

Regular Session, 2013

HOUSE BILL NO. 652

BY REPRESENTATIVE ABRAMSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HEALTH CARE: Provides relative to health care financing

1 AN ACT

2 To enact Chapter 67 of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 46:2921 through 2929, relative to health services; to provide relative to the  
4 medical assistance program; to provide relative to reimbursement rates for certain  
5 health services; to enact the Supplemental Hospital Credit Program Act; to provide  
6 for collection and administration of an assessment for hospitals; to provide for  
7 disposition of the assessment; to provide for penalties and sanctions; to provide for  
8 an effective date; to provide for duties of the secretary of the Department of Health  
9 and Hospitals; to provide for rulemaking authority; to provide for a sunset date; and  
10 to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 67 of Title 46 of the Louisiana Revised Statutes of 1950,  
13 comprised of R.S. 46:2921 through 2929, is hereby enacted to read as follows:

14 CHAPTER 67. SUPPLEMENTAL HOSPITAL CREDIT PROGRAM

15 §2921. Short title; purpose

16 A. This Chapter may be known and referred to as the "Supplemental  
17 Hospital Credit Program Act".

18 B. The purposes of this Chapter include the following:

19 (1) Preserve and enhance the availability of inpatient and outpatient hospital  
20 care for all patients.

1           (2) Enhance the stability of Medicaid funding by capturing a reliable source  
2           of funding for a portion of the state's obligation.

3           (3) Ease "cost-shifting" to employers and private insurers by providing  
4           reimbursement for a portion of hospitals' uncompensated care and Medicaid  
5           underpayment.

6           §2922. Definitions

7           As used in this Chapter, the following terms shall have the following  
8           meanings:

9           (1) "Assessment effective date" means the date specified in R.S. 46:2926(E).

10          (2) "Base year Medicaid hospital funding" means the amount paid to all  
11          nonstate hospitals by the Medicaid program in state Fiscal Year 2012-2013,  
12          excluding Medicare upper payment limit payments.

13          (3) "Base year Medicaid hospital rates" means the rates, excluding upper  
14          payment limit payments, for inpatient and outpatient services paid to all nonstate  
15          hospitals by the Medicaid program in state Fiscal Year 2012-2013.

16          (4) "Base year Medicare cost report" means the hospital's Medicare cost  
17          report filed for the full cost report year beginning in the Federal Fiscal Year 2012  
18          (October 2011 through September 2012). In the event that the hospital did not file  
19          a full year Medicare cost report for this period, the base year Medicare cost report  
20          shall be the hospital's first full year Medicare cost report filed subsequent to this  
21          period.

22          (5) "CMS" means the Centers for Medicare and Medicaid Services of the  
23          United States Department of Health and Human Services or its successor.

24          (6) "Department" means the Department of Health and Hospitals.

25          (7) "Exempt hospitals" means all hospitals owned by the state, all hospitals  
26          owned by the United States or any agency or department thereof, rural hospitals as  
27          defined in R.S. 40:1300.143, and hospitals certified by Medicare as separately  
28          licensed long-term acute care, rehabilitation, or psychiatric hospitals.

29          (8) "Fund" means the Supplemental Hospital Credit Program Trust Fund.

1           (9) "Hospital" means any hospital licensed by the state under R.S. 40:2100  
2           et seq., but shall not include any hospital owned by the state, any hospital owned by  
3           the United States or any agency or department thereof, rural hospitals as defined in  
4           R.S. 40:1300.143, and hospitals certified by Medicare as separately licensed long-  
5           term acute care, rehabilitation, or psychiatric hospitals.

6           (10) "Nonstate hospitals" means all hospitals licensed by the state or  
7           participating in the Medicaid program, excluding only those that are owned by the  
8           state.

9           (11) "Intentional failure to pay" means the failure by a hospital to pay the fee  
10          imposed under this Chapter within thirty days of a written notice of delinquency  
11          from the department.

12          (12) "Medicaid program" means the medical assistance program as  
13          established in Title XIX of the Social Security Act and as administered in the state  
14          of Louisiana by the Department of Health and Hospitals.

