

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Upper payment limit program-private hospitals.

Sponsored by: Joint Labor, Health & Social Services Interim
Committee

A BILL

for

1 AN ACT relating public welfare; establishing a private
2 hospital assessment as specified; providing for the use of
3 assessments to obtain federal matching funds; providing for
4 payments to private hospitals as specified; establishing an
5 account; providing definitions; providing regulatory
6 authority; providing penalties; and providing for an
7 effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

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11

STAFF COMMENT

12

Wyoming law currently contains the Nursing Care
13 Facility Assessment Act, W.S. 42-7-101 through
14 42-7-109, which collects an assessment from
15 nursing homes and uses the collected monies to

1 provide higher reimbursement rates to those
 2 nursing homes that pay the assessment. The
 3 system is very similar to that proposed for
 4 private hospitals. For that reason, the following
 5 legislation adopts the structure used in the
 6 Nursing Care Facility Assessment Act for private
 7 hospitals. The assessment for private hospitals
 8 is placed in a new article, immediately after the
 9 article applicable to the nursing home
 10 assessment.

11 *****
 12

13 **Section 1.** W.S. 42-9-101 through 42-9-109 are created
 14 to read:

15

16 CHAPTER 9. PRIVATE HOSPITAL ASSESSMENT ACT

17

18 **42-9-101. Short title.**

19

20 This chapter shall be known and may be cited as the
 21 "Wyoming Private Hospital Assessment Act."

22

23 **42-9-102. Definitions.**

24

25 (a) As used in this chapter:

26

27 (i) "Account" means the private hospital
 28 assessment account created by W.S. 42-9-103;

1

2 (ii) "Department" means the department of
3 health;

4

5 (iii) "Fiscal year" means the twelve (12) month
6 period beginning October 1 and ending September 30;

7

8 (iv) "Medicaid" means the medical assistance
9 program established by title XIX of the federal Social
10 Security Act and administered in this state by the
11 department pursuant to the Wyoming Medical Assistance and
12 Services Act;

13

14 (v) "Medicare cost report" means form CMS-2552-
15 96, the hospital cost report, as it existed on January 1,
16 2015;

17 *****

18

STAFF COMMENT

19 The report number and worksheet page numbers
20 identified in paragraphs (v) and (vi) may need to
21 be updated to reflect current references. The
22 Department has indicated that the proper Medicaid
23 cost report, referenced in paragraph (v), likely
24 is form CMS-2552-10. The Committee may want to
25 consider whether identifying specific pages and
26 report numbers is advisable since they can be
27 amended only through legislative action.

28

1 (vi) "Net hospital patient revenue" means gross
2 hospital revenue as reported on Worksheet G-2 (Columns 1
3 and 2, Lines 1, 2, 2.01, 15, 17 and 18) of the most recent
4 settled Medicare cost report, excluding estimated
5 nonhospital ancillary revenue as reported on worksheet D-4,
6 multiplied by the hospital's ratio of total net to gross
7 revenue, as reported on worksheet G-3 (Column 1, Line 3)
8 and worksheet G-2 (Part I, Column 3, Line 25). If a
9 hospital does not have a settled Medicare cost report, a
10 hospital's net hospital patient revenue shall be determine
11 based on current data, which may be extrapolated and then
12 reconciled against the hospital's most recent settled
13 Medicare cost report, when available, with the hospital
14 repaying to the department any excess payments;

15

16 (vii) "Private hospital" means those
17 institutions licensed by the department as hospitals which
18 are not owned or operated by the state or any city, town,
19 county, special district or other political subdivision of
20 the state or local government;

21

1 (viii) "Quarterly adjustment payment" means the
2 payment made to private hospitals pursuant to W.S. 42-9-
3 106;

4

5 (ix) For purposes of this chapter, "upper
6 payment limit" means the limitation established pursuant to
7 42 C.F.R. 447.272 and 42 C.F.R. 447.321 on aggregate
8 private hospital medicaid reimbursement for inpatient and
9 outpatient services;

10

11 (x) "Upper payment limit gap" means the amount
12 calculated annually by the department constituting the
13 difference between the upper payment limit and medicaid
14 payments made to private hospitals in a fiscal year,
15 excluding any quarterly adjustment payments authorized by
16 this chapter.

17

18 **42-9-103. Private hospital assessment account.**

19

20 (a) The private hospital assessment account is
21 created.

22

1 (b) The state treasurer shall invest amounts
2 deposited within the account in accordance with law and all
3 investment earnings shall be credited back to the account.
4 Funds in the account are continuously appropriated to the
5 department for the purposes specified in this section.

6

7 (c) The account shall consist of:

8

9 (i) Amounts collected or received by the
10 department from private hospital assessments under this
11 chapter;

12

13 (ii) All federal matching funds received by the
14 department as a result of expenditures made by the
15 department pursuant to this chapter.

