

CHAPTER 158
SB 369-FN-A – FINAL VERSION

03/13/14 0862s
03/13/14 0960s
03/27/14 1075s
14May2014... 1803h
06/04/14...2004CofC
06/04/14 2025EBA

2014 SESSION

14-2699
10/01

SENATE BILL ***369-FN-A***

AN ACT relative to the Medicaid enhancement tax.

SPONSORS: Sen. Odell, Dist 8; Rep. Major, Rock 14

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill revises services taxable under the Medicaid enhancement tax and clarifies that the Medicaid enhancement tax is a health care-related tax. The bill removes the application of the Medicaid enhancement tax to special hospitals for rehabilitation. The bill also changes the payment schedule for the tax and the method for collecting overdue tax payments.

This bill prescribes expenditures from the uncompensated care and Medicaid fund.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the Medicaid enhancement tax.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 158:1 Medicaid Enhancement Tax; Definition; Hospital. Amend RSA 84-A:1, III to read as
2 follows:

3 III. “Hospital” means general hospitals [~~and special hospitals for rehabilitation~~] required to
4 be licensed under RSA 151 that provide inpatient and outpatient hospital services, but not including
5 government facilities.

6 158:2 New Paragraph: Medicaid Enhancement Tax; Definition; Inpatient Hospital Services.
7 Amend RSA 84-A:1 by inserting after paragraph III the following new paragraph:

8 III-a. “Inpatient hospital services” means those services that are classified as inpatient
9 hospital services for purposes of section 1903(w) of the Social Security Act, and are defined in 42
10 C.F.R. section 440.10, regardless of the patient receiving the service or the payor for that service.

11 158:3 New Paragraph; Medicaid Enhancement Tax; Definition; Outpatient Hospital Services.
12 Amend RSA 84-A:1 by inserting after paragraph IV-a the following new paragraph:

13 IV-b. “Outpatient hospital services” means those services that are classified as outpatient
14 hospital services for purposes of section 1903(w) of the Social Security Act, and are defined in 42
15 C.F.R. section 440.20, regardless of the patient receiving the service or the payor for that service.

16 158:4 Medicaid Enhancement Tax; Definition; Net Patient Services Revenue. Amend RSA 84-
17 A:1, IV-a to read as follows:

18 IV-a. “Net patient services revenue” means the gross charges of the hospital ***for inpatient***
19 ***and outpatient hospital services*** less any deducted amounts for bad debts, charity care, and
20 payor discounts. “Net patient services revenue” shall include revenues received from the state’s
21 uncompensated care account and revenues received from all payers of inpatient and outpatient
22 [~~patient care~~] ***hospital services***.

23 158:5 Imposition of Tax. RSA 84-A:2 is repealed and reenacted to read as follows:

24 84-A:2 Imposition of Tax.

25 I. For the taxable period ending June 30, 2014, a tax is imposed at a rate of 5.5 percent upon

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1 the net patient services revenue of every hospital for the hospital's fiscal year ending during the first
2 full calendar year preceding the taxable period.

3 II. For the taxable period ending June 30, 2015, a tax is imposed at a rate of 5.5 percent
4 upon the net patient services revenue of every hospital for the hospital's fiscal year ending during
5 the calendar year in which the taxable period begins.

6 III. For the taxable period ending June 30, 2016, a tax is imposed at a rate of 5.45 percent
7 upon the net patient services revenue of every hospital for the hospital's fiscal year ending during
8 the calendar year in which the taxable period begins.

9 IV. For the taxable period ending June 30, 2017, a tax is imposed at a rate of 5.4 percent
10 upon the net patient services revenue of every hospital for the hospital's fiscal year ending during
11 the calendar year in which the taxable period begins.

12 V. For the taxable period ending June 30, 2018, and for every taxable period thereafter, a
13 tax is imposed at a rate of 5.4 percent upon the net patient services revenue of every hospital for the
14 hospital's fiscal year ending during the calendar year in which the taxable period begins unless the
15 total aggregate uncompensated care for hospitals with both a critical and a noncritical access
16 hospital designation falls below \$375 million, at which point the tax rate shall be 5.25 percent.

17 158:6 Tax Due; Offset For Past Due Payments. RSA 84-A:3 is repealed and reenacted to read as
18 follows:

19 84-A:3 Tax Due; Offset for Past Due Payments.

20 I. For the taxable period beginning July 1, 2014, and for every taxable period thereafter,
21 each hospital shall pay 100 percent of its Medicaid enhancement tax due and payable for the taxable
22 period no later than the fifteenth day of April.

