

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2011-11
SENATE BILL 32**

AN ACT TO PROVIDE FOR HOSPITAL ASSESSMENTS TO BE USED TO OBTAIN MATCHING FEDERAL MEDICAID FUNDS TO REDUCE THE LOSSES HOSPITALS SUSTAIN WHEN TREATING MEDICAID AND UNINSURED PATIENTS, TO REDUCE THE INEQUITY IN MEDICAID PAYMENTS BETWEEN PUBLIC AND NONPUBLIC HOSPITALS, AND TO PROVIDE FORTY-THREE MILLION DOLLARS IN ADDITIONAL FUNDING FOR THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 108A of the General Statutes is amended by adding a new Article to read:

"Article 7.

"Hospital Provider Assessment Act.

"§ 108A-120. Short title and purpose.

This Article shall be known as the 'Hospital Provider Assessment Act.' The assessments imposed by this Article are to provide revenue to improve funding for payments for hospital services provided to Medicaid and uninsured patients. All assessment proceeds and corresponding matching federal funds must be used to make the payments required under G.S. 108A-124. This Article does not authorize a political subdivision of the State to license a hospital for revenue or impose a tax or assessment on a hospital.

"§ 108A-121. Definitions.

The following definitions apply in this Article:

- (1) CMS. – Centers for Medicare and Medicaid Services.
- (2) Critical access hospital. – Defined in 42 C.F.R. § 400.202.
- (3) Department. – The Department of Health and Human Services.
- (4) Equity assessment. – The assessment payable under G.S. 108A-123.
- (5) Medicaid equity payment. – The amount required to be paid under G.S. 108A-124.
- (6) Public hospital. – A hospital that certifies its public expenditures to the Department pursuant to 42 C.F.R. § 433.51(b) during the fiscal year for which the assessment applies.
- (7) Secretary. – The Secretary of Health and Human Services.
- (8) State's annual Medicaid payment. – Forty-three million dollars (\$43,000,000).
- (9) Total hospital costs. – The costs as calculated using the most recent available Hospital Cost Report Information Systems cost report data, available through CMS, or other comparable data.
- (10) Upper pay limit (UPL). – The maximum ceiling imposed by federal regulation on hospital Medicaid payments under 42 C.F.R. § 447.272 for inpatient services.
- (11) UPL assessment. – The assessment payable under G.S. 108A-123.
- (12) UPL gap. – The difference between the UPL attributable to hospital inpatient services and the reasonable costs of inpatient hospital services as defined in Section (f)(2)(A) on page 11 of Attachment 4.19-A of the State Medicaid Plan as approved on December 15, 2005.
- (13) UPL payment. – The amount required to be paid under G.S. 108A-124.

"§ 108A-122. Assessment.

(a) Assessment Imposed. – Except as provided in this section, the assessments authorized under this Article are imposed as a percentage of total hospital costs on all licensed



North Carolina hospitals. The assessments are due quarterly in the time and manner prescribed by the Secretary. Payment of an assessment is considered delinquent if not paid within seven days of the due date. With respect to any past-due assessment, the Department may withhold the unpaid amount from Medicaid payments otherwise due or impose a late-payment penalty. The Secretary may waive a penalty for good cause shown.

(b) Allowable Cost. – An assessment paid under this Article may be included as allowable costs of a hospital for purposes of any applicable Medicaid reimbursement formula. An assessment imposed under this Article may not be added as a surtax or assessment on a patient's bill.

(c) Full Exemption. – The following hospitals are exempt from both the equity assessment and the UPL assessment:

- (1) State-owned and State-operated hospitals.
- (2) The primary affiliated teaching hospital for each University of North Carolina medical school.
- (3) Critical access hospitals.
- (4) Long-term care hospitals.
- (5) Freestanding psychiatric hospitals.
- (6) Freestanding rehabilitation hospitals.

(d) Partial Exemption. – A public hospital is exempt from the equity assessment.

"§ 108A-123. Assessment amount.

(a) Annual Calculation. – The Secretary must annually calculate the equity assessment amount and the UPL assessment amount for each hospital subject to the respective assessment. Each assessment must comply with applicable federal regulations and may be prorated for any partial year. The Secretary must notify each hospital that is assessed the amount of its UPL assessment and, if applicable, its equity assessment. The notice must include all of the following:

- (1) The applicable assessment rates.
- (2) The hospital costs on which the hospital's assessments are based.
- (3) The elements of the calculation of the hospital's UPL.