15          (13) "Net patient revenue" means the amount reported as net patient revenue  
16          in the hospital's Medicare cost report.

17          (14) "Net uncompensated cost" means, with respect to hospitals subject to  
18          this Chapter, the cost of furnishing uncompensated care to uninsured patients less  
19          any payments received for such care.

20          (15) "Secretary" means the secretary of the Department of Health and  
21          Hospitals.

22          (16) "State" means the state of Louisiana.

23          (17) "Uncompensated care" means, with respect to hospitals subject to this  
24          Chapter, furnishing inpatient and outpatient hospital services to uninsured persons  
25          as defined by the Louisiana Department of Health and Hospitals.

26          §2923. Supplemental Hospital Credit Program Trust Fund

27                A. There is hereby established as a special fund in the state treasury to be  
28                known as the Supplemental Hospital Credit Program Act Trust Fund, which shall  
29                consist of monies generated by the assessments on hospitals as provided in this

1        Chapter. The monies in the fund shall be available for appropriation by the  
2        legislature only to the Medicaid program and only as provided in this Chapter and  
3        solely in order to accomplish the purposes of this Chapter. The monies in the fund  
4        shall be invested by the state treasurer in the same manner as monies in the state  
5        general fund. All interest earned from the investment of monies in the fund, all  
6        interest paid as a result of late payments, and any other income relating to the fund  
7        or the fee imposed by this Chapter shall be deposited in and remain to the credit of  
8        the fund.

9                B. When available for appropriation as provided in this Chapter, the monies  
10              from the fund appropriated by the legislature shall be used and expended for the  
11              stated purposes and subject to the limitations of this Chapter.

12              C. Use of the monies in the fund shall be limited to those programs for which  
13              federal financial participation under Title XIX of the Social Security Act is available.  
14              §2924. Assessment; deposit into fund

15              A.(1) The Department of Health and Hospitals, or its successor, shall  
16              annually develop and adopt a formula which shall be used to determine the  
17              assessment provided for in this Chapter, subject to approval of the legislature. Prior  
18              to approval of the formula by the legislature, the legislature may return the formula  
19              adopted by the department to the department and may recommend to the department  
20              an amended formula for consideration by the department and submission to the  
21              legislature for approval.

22              (2) The legislature shall annually appropriate funds sufficient to fully fund  
23              the current cost to the state of the Supplemental Hospital Credit Program as  
24              determined by applying the approved formula. Neither the governor nor the  
25              legislature shall reduce the appropriation, except that the governor may reduce such  
26              appropriation using means provided in the act containing the appropriation provided  
27              that any such reduction is consented to in writing by two-thirds of the elected  
28              members of each house of the legislature.

1           (3) Whenever the legislature fails to approve the formula most recently  
2           adopted by the department, or its successor, the last formula adopted by the  
3           department, or its successor, and approved by the legislature shall be used for the  
4           determination of the cost of the Supplemental Hospital Credit Program and for the  
5           allocation of funds appropriated.

6           B. In the event that the net patient revenue stated in the hospitals' base year  
7           Medicare cost report is amended or adjusted at any time after assessment payments  
8           under this Chapter have been made, the hospital shall, within ninety days of such  
9           amendment or adjustment, pay any difference between previous assessment  
10          payments and the amount that would have been due in light of the cost report  
11          amendment or adjustment. If the amendment to the cost report reflects that the  
12          assessment was overpaid, the balance shall be refunded to the hospital within the  
13          same period.

14          C. Except in the implementation period, the assessment shall be paid in equal  
15          quarterly installments due on the twentieth day of the third month of each calendar  
16          quarter. Subject to the exceptions contained in Article VII, Section 9(A) of the  
17          Constitution of Louisiana, all assessments collected pursuant to this Chapter shall be  
18          paid into the state treasury and shall be credited to the Bond Security and  
19          Redemption Fund. Out of the funds remaining in the Bond Security and Redemption  
20          Fund after a sufficient amount is allocated from that fund to pay all obligations  
21          secured by the full faith and credit of the state which become due and payable within  
22          any fiscal year, the treasurer shall, prior to placing such remaining funds in the state  
23          general fund, pay into the Supplemental Hospital Credit Program Trust Fund an  
24          amount equal to the total amount of the assessments collected.

