

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

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.

35  
36 /s/Teague