

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S3/21/17
A Bill

SENATE BILL 649

By: Senator Teague

For An Act To Be Entitled

AN ACT TO ESTABLISH AN AMBULANCE ASSESSMENT PROGRAM
TO IMPROVE THE QUALITY AND TIMELINESS OF MEDICAL
TRANSPORTS IN ARKANSAS; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH AN AMBULANCE ASSESSMENT
PROGRAM TO IMPROVE THE QUALITY AND
TIMELINESS OF MEDICAL TRANSPORTS IN
ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to add an additional subchapter to read as follows:

*Subchapter 27 – Assessment Fee and Program on Medical Transportation
Providers*

20-77-2701. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Emergency medical services constitute an invaluable part of the healthcare delivery system of Arkansas;

(2) Emergency medical services will be a key element in any healthcare reform initiative;

(3) Emergency medical services are a key component of any economic development program as emergency medical services are essential to recruiting and retaining industry;

(4) Emergency medical services are a critical element of the



emergency preparedness system within Arkansas; and

(5) While containing the cost of funding within the Arkansas Medicaid Program and providing healthcare services for the poor and uninsured individuals of this state are vital interests, the challenges associated with appropriate reimbursement for emergency medical services under the Arkansas Medicaid Program are recognized.

(b) It is the intent of the General Assembly to assure appropriate reimbursement by establishing an assessment on emergency medical services to preserve vital emergency medical services for all residents of Arkansas.

20-77-2702. Definitions.

As used in this subchapter:

(1) "Air ambulance services" means services authorized and licensed by the Department of Health to provide care and air transportation of patients;

(2) "Ambulance services" means services authorized and licensed by the department to provide care and transportation of patients upon the streets and highways of Arkansas;

(3) "Emergency medical services" means:

(A) The transportation and medical care provided an ill or injured person before arrival at a medical facility by a licensed emergency medical services personnel or other healthcare provider;

(B) Continuation of the initial emergency care within a medical facility subject to the approval of the medical staff and governing board of that facility; and

(C) Integrated medical care in emergency and nonurgent settings with the oversight of a physician;

(4)(A) "Medical transportation" means emergency medical services provided through ambulance services and air ambulance services.

(B) "Medical transportation" does not include nonemergency ambulance services;

(5) "Medical transportation provider" means a licensed provider of medical transportation;

(6) "Net operating revenue" means the gross revenues earned for providing medical transportation in Arkansas, excluding amounts refunded to or recouped, offset, or otherwise deducted by a patient or payer for medical

transportation;

(7)(A) "Nonemergency ambulance services" means the transport in a motor vehicle to or from medical facilities, including without limitation hospitals, nursing homes, physicians' offices, and other healthcare facilities of persons who are ill or injured and who are transported in a reclining position.

(B) "Nonemergency ambulance services" does not include transportation provided by licensed hospitals that own and operate the ambulance for their own admitted patients;

(8) "Specialty hospital based ambulance services" means ambulance services provided by an acute care general hospital that limits healthcare services primarily to children and qualifies as exempt from the Medicare prospective payment system regulation;

(9) "Upper payment limit" means the lesser of the customary charges of the medical transportation provider or the prevailing charges in the locality of the medical transportation provider for comparable services under comparable circumstances, calculated according to methodology in an approved state plan amendment for the Arkansas Medicaid Program; and

(10)(A) "Upper payment limit gap" means the difference between the upper payment limit of the medical transportation provider and the Medicaid payments not financed using medical transportation assessment made to all medical transportation providers.

(B) "Upper payment limit gap" is calculated separately for ambulance services and air ambulance services.

20-77-2703. Medical transportation provider assessment.

(a)(1) Except as provided in this subchapter, an assessment is imposed on each medical transportation provider for each state fiscal year in an amount calculated as a percentage of the net operating revenues of the medical transportation provider.

(2) The assessment rate shall be determined annually based upon the percentage of net operating revenue needed to generate an amount up to the nonfederal portion of the upper payment limit gap plus the annual fee to be paid to the Arkansas Medicaid Program under § 20-77-2705(f)(1)(C), but in no case at a rate that would cause the assessment proceeds to exceed the indirect guarantee threshold set forth in 42 C.F.R. § 433.68(f)(3)(i).