25          D. Any assessment not timely paid by a hospital shall bear interest at the rate  
26          provided by law for failure to pay other assessments due to the state, provided that  
27          the secretary may, in individual cases, waive the interest based on the financial  
28          condition of the hospital involved. The department shall cause a notice of

1 delinquency to be sent to any hospital which has not paid in full any amount within  
2 thirty days of the date due.

3 E. When a hospital disputes that the assessment is payable, or disputes the  
4 amount that is payable, it shall give the department written notice thereof at any time  
5 before the assessment becomes delinquent. Under no circumstances shall the  
6 department offset any amounts due to a hospital to collect the assessment to the  
7 extent that the assessment has been properly disputed as provided herein.

8 F. Any assessment collected pursuant to this Chapter shall be considered an  
9 allowable cost for purposes of Medicare and Medicaid cost reporting and  
10 reimbursement.

11 G.(1)(a) No hospital shall pass on the cost of this assessment or include the  
12 assessment as an itemized and separately listed amount on any statement sent to any  
13 patient, responsible party, insurer, or self-insured employer programs. If such a  
14 violation occurs, it shall be considered a violation of hospital minimum standards.  
15 If any party has reason to believe that the assessment has been passed on to the party,  
16 or an attempt was made to do so, the party may submit in writing to the Department  
17 of Revenue a request for an investigation along with evidence that the assessment  
18 has been passed on or that an attempt was made to pass on the assessment. The  
19 department shall have an affirmative duty to protect the parties above against any  
20 violation of this Subsection.

21 (b) Any bill or statement sent to a patient, responsible party, insurer, or self-  
22 insured employer program after the initial effective date of this Subsection shall  
23 contain the following statement: "This bill does not contain any cost of the  
24 assessment imposed by the Supplemental Hospital Credit Program Act provided in  
25 Act \_\_\_\_\_ of the 2013 Regular Session." The act number shall be the number of the  
26 act which originated as House Bill No. \_\_\_\_\_ of the 2013 Regular Session.

27 (2) Upon receipt of a written request for an investigation by an affected  
28 party, the department shall conduct a full investigation in a timely manner. Upon  
29 completion of the investigation, the department shall conduct a hearing, pursuant to

1 the provisions of the Administrative Procedure Act, if it believes sufficient cause has  
2 been shown to warrant a hearing. If the department declines to conduct a hearing,  
3 it shall explain in writing to the requesting party its reasons for not acting further  
4 upon the complaint.

5 (3) Upon any finding by the Department of Revenue of a violation of this  
6 Subsection, it shall order full restitution to the affected party, including judicial  
7 interest computed from the time that the violation occurred until payment of the  
8 restitution. Furthermore, the Department of Revenue shall forward its findings to the  
9 Department of Health and Hospitals, which shall conduct a hearing in the matter to  
10 determine the sanctions applicable thereto, including suspension or revocation of the  
11 violating hospital's license.

12 §2925. Disbursement of credit fund proceeds

13 A. The proceeds of the credit fund may be disbursed only to the department  
14 for use in the Medicaid program consistent with the stated purposes of this Chapter,  
15 and only when the following conditions have been met:

16 (1) Total Medicaid funding and reimbursement rates paid in the current fiscal  
17 year for payments to all nonstate hospitals is not less than the base year Medicaid  
18 hospital funding.

19 (2) The payments required to be made to hospitals under the Rural Hospital  
20 Preservation Act is not less than the base year Medicaid funding.

