day of each quarter after the due date until the assessed amount and the
212 penalty imposed under Subsection (2)(b)(i) are paid in full, an additional 5% penalty on:

213 (A) any unpaid quarterly assessment; and

214 (B) any unpaid penalty assessment.

215 (c) Upon making a record of its actions, and upon reasonable cause shown, the division
216 may waive, reduce, or compromise any of the penalties imposed under this part.

217 Section 10. Section 26-36d-207 is repealed and reenacted to read:

218 **26-36d-207. Hospital Provider Assessment Expendable Revenue Fund.**

219 (1) There is created an expendable special revenue fund known as the "Hospital
220 Provider Assessment Expendable Revenue Fund."

221 (2) The fund shall consist of:

222 (a) the assessments collected by the department under this chapter;

223 (b) any interest and penalties levied with the administration of this chapter; and

224 (c) any other funds received as donations for the fund and appropriations from other
225 sources.

226 (3) Money in the fund shall be used:

227 (a) to support capitated rates consistent with Subsection [26-36d-203\(1\)\(d\)](#) for
228 accountable care organizations; and

229 (b) to reimburse money collected by the division from a hospital through a mistake
230 made under this chapter.

231 Section 11. Section [26-36d-208](#) is repealed and reenacted to read:

232 **26-36d-208. Repeal of assessment.**

233 (1) The repeal of the assessment imposed by this chapter shall occur upon the
234 certification by the executive director of the department that the sooner of the following has
235 occurred:

236 (a) the effective date of any action by Congress that would disqualify the assessment
237 imposed by this chapter from counting toward state Medicaid funds available to be used to
238 determine the federal financial participation;

239 (b) the effective date of any decision, enactment, or other determination by the
240 Legislature or by any court, officer, department, or agency of the state, or of the federal
241 government that has the effect of:

242 (i) disqualifying the assessment from counting towards state Medicaid funds available
243 to be used to determine federal financial participation for Medicaid matching funds; or

244 (ii) creating for any reason a failure of the state to use the assessments for the Medicaid

245 program as described in this chapter;
246 (c) the effective date of:
247 (i) an appropriation for any state fiscal year from the General Fund for hospital
248 payments under the state Medicaid program that is less than the amount appropriated for state
249 fiscal year 2012;

250 (ii) the annual revenues of the state General Fund budget return to the level that was
251 appropriated for fiscal year 2008;

252 (iii) a division change in rules that reduces any of the following below July 1, 2011,
253 payments:

254 (A) aggregate hospital inpatient payments;

255 (B) adjustment payment rates; or

256 (C) any cost settlement protocol; or

257 (iv) a division change in rules that reduces the aggregate outpatient payments below
258 July 1, 2011, payments; and

259 (d) the sunset of this chapter in accordance with Section [63I-1-226](#).

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

266 Section 12. Section **63I-1-226** is amended to read:

267 **63I-1-226. Repeal dates, Title 26.**

268 (1) Section [26-1-40](#) is repealed July 1, 2019.

269 (2) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July
270 1, 2025.

271 (3) Section [26-10-11](#) is repealed July 1, 2020.

- 272 (4) Subsection [26-18-417\(3\)](#) is repealed July 1, 2020.
- 273 (5) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.
- 274 (6) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2024.
- 275 (7) Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act, is repealed
276 July 1, 2024.
- 277 (8) Title 26, Chapter 36d, Hospital Provider Assessment Act, is repealed July 1, ~~[2019]~~
278 2024.
- 279 ~~[(9) Title 26, Chapter 56, Hemp Extract Registration Act, is repealed January 1, 2019.]~~
280 ~~[(10)]~~ (9) Title 26, Chapter 63, Nurse Home Visiting Pay-for-Success Program, is
281 repealed July 1, 2026.
- 282 Section 13. **Retrospective operation -- Effective date.**
- 283 This bill has retrospective operation to December 1, 2018, except that the amendments
284 to Section [63I-1-226](#) take effect on May 14, 2019.