(3) The assessment rate described in subsection (a) of this section shall be determined after consultation with the Arkansas Ambulance Association or its successor association.

(b) This subchapter does not authorize a unit of county or local government to license for revenue or impose a tax or assessment:

(1) Upon medical transportation providers; or

(2) Measured by the income or earnings of a medical transportation provider.

20-77-2704. Program administration.

(a) The Director of the Division of Medical Services of the Department of Human Services shall administer the assessment program created in this subchapter.

(b)(1) The Division of Medical Services of the Department of Human Services shall adopt rules to implement this subchapter.

(2) Unless otherwise provided in this subchapter, the rules adopted under subdivision (b)(1) of this section shall not grant any exceptions to or exemptions from the medical transportation provider assessment imposed under § 20-77-2703.

(3) The rules adopted under subdivision (b)(1) of this section shall include any necessary forms for:

(A) Calculating of upper payment limits;

(B) Reporting of net operating revenue;

(C) Imposing and collecting of the medical transportation provider assessment imposed under § 20-77-2703; and

(D) Enforcing this subchapter, including without limitation letters of caution or sanctions.

(4) The rules adopted under subdivision (b)(1) of this section shall specify which time periods are used as the basis for the calculation of the assessment in each state fiscal year.

(c) To the extent practicable, the division shall administer and enforce this subchapter and collect the assessments, interest, and penalty assessments imposed under this subchapter using procedures generally employed in the administration of the division's other powers, duties, and functions.

20-77-2705. Medical Transportation Assessment Account.

(a)(1) There is created within the Arkansas Medicaid Program Trust Fund a designated account known as the "Medical Transportation Assessment Account".

(2) The medical transportation provider assessments imposed under § 20-77-2703 shall be deposited into the Medical Transportation Assessment Account.

(b) Moneys in the Medical Transportation Assessment Account shall consist of:

(1) All moneys collected or received by the Division of Medical Services of the Department of Human Services from medical transportation provider assessments imposed under § 20-77-2703;

(2) Any interest or penalties levied in conjunction with the administration of this subchapter; and

(3) Any appropriations, transfers, donations, gifts, or moneys from other sources, as applicable.

(c) The Medical Transportation Assessment Account shall be separate and distinct from the General Revenue Fund Account of the State Apportionment Fund and shall be supplementary to the Arkansas Medicaid Program Trust Fund.

(d) Moneys in the Medical Transportation Assessment Account shall not be used to replace other general revenues appropriated and funded by the General Assembly or other revenues used to support Medicaid.

(e) The Medical Transportation Assessment Account shall be exempt from budgetary cuts, reductions, or eliminations caused by a deficiency of general revenues.

(f)(1) Except as necessary to reimburse any funds borrowed to supplement funds in the Medical Transportation Assessment Account, the moneys in the Medical Transportation Assessment Account shall be used only as follows:

(A) To make emergency medical transportation access payments under § 20-77-2709;

(B) To reimburse moneys collected by the division from medical transportation providers through error or mistake or under this subchapter; or

(C) To pay an annual fee to the division in the amount of three and three-fourths percent (3.75%) of the assessments collected from medical transportation providers under § 20-77-2703 each state fiscal year.

(2)(A) The Medical Transportation Assessment Account shall retain account balances remaining each fiscal year.

(B) At the end of each fiscal year, any positive balance remaining in the Medical Transportation Assessment Account shall be factored into the calculation of the new assessment rate by reducing the amount of medical transportation provider assessment funds that must be generated during the subsequent fiscal year.

(3) A medical transportation provider shall not be guaranteed that its emergency medical transportation access payments will equal or exceed the amount of its medical transportation provider assessment.

20-77-2706. Exemptions.

(a) The following medical transportation providers are exempt from the assessment imposed under § 20-77-2703 unless the exemption is adjudged to be unconstitutional or otherwise determined to be invalid:

(1) Volunteer ambulance services;

(2) Ambulance services owned by the state, county, or political subdivision;

(3) Nonemergency ambulance services;

(4) Air ambulance services; and

(5) Specialty hospital based ambulance services.

(b) If an exemption under subsection (a) of this section is adjudged to be unconstitutional or otherwise determined to be invalid, the applicable medical transportation provider shall pay the assessment imposed under § 20-77-2703.

20-77-2707. Quarterly notice and collection.