21 (3) An approved and final system is in place and fully funded to compensate  
22 hospitals as defined in this Chapter for at least seventy-five percent of their  
23 uncompensated care as reported on the latest uncompensated care filing prior to May  
24 thirty-first of the previous fiscal year. Any hospital which has not filed previously  
25 or is not yet required by regulation to make an uncompensated care filing, or which  
26 is without a full year cost report, may file an estimate of its uncompensated costs  
27 within forty-five days of the end of the quarter of such care provided in that quarter,  
28 and any such hospital otherwise eligible under this Chapter for such uncompensated  
29 care compensation shall be included in the payment to be made in the quarter in

1 which the estimate is filed, subject to final adjustment as otherwise provided. Except  
2 as hereinafter provided, the uncompensated care payment shall be paid in equal  
3 quarterly installments due on the fifteenth day of the third month in each calendar  
4 quarter.

5 (4) In the current fiscal year, Medicaid rates for all inpatient and outpatient  
6 services rendered by hospitals, including psychiatric care, are equal to the maximum  
7 allowable Medicare hospital rates for those services, respectively.

8 B. During the implementation period, the rates required by Subsection A of  
9 this Section may be contingent on final implementation of the assessment imposed  
10 by this Chapter, as long as the rates apply, whether prospectively or retroactively, to  
11 all services rendered and payments due in the implementation period.

12 C. If the criteria in Subsection A of this Section have not been met, no  
13 assessments or other assets of the fund shall be disbursed to the department. Any  
14 amount not disbursed within one hundred twenty days of the end of the quarter in  
15 which it was received shall be refunded to the hospital that paid it. Thereafter, no  
16 assessment may be imposed, and no assessment shall be due until the criteria in  
17 Subsection A of this Section have been met.

18 §2926. Department responsibilities; effective date

19 A. The department shall promptly promulgate, pursuant to the  
20 Administrative Procedure Act, such regulations as are necessary to comply with R.S.  
21 46:2925(A). The department is specifically authorized to promulgate the regulations  
22 as emergency rules. The department shall submit to the secretary of the United  
23 States Department of Health and Human Services for his approval those amendments  
24 to the Medicaid state plan necessary to conform the Medicaid state plan with the  
25 provisions of this Chapter. The department shall simultaneously seek any waivers  
26 of applicable federal regulations required to implement this Chapter. The provisions  
27 of this Chapter, including any base level funding and rate requirements in R.S.  
28 46:2925, shall be contingent upon this approval and the granting of any required  
29 waiver.



1           B. The department is authorized and directed to adopt and promulgate,  
2           pursuant to the Administrative Procedure Act, the rules and regulations as are  
3           necessary to administer the assessments imposed herein, including but not limited  
4           to rules and regulations regarding the collection and payment of the assessments and  
5           the records necessary to be maintained and made available by the hospitals on which  
6           the assessments are imposed.

7           C. Except to the extent that they directly or indirectly contradict the  
8           provisions of R.S. 46:2925, the department is authorized to promulgate the  
9           regulations required by CMS to obtain approval hereof.

10           D. The governor, by executive order, may designate any agency, department,  
11           or division of state government to assist the Department of Health and Hospitals to  
12           collect the assessment authorized herein.

13           E.(1) The effective date of the assessment imposed by this Chapter shall be  
14           the later of either of the following:

15           (a) The date upon which the rates provided for in R.S. 46:2925(A)(3) and (4)  
16           become payable to hospitals to which the assessment applies as defined in this  
17           Chapter.

18           (b) The first day of the calendar quarter in which the department seeks  
19           approval from CMS of the amendments to the state's Medicaid state plan as provided  
20           in Subsection A of this Section.

21           (2) The implementation period will begin on the effective date of the  
22           assessment and continue until the end of the calendar quarter in which CMS  
23           approves the amendments to the state's Medicaid state plan and any required waiver  
24           as provided in Subsection A of this Section; however, if that approval date falls  
25           within the last thirty days of the calendar quarter, the implementation period shall  
26           extend to the end of the next calendar quarter. All rates provided for in R.S.  
27           47:2925(A)(3) and (4) payable during the implementation period may be accrued by  
28           the department until the last month of the implementation period, but shall be paid  
29           no later than the fifteenth day of that month. All assessments due for the

1 implementation period shall not be payable until the twentieth day of the last month  
2 of the implementation period, but in no event shall any assessment be payable by  
3 any hospital before five days after all rates provided for in R.S. 46:2925(A)(3) and  
4 (4) which were accrued during the implementation period have been paid to that  
5 hospital. Thereafter, payments shall be made and the assessment shall be payable  
6 as provided in R.S. 46:2924.