(b) Equity Assessment. – The equity assessment consists of both inpatient and outpatient components. The equity assessment percentage rate must be calculated to produce an aggregate annual amount equal to the following:

- (1) The amount needed to make the Medicaid equity payments under G.S. 108-124.
- (2) The applicable portion of the State's annual Medicaid payment, as provided in subsection (d) of this section.

(c) UPL Assessment. – The UPL assessment consists of both inpatient and outpatient components. The UPL assessment percentage rate must be calculated to produce an aggregate annual amount equal to the following:

- (1) The amount needed to make the UPL payments under G.S. 108A-124.
- (2) The applicable portion of the State's annual Medicaid payment, as provided in subsection (d) of this section.

(d) State's Annual Medicaid Payment. – The State's annual Medicaid payment must be allocated between the equity assessment and the UPL assessment based on the amount of gross payments received by hospitals under G.S. 108A-124.

(e) Appeal. – A hospital may appeal an assessment determination through a reconsideration review. The pendency of an appeal does not relieve a hospital from its obligation to pay an assessment amount when due.

"§ 108A-124. Use of assessment proceeds.

(a) Use. – The proceeds of the assessments imposed under this Article and all corresponding matching federal funds must be used to make the State annual Medicaid payment to the State and the Medicaid equity payments and UPL payments to hospitals.

(b) Quarterly Payments. – Within seven days of the due date for each quarterly assessment imposed under G.S. 108A-123, the Secretary must do the following:

- (1) Transfer to the State Controller twenty-five percent (25%) of the State's annual Medicaid payment amount.
- (2) Pay to each hospital that has paid its equity assessment for the respective quarter twenty-five percent (25%) of its Medicaid equity payment amount. A hospital's Medicaid equity payment amount is the sum of the hospital's

Medicaid inpatient and outpatient deficits after calculating all other Medicaid payments, excluding disproportionate share hospital payments and the UPL payment remitted to the hospital under subdivision (3) of this subsection.

- (3) Pay to the primary affiliated teaching hospital for the East Carolina University Brody School of Medicine, to the critical access hospitals, and to each hospital that has paid its UPL assessment for the respective quarter twenty-five percent (25%) of its UPL payment amount, as determined under subsection (c) of this section.

(c) UPL Payment Amount. – The aggregate UPL payments made to eligible hospitals that are public hospitals is the sum of the UPL gaps for all public hospitals. The aggregate UPL payments made to eligible hospitals that are not public hospitals is the sum of the UPL gaps for these hospitals. UPL payments are payable to the individual hospitals in the ratio of each hospital's Medicaid inpatient costs to the total Medicaid inpatient costs for the respective group.

(d) Refund of Assessment. – If all or any part of a payment required to be made under this section is not made to one or more hospitals when due, the Secretary must promptly refund to each such hospital the corresponding assessment proceeds collected in proportion to the amount of assessment paid by that hospital.

"§ 108A-125. Deferral of assessment due date.

In the event the data necessary to calculate the assessments required under G.S. 108A-123 or the payments required under G.S. 108A-124 is not available to the Secretary in time to impose the quarterly assessments for a payment year, the Secretary may defer the due date for the assessments and payments to a subsequent quarter.

"§ 108A-126. Approval of assessment program.

The Department must file a State plan amendment with the CMS that incorporates the assessment payments and distributions consistent with the provisions of this Article. Upon CMS approval, the Secretary may impose the initial assessment retroactive to the first day of the quarter in which the State Plan amended was filed, provided the Secretary remits the corresponding payments to hospitals required under G.S. 108A-124 for that quarter. If CMS approves only one component of the equity assessment, the Secretary may adjust the percentage rate on the approved component to produce the required aggregate Medicaid equity payment amounts under G.S. 108A-124. If CMS approves only one component of the UPL assessment, the Secretary may adjust the percentage rate on the approved component to produce the required aggregate UPL payment amounts under G.S. 108A-124. The Secretary may adopt rules as necessary to implement the assessment program under this Article.

"§ 108A-127. Repeal.

The authority to impose an assessment under this Article is repealed in the event that CMS determines that the assessment or payment methodologies described in this Article are impermissible or CMS revokes approval of any portion of the State Plan amendment authorizing the payments required under G.S. 108A-124."

SECTION 2. The Department of Health and Human Services must file with the Centers for Medicare and Medicaid Services a State Plan amendment as required under Article 7 of Chapter 108A of the General Statutes, as enacted by this act, by March 31, 2011.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of March,
2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 2:09 p.m. this 25th day of March, 2011