(a)(1) The annual medical transportation provider assessment imposed under § 20-77-2703 shall be due and payable on a quarterly basis.

(2) However, an installment payment of an assessment imposed by § 20-77-2703 shall not be due and payable until:

(A) The Division of Medical Services of the Department of Human Services issues the written notice required by § 20-77-2708(a) stating that the payment methodologies to medical transportation providers required under § 20-77-2709 have been approved by the Centers for Medicare and Medicaid Services and the waiver under 42 C.F.R. § 433.68 for the assessment

imposed by § 20-77-2703, if necessary, has been granted by the Centers for Medicare and Medicaid Services;

(B) The thirty-day verification period required by § 20-77-2708(b) has expired; and

(C) The division has made all quarterly installments of emergency medical transportation access payments that were otherwise due under § 20-77-2709 consistent with the effective date of the approved state plan amendment and waiver.

(3) After the initial installment has been paid under this section, each subsequent quarterly installment payment of an assessment imposed by § 20-77-2703 shall be due and payable within ten (10) business days after the medical transportation provider has received its emergency medical transportation access payments due under § 20-77-2709 for the applicable quarter.

(b)(1) If a medical transportation provider fails to timely pay the full amount of a quarterly assessment, the division shall add to the assessment:

(A) A penalty assessment equal to five percent (5%) of the quarterly amount not paid on or before the due date; and

(B) On the last day of each quarter after the due date until the assessed amount and the penalty imposed under subdivision (b)(1)(A) of this section are paid in full, an additional five percent (5%) penalty assessment on any unpaid quarterly and unpaid penalty assessment amounts.

(2) Payments shall be credited first to unpaid quarterly amounts, rather than to penalty or interest amounts, beginning with the most delinquent installment.

(3) If the division is unable to recoup from Medicaid payments the full amount of any unpaid assessment or penalty assessment, or both, the division may file suit in a court of competent jurisdiction to collect up to double the amount due, the division's costs related to the suit and reasonable attorney's fees.

20-77-2708. Notice of assessment.

(a)(1) The Division of Medical Services of the Department of Human Services shall send a notice of assessment to each medical transportation provider informing the medical transportation provider of the assessment

rate, the medical transportation provider's net operating revenue calculation, and the estimated assessment amount owed by the medical transportation provider for the applicable fiscal year.

(2) Except as set forth in subdivision (a)(3) of this section, annual notices of assessment shall be sent at least forty-five (45) days before the due date for the first quarterly assessment payment of each fiscal year.

(3) The first notice of assessment shall be sent within seventy-five (75) days after receipt by the division of notification from the Centers for Medicare and Medicaid Services that the payments required under § 20-77-2709 and, if necessary, the waiver granted under 42 C.F.R. § 433.68 have been approved.

(b) The medical transportation provider shall have thirty (30) days from the date of its receipt of a notice of assessment to review and verify the assessment rate, the medical transportation provider's net operating revenue calculation, and the estimated assessment amount.

(c)(1) If a medical transportation provider operates, conducts, or maintains more than one (1) medical transportation provider in the state, the medical transportation provider shall pay the assessment for each medical transportation provider separately.

(2) However, if the medical transportation provider operates more than one (1) medical transportation provider under one (1) Medicaid provider number, the medical transportation provider may pay the assessment for the medical transportation providers in the aggregate.

(d)(1) For a medical transportation provider subject to the assessment imposed under § 20-77-2703 that ceases to conduct medical transportation operations or maintain its state license or did not conduct medical transportation operations throughout a state fiscal year, the assessment for the state fiscal year in which the cessation occurs shall be adjusted by multiplying the annual assessment computed under § 20-77-2703 by a fraction, the numerator of which is the number of days during the year that the medical transportation provider operated and the denominator of which is three hundred sixty-five (365).

(2) Immediately upon ceasing to operate, the medical transportation provider shall pay the adjusted assessment for that state fiscal year to the extent not previously paid.