7 §2927. Assessments by other entities prohibited

8 No political subdivision of the state or other local governmental entity may  
9 require a license or impose an assessment which applies to hospital providers  
10 disproportionately to other businesses or which is measured by the income or  
11 earnings of a hospital provider.

12 §2928. Certification of Title XIX claims and incurred uncompensated costs

13 Nonstate public hospitals, except small rural hospitals as defined in R.S.  
14 40:1300.143, shall certify to the Department of Health and Hospitals the state,  
15 nonfederal share of expenditures for all their Medicaid claims and shall provide a  
16 certification of incurred uncompensated care costs that constitute public expenditures  
17 that are eligible for federal financial participation under Title XIX of the Social  
18 Security Act. Both certifications shall be submitted in a form satisfactory to the  
19 department at the earliest possible date after July first, but no later than October first  
20 of each fiscal year beginning July 1, 2013. The department shall by regulation  
21 specify how any certification is to be made during the implementation period  
22 provided by this Chapter.

23 §2929. Actions relating to collection of the assessment

24 When the department fails to comply with any of the terms of this Chapter,  
25 Article 3601 of the Louisiana Code of Civil Procedure shall not prohibit any action  
26 to enjoin collection of any assessment provided by this Chapter or the transfer of any  
27 amounts from the fund to the department or any other agency of state government.

28 Section 2. This Act shall become null and void as of January 1, 2015, if no proposed  
29 amendment of the Constitution of Louisiana to establish the Supplemental Hospital Credit

1 Program Act Trust Fund and to provide for the dedicated appropriation of the monies  
2 contained therein consistent with the purposes of this Act is adopted at a statewide election  
3 and becomes effective on or before January 1, 2015.

4 Section 3. This Act shall become effective upon signature by the governor or, if not  
5 signed by the governor, upon expiration of the time for bills to become law without signature  
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
8 effective on the day following such approval.

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### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Abramson

HB No. 652

**Abstract:** Establishes the Supplemental Hospital Credit Program.

Proposed law provides that the purposes of the Act are to:

- (1) Preserve and enhance the availability of inpatient and outpatient hospital care for all patients.
- (2) Enhance the stability of Medicaid funding by capturing a reliable source of funding for a portion of the state's obligation.
- (3) Ease "cost-shifting" to employers and private insurers by providing reimbursement for a portion of hospitals' uncompensated care and Medicaid underpayment.

Proposed law creates the Supplemental Hospital Credit Program Trust Fund in the state treasury and requires that monies in the credit fund to be invested in the same manner as monies in the state general fund. Interest earned shall be deposited and remain in the credit fund.

Proposed law further provides for appropriation of monies from the fund.

Proposed law provides a method for the deposit of the revenue produced by the assessment provided by proposed law and limits the utilization of the monies to those programs for which federal financial participation is available.

Proposed law provides for definitions.

Proposed law requires the Dept. of Health and Hospitals, or its successor, to annually develop and adopt a formula which shall be used to determine the assessment provided for in proposed law, subject to approval of the legislature. Prior to approval of the formula by the legislature, the legislature may return the formula adopted by the department to the department and may recommend to the department an amended formula for consideration by the department and submission to the legislature for approval.

Proposed law requires the legislature to annually appropriate funds sufficient to fully fund the current cost to the state of the Supplemental Hospital Credit Program as determined by applying the approved formula. Neither the governor nor the legislature may reduce the appropriation, except that the governor may reduce the appropriation using means provided in the act containing the appropriation provided that any such reduction is consented to in writing by two-thirds of the elected members of each house of the legislature.

Proposed law provides that, whenever the legislature fails to approve the formula most recently adopted by the department, or its successor, the last formula adopted by the department, or its successor, and approved by the legislature shall be used for the determination of the cost of the Supplemental Hospital Credit Program and for the allocation of funds appropriated.