16

17 (d) The account shall be used exclusively for the
18 following purposes:

19

20 (i) To pay administrative expenses incurred by
21 the department or its agent in performing the activities
22 authorized by this chapter, provided that such expenses

1 shall not exceed a total of one percent (1%) of the
2 aggregate assessment funds collected in the fiscal year;

3

4 (ii) To secure federal matching funds available
5 through the state medicaid plan as approved pursuant to
6 W.S. 42-9-108, which shall be used to make quarterly
7 adjustment payments as provided by this chapter;

8

9 (iii) To repay to the federal government any
10 excess payments received or made to private hospitals if
11 the state plan, after approval by the federal centers for
12 medicare and medicaid services, is subsequently disapproved
13 for any reason and after the state has exhausted all
14 appeals. Private hospitals shall refund any excess
15 payments to the assessment account. If a private hospital
16 is unable to refund payments as provided in this paragraph,
17 the department shall develop a payment plan to recoup
18 deficient payments and accordingly deduct amounts from
19 future medicaid payments. The department shall refund the
20 federal government for the federal portion of those
21 overpayments;

22

1 (iv) To refund assessments paid by private
2 hospitals for quarterly adjustment payments which were
3 earned but not paid by the department, but only after the
4 payments authorized by paragraphs (i) and (iii) of this
5 section have been made.

6

7 **42-9-104. Assessments.**

8

9 (a) Each private hospital shall pay a private
10 hospital assessment to the department
11 in accordance with this section. Hospitals owned or
12 operated by the state or any city, town, county, special
13 district or other political subdivision of the state or
14 local government shall not be required to pay the
15 assessment required by this section.

16

17 (b) The assessment due under this section shall be
18 imposed each fiscal year in an amount calculated as a
19 uniform percentage of each hospital's net patient revenue.
20 The assessment rate shall be determined by the department
21 on a prospective basis and shall be based on the percentage
22 of net hospital patient revenue needed to generate an
23 amount not to exceed the nonfederal portion of the upper

1 payment limit gap plus the fee authorized by W.S. 42-9-
2 103(d)(i). In no event shall the assessment rate exceed
3 the indirect guarantee threshold amount established by 42
4 C.F.R. 433.68(f)(3)(i) or other federal law.

5
6 (c) Unless otherwise determined by the department,
7 the department shall collect and each private hospital
8 shall pay the assessment required by this section on a
9 quarterly basis, each payment constituting twenty-five
10 percent (25%) of the annual assessment determined by the
11 department. The initial payment shall be due not later
12 than forty-five (45) days after the state plan has been
13 approved by the federal centers for medicare and medicaid
14 services unless a later date is set by the department.
15 Subsequent payments are due not later than forty-five (45)
16 days after the end of each calendar quarter unless a later
17 date is set by the department.

18
19 (d) If a private hospital ceases to operate as a
20 hospital or for any reason ceases to be subject to the
21 assessment imposed under this chapter, the assessment for
22 the fiscal year in which the cessation occurs shall be
23 adjusted by multiplying the annual assessment by a

1 fraction, the numerator of which is the number of days in
2 the year during which the hospital is subject to the
3 assessment and the denominator of which is three hundred
4 sixty-five (365). Immediately upon ceasing to operate as a
5 hospital, or otherwise ceasing to be subject to this
6 chapter, the hospital shall pay the assessment for each
7 quarter as adjusted, to the extent not previously paid.

8

9 **42-9-105. Penalties for failure to pay assessment.**

10

11 (a) If a private hospital fails to pay an assessment
12 due under this chapter, there shall be added to the
13 assessment a penalty equal to five percent (5%) of the
14 amount of the assessment that was not paid when due. The
15 penalty under this section may be waived by the department
16 for good cause. Any payments made after a penalty is
17 assessed under this section shall be credited first to
18 unpaid assessment amounts rather than to penalty amounts,
19 beginning with the most delinquent installment.

20

21 (b) In addition to the penalty under subsection (a)
22 of this section, the department may implement any of the

1 following remedies for failure of a private hospital to pay
2 its assessment when due under this chapter:

3

4 (i) Withhold any medicaid payments, including
5 any quarterly adjustment payments, until the assessment is
6 paid;

7

8 (ii) Suspend or revoke the private hospital's
9 license; or

10

11 (iii) Develop a plan that requires the private
12 hospital to pay any delinquent assessment in installments.

13

14 **42-9-106. Quarterly adjustment payments.**

15

16 (a) To preserve the quality and improve access to
17 hospital services for private hospital inpatient and
18 outpatient services rendered on or after July 1, 2016, the
19 department shall make quarterly adjustment payments as set
20 forth in this section.

21 *****

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STAFF COMMENT

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Although it is permissible to include subsection

24

(a), above, in statute, standard statutory

1 convention disfavors including statements of
2 purpose within codified language.
3 *****

4

5 (b) Each private hospital that pays assessments under
6 this chapter shall be eligible to receive quarterly
7 adjustment payments as provided in this section. The
8 department shall distribute quarterly adjustment payments
9 in an amount up to but not to exceed the upper payment
10 limit gap for private hospital inpatient and outpatient
11 services.

