

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S3/21/17

A Bill

SENATE BILL 649

5 By: Senator Teague
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH AN AMBULANCE ASSESSMENT PROGRAM
9 TO IMPROVE THE QUALITY AND TIMELINESS OF MEDICAL
10 TRANSPORTS IN ARKANSAS; AND FOR OTHER PURPOSES.
11

Subtitle

12
13
14 TO ESTABLISH AN AMBULANCE ASSESSMENT
15 PROGRAM TO IMPROVE THE QUALITY AND
16 TIMELINESS OF MEDICAL TRANSPORTS IN
17 ARKANSAS.
18

19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

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

24 *Subchapter 27 – Assessment Fee and Program on Medical Transportation*
25 *Providers*
26

27 *20-77-2701. Legislative findings and intent.*

28 *(a) The General Assembly finds that:*

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

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

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

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



1 emergency preparedness system within Arkansas; and

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

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

10
11 20-77-2702. Definitions.

12 As used in this subchapter:

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

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

19 (3) "Emergency medical services" means:

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

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

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

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

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

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

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

1 transportation;

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

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

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

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

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

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

25
26 20-77-2703. Medical transportation provider assessment.

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

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

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

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

6 (1) Upon medical transportation providers; or

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

9
10 20-77-2704. Program administration.

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

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

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

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

22 (A) Calculating of upper payment limits;

23 (B) Reporting of net operating revenue;

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

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

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

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

35
36 20-77-2705. Medical Transportation Assessment Account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11
12 20-77-2706. Exemptions.

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

16 (1) Volunteer ambulance services;

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

19 (3) Nonemergency ambulance services;

20 (4) Air ambulance services; and

21 (5) Specialty hospital based ambulance services.

22 (b) If an exemption under subsection (a) of this section is adjudged
23 to be unconstitutional or otherwise determined to be invalid, the applicable
24 medical transportation provider shall pay the assessment imposed under § 20-
25 77-2703.

26
27 20-77-2707. Quarterly notice and collection.

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

30 (2) However, an installment payment of an assessment imposed by
31 § 20-77-2703 shall not be due and payable until:

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

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

3 (B) The thirty-day verification period required by § 20-
4 77-2708(b) has expired; and

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

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

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

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

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

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

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

32
33 20-77-2708. Notice of assessment.

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

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

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

8 (3) The first notice of assessment shall be sent within seventy-
9 five (75) days after receipt by the division of notification from the Centers
10 for Medicare and Medicaid Services that the payments required under § 20-77-
11 2709 and, if necessary, the waiver granted under 42 C.F.R. § 433.68 have been
12 approved.

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

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

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

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

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

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

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

17 (g) A medical transportation provider that is subject to payment of
18 the assessment computed under § 20-77-2703 at the beginning of a state fiscal
19 year but during the state fiscal year experiences a change in status so that
20 it becomes exempted from payment under § 20-77-2706 shall be relieved of its
21 obligation to pay the medical transportation provider assessment and shall
22 become ineligible for emergency medical transportation access payments under
23 § 20-77-2709 on the date specified in rules promulgated by the division under
24 the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

25
26 20-77-2709. Emergency medical transportation access payments.

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

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

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

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

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

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

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

20
21 20-77-2710. Effectiveness – Cessation.

22 (a) The medical transportation provider assessment imposed under § 20-
23 77-2703 shall cease to be imposed, the emergency medical transportation
24 access payments made under § 20-77-2709 shall cease to be paid, and any
25 moneys remaining in the Medical Transportation Assessment Account in the
26 Arkansas Medicaid Program Trust Fund shall be refunded to medical
27 transportation providers in proportion to the amounts paid by them if:

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

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

36 (A) Established Medicaid medical transportation provider

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

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

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

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

11 (b)(1) The medical transportation provider assessment imposed under §
12 20-77-2703 shall cease to be imposed and the emergency medical transportation
13 access payments under § 20-77-2709 shall cease to be paid if the assessment
14 is determined to be an impermissible tax under Title XIX of the Social
15 Security Act, 42 U.S.C. § 1396 et seq.

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

23
24 20-77-2711. State plan amendment.

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

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

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

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

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APPROVED: 04/07/2017