Exempted from the term "hospitals" are:

- (1) All hospitals owned by the state, the United States or any agency or department thereof.
- (2) Rural hospitals as defined in present law.
- (3) Hospitals certified by Medicare as separately licensed long term acute care, rehabilitation, or psychiatric hospitals.

Proposed law defines "base year Medicare cost report" as the hospital's Medicare cost report filed for the full cost report year beginning in the Federal Fiscal Year 2012 (Oct. 2011 through Sept. 2012) or, if the hospital did not file a full year Medicare cost report for this period, the hospital's first full year Medicare cost report filed subsequent to that period.

Proposed law provides that the effective date of the assessment is the later of: (1) the date the required rates for uncompensated care, Medicaid psychiatric care, and outpatient rates become payable or (2) the first day of the quarter in which DHH seeks approval from CMS of the amendments to the state's Medicaid state plan.

Proposed law provides that the assessment shall be considered an allowable cost for purposes of Medicare and Medicaid cost reporting and reimbursement.

Proposed law prohibits hospitals from passing on the cost of this assessment or including the assessment as an itemized and separately listed amount on any statement, and requires any bill to contain a statement that the costs have not been passed on. Any hospital that violates proposed law after notice and hearing shall be considered to have violated "hospital minimum standards" and shall be subject to the sanctions applicable thereto, including suspension or revocation of its license by DHH. Additionally, DHH must order restitution of the amounts obtained.

Proposed law requires the assessment to be paid into the Supplemental Hospital Credit Program Trust Fund. Money in the fund may be appropriated only for purposes of the proposed law.

Proposed law provides that proceeds of the fund may be disbursed to DHH for use in the Medicaid program only when the following conditions have been met:

- (1) Total Medicaid funding and reimbursement rates paid in the "current fiscal year" for payments to all "nonstate hospitals" is not less than the "base year Medicaid hospital funding", defined as the amount paid to all "nonstate hospitals" by the Medicaid program in FY 12-13, excluding Medicare upper payment limit payments.
- (2) The payments required to be made to hospitals under the Rural Hospital Preservation Act is not less than the base year.

- (3) An approved and final system is in place and fully funded to compensate "hospitals" for at least 75% of their "uncompensated care" (furnishing services to "uninsured people" as defined by DHH) as reported on the latest uncompensated care filing prior to May 31st of the previous fiscal year.

Hospitals which are not yet required by regulation to file, or without a full year report, or have not previously filed, may file an estimate within 45 days of the end of the quarter, subject to final adjustment as otherwise provided.

The uncompensated care payment is made in equal quarterly installments due on the 15<sup>th</sup> day of the 3<sup>rd</sup> month in each calendar quarter.

- (4) In the current fiscal year, Medicaid rates for all inpatient and outpatient services rendered by hospitals, including psychiatric care, are equal to the maximum allowable Medicare hospital rates for those services, respectively.

Proposed law provides that, if the above criteria have not been met, no assessments can be disbursed to DHH and must be refunded if not disbursed within 120 days of the end. No assessment may be thereafter imposed until the criteria has been met.

Proposed law requires DHH to adopt and promulgate rules and regulations necessary to implement the proposed law after submission to the secretary of the U.S. Dept. of Health and Human Services.

Proposed law prohibits other political subdivisions from collecting assessments from hospitals in a manner that treats them differently than other providers.

Proposed law requires "nonstate public hospitals" except "small rural hospitals" to certify to DHH the state, nonfederal share of expenditures for all their Medicaid claims and incurred uncompensated care costs that constitute "public expenditures" that are eligible for federal participation.

Proposed law provides for jurisdiction, should the provisions of law not be met, to enjoin the collection of the assessment and to prohibit the amounts from the fund from being transferred to DHH or any other agency of state government.

Proposed law will become null and void as of Jan. 1, 2015, if no proposed amendment of the Constitution of La. to establish the Supplemental Hospital Credit Program Act Trust Fund and to provide for the dedicated appropriation of the monies contained therein consistent with the purposes of proposed law is adopted at a statewide election and becomes effective on or before Jan. 1, 2015.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 46:2921-2929)