12

13 (c) A portion of the total quarterly adjustment
14 payments, not to exceed the upper payment limit gap for
15 private hospital inpatient services, shall be designated as
16 the private hospital inpatient quarterly adjustment pool.
17 The following shall apply:

18

19 (i) In addition to any other funds paid to
20 private hospitals for inpatient hospital services to
21 medicaid patients, each eligible private hospital shall
22 receive inpatient quarterly adjustment payments each fiscal
23 year equal to the hospital's pro rata share of the private
24 hospital inpatient quarterly adjustment pool based upon the

1 hospital's medicaid payments for inpatient services divided
2 by the total medicaid payments for inpatient services of
3 all eligible hospitals;

4

5 (ii) Private hospital inpatient quarterly
6 adjustment payments shall be made on a quarterly basis.

7

8 (d) A portion of the total hospital quarterly
9 adjustment payments, not to exceed the upper payment limit
10 gap for private hospital outpatient services, shall be
11 designated as the private hospital outpatient quarterly
12 adjustment pool. The following shall apply:

13

14 (i) In addition to any other funds paid to
15 private hospitals for outpatient hospital services to
16 medicaid patients, each eligible hospital shall receive
17 private hospital outpatient quarterly adjustment payments
18 each fiscal year equal to the hospital's pro rata share of
19 the private hospital outpatient quarterly adjustment pool
20 based upon the hospital's medicaid payments for outpatient
21 services divided by the total medicaid payments for
22 outpatient services of all eligible hospitals;

23

1 (ii) Private hospital outpatient quarterly
2 adjustment payments shall be made on a quarterly basis.

3
4 (e) Quarterly adjustment payments shall not be used
5 to offset any other payment by medicaid for hospital
6 inpatient or outpatient services to medicaid beneficiaries,
7 including without limitation any fee-for-service, per diem,
8 private hospital inpatient adjustment or cost-settlement
9 payment.

10

11 (f) No private hospital shall be guaranteed,
12 expressly or otherwise, that any quarterly adjustment
13 payment will equal or exceed the amount of the private
14 hospital assessments due under this chapter.

15

16 *****

17 **STAFF COMMENT**

18 To the extent the language in subsection (g),
19 below, limits the Legislature's ability to adjust
20 funding levels in the future, it may constitute
21 an impermissible effort to bind future
22 legislatures. The Legislature likely is not
23 allowed to limit the budgetary authority of
24 future legislatures by broadly prohibiting
25 adjustments to future funding levels which are
26 meant to "support medicaid."

27 *****

1 (g) Monies made available by this chapter shall not
2 be used to replace other general revenues appropriated and
3 funded by the legislature or other revenues used to support
4 medicaid.

5

6 **42-9-107. Discontinuation of the assessment and**
7 **quarterly adjustment payments.**

8

9 (a) The assessment imposed by this chapter shall be
10 discontinued if:

11

12 (i) The state plan amendment reflecting the
13 quarterly adjustment payments authorized by this chapter is
14 not approved by the federal centers for medicare and
15 medicaid services. The department may modify the quarterly
16 adjustment payment provisions as necessary to obtain the
17 federal centers for medicare and medicaid services approval
18 if such changes do not exceed the authority and purposes of
19 this chapter;

20

21 (ii) If federal financial participation to match
22 assessments under this chapter becomes unavailable under
23 federal law. In such case, the department shall terminate

1 the imposition of assessments beginning on the date the
2 federal statutory, regulatory or interpretive change takes
3 effect.

4

5 (b) If collection of the assessment is discontinued
6 as provided in this section, quarterly adjustment payments
7 shall be discontinued and, after payment of all amounts
8 under W.S. 42-9-103(d)(i) and (iii), any assessments
9 remaining in the account shall be returned to the private
10 hospitals from which the assessments were collected on the
11 same basis as they were collected.

12

13 **42-9-108. Approval of state plan; rulemaking.**

14

15 (a) The department shall seek necessary federal
16 approval in the form of state plan amendments in order to
17 implement the provisions of this chapter.

18

19 (b) The department shall adopt rules and regulations
20 necessary to implement the provisions of this chapter and
21 to obtain approval of the state plan amendments.

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STAFF COMMENT

The section, below, is included in the Nursing Care Facility Assessment Act and, so, is included here. However, the Wyoming Hospital Association notes that this section may be unnecessary given that a definition of hospital exists which may address this situation. The Association also believes there is no incentive to game the system because a hospital which operates multiple facilities but considers itself one hospital will simply have a larger net patient revenue and will, therefore, pay the same, higher assessment.

42-9-109. Multiple facilities.

If a person conducts, operates or maintains more than one (1) private hospital licensed by the department, the person shall pay the assessment for each private hospital separately.

Section 2. This act is effective July 1, 2016.

(END)