(e) A medical transportation provider subject to an assessment under this subchapter that has not been previously licensed as a medical transportation provider in Arkansas and that commences medical transportation operations during a state fiscal year shall pay the required assessment computed under § 20-77-2703 and shall be eligible for emergency medical transportation access payments under § 20-77-2709 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f) A medical transportation provider that is exempted from payment of the assessment under § 20-77-2706 at the beginning of a state fiscal year but during the state fiscal year experiences a change in status so that it becomes subject to the assessment shall pay the required assessment computed under § 20-77-2703 and shall be eligible for emergency medical transportation access payments under § 20-77-2709 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) A medical transportation provider that is subject to payment of the assessment computed under § 20-77-2703 at the beginning of a state fiscal year but during the state fiscal year experiences a change in status so that it becomes exempted from payment under § 20-77-2706 shall be relieved of its obligation to pay the medical transportation provider assessment and shall become ineligible for emergency medical transportation access payments under § 20-77-2709 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

20-77-2709. Emergency medical transportation access payments.

(a) To preserve and improve access to medical transportation services, for medical transportation services rendered on or after July 1, 2017, the Division of Medical Services of the Department of Human Services shall make emergency medical transportation access payments as set forth in this section.

(b) The division shall calculate the emergency medical transportation access payment amount as the balance of the Medical Transportation Assessment Account plus any federal matching funds earned on the balance, up to but not to exceed the upper payment limit gap for all medical transportation providers.

(c)(1) Except as provided in § 20-77-2706, all medical transportation providers shall be eligible for emergency medical transportation access payments each state fiscal year as set forth in this subsection.

(2)(A) In addition to any other funds paid to medical transportation providers for emergency medical services to Medicaid patients, each eligible medical transportation provider shall receive emergency medical transportation access payments each state fiscal year equal to the medical transportation provider's proportionate share of the total upper payment limit gap for all providers of emergency medical services.

(B) Emergency medical transportation access payments shall be made on a quarterly basis.

(C) In addition to other rules as the division determines are necessary to implement emergency medical transportation access payments, the division may create separate levels of assessments and emergency medical transportation access payments for ambulance services and air ambulance services.

(d) An emergency medical transportation access payment shall not be used to offset any other payment by Medicaid for emergency or nonemergency services to Medicaid beneficiaries.

20-77-2710. Effectiveness – Cessation.

(a) The medical transportation provider assessment imposed under § 20-77-2703 shall cease to be imposed, the emergency medical transportation access payments made under § 20-77-2709 shall cease to be paid, and any moneys remaining in the Medical Transportation Assessment Account in the Arkansas Medicaid Program Trust Fund shall be refunded to medical transportation providers in proportion to the amounts paid by them if:

(1) The Medical Transportation Assessment Account access payments required under § 20-77-2709 are changed or the assessments imposed under § 20-77-2703 are not eligible for federal matching funds under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq.; or

(2) It is determined in the course of an administrative adjudication or in an action under § 25-15-207 that the Division of Medical Services of the Department of Human Services:

(A) Established Medicaid medical transportation provider

payment rates that include an offset, in whole or in part, for any emergency medical transportation access payments under § 20-77-2709; or

(B) Included the net effect of any emergency medical transportation access payment under § 20-77-2709 when considering whether Medicaid medical transportation provider payment rates are:

(i) Consistent with efficiency, economy, and quality of care; and

(ii) Sufficient to enlist enough providers so that Medicaid care and services are available at least to the extent that the care and services are available to the general population in the geographic area.

(b)(1) The medical transportation provider assessment imposed under § 20-77-2703 shall cease to be imposed and the emergency medical transportation access payments under § 20-77-2709 shall cease to be paid if the assessment is determined to be an impermissible tax under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.

(2) Moneys in the Medical Transportation Assessment Account in the Arkansas Medicaid Program Trust Fund derived from assessments imposed before the determination described in subdivision (b)(1) of this section shall be disbursed under § 20-77-2709 to the extent federal matching is not reduced due to the impermissibility of the assessments, and any remaining moneys shall be refunded to medical transportation providers in proportion to the amounts paid by them.

20-77-2711. State plan amendment.

(a) The Division of Medical Services of the Department of Human Services shall file with the Centers for Medicare and Medicaid Services a state plan amendment to implement the requirements of this subchapter, including the payment of emergency medical transportation access payments under § 20-77-2709, no later than forty-five (45) days after June 15, 2017.

(b) If the state plan amendment is not approved by the Centers for Medicare and Medicaid Services, the division shall:

(1) Not implement the assessment imposed under § 20-77-2703; and

(2) Return any assessment fees to the medical transportation providers that paid the fees if assessment fees have been collected.

/s/Teague