23 II. Payments due under this section which are past due from any hospital by more than 60
24 days may be collected from such hospital by means of offset against any amounts due and payable to
25 such hospital by any program operated by the department of health and human services including,
26 but not limited to, programs of medical assistance authorized under the Title XIX or XXI of the
27 Social Security Act and operated by the department of health and human services, or any other state
28 program under which the state purchases services from such a hospital. The department of revenue
29 administration shall establish a plan for reporting the necessary information to the department of
30 health and human services or other appropriate state department to collect offsets under this
31 section.

32 158:7 Returns. Amend RSA 84-A:4 to read as follows:

33 84-A:4 Returns. Every hospital shall on or before the ~~[tenth]~~ **fifteenth** day of ~~[the month~~
34 ~~following the expiration of]~~ **April in** the taxable period make a return to the commissioner. The
35 commissioner shall adopt rules, pursuant to RSA 541-A, relative to the form of such return and the
36 data which it must contain for the correct computation of net patient services revenue and the tax

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1 assessed upon such amount. All returns shall be signed by the taxpayer or by its authorized
2 representative, subject to the pains and penalties of perjury. If such return shows an overpayment
3 of the tax due, the commissioner shall refund or credit the overpayment to the hospital in accordance
4 with RSA 21-J:28-a. ***Every hospital shall on or before January 15 in the taxable period make***
5 ***a nonbinding estimate of its projected tax payment.***

6 158:8 Method of Payment; Reference Corrected. Amend RSA 84-A:5, I to read as follows:

7 I. The payments required by RSA 84-A:3[~~II-a~~] shall be made by electronic transfer of
8 moneys to the state treasurer and deposited to the uncompensated care ***and Medicaid*** fund
9 established by RSA 167:64.

10 158:9 New Sections; Medicaid Enhancement Taxes; Declaration of Intent; Severability. Amend
11 RSA 84-A by inserting after section 13 the following new sections:

12 84-A:14 Declaration of Intent. It is the declared intent of this chapter to provide for the
13 consistent, equitable, and rational taxation of revenue received from inpatient hospital services and
14 outpatient hospital services, which are 2 separate and distinct classes of property and are
15 permissible classes of health care-related services which may be taxed in accordance with federal law
16 to ensure access to Federal Financial Participation. In addition, it is the declared intent of this
17 chapter to enact a health care-related tax, as permitted under section 1903(w) of the Social Security
18 Act, upon the revenue derived from inpatient and outpatient hospital services, which are distinct
19 from other classes of health care services, are subject to a different reimbursement methodology for
20 public payors, are subject to different licensing and certification requirements, are potentially
21 eligible for uncompensated care payments under the disproportionate share hospital program, and
22 which provide a necessary, rational, and demonstrated public health benefit.

23 84-A:15 Severability. If any provision of this chapter or the application thereof to any person or
24 circumstances is held invalid, the invalidity does not affect other provisions or applications of the
25 chapter which can be given effect without the invalid provisions or applications, and to this end the
26 provisions of this chapter are severable. This severability clause shall apply to the application of this
27 chapter to revenue from inpatient hospital services and outpatient hospital services, such that the
28 invalidity of either shall not affect the application of the statute to the other.

29 158:10 Substantial Understatement Penalty. Amend RSA 21-J:33-a, I to read as follows:

30 I. If there is a substantial understatement of tax imposed under RSA 77, RSA 77-A, RSA 77-
31 E, RSA 78-A, RSA 78-C, RSA 82-A [Ø] RSA 83-C, [Ø] RSA 83-E, ***or RSA 84-A*** for any taxable
32 period, there shall be added to the tax an amount equal to 25 percent of the amount of any
33 underpayment attributable to such understatement.

34 158:11 Medicaid Enhancement Tax; Definition; Uncompensated Care and Medicaid Fund.
35 Amend RSA 84-A:1, VI to read as follows:

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1 VI. “Uncompensated care *and Medicaid* fund” means the fund established in RSA 167:64
2 to reimburse hospitals for costs associated with uncompensated care and shortfalls in publicly
3 funded programs.

4 158:12 Subdivision Heading. Amend the subdivision heading preceding RSA 167:63 to read as
5 follows:

Uncompensated Care *and Medicaid* Fund

7 158:13 Uncompensated Care and Medicaid Fund. RSA 167:64 is repealed and reenacted to read
8 as follows:

9 167:64 Uncompensated Care and Medicaid Fund.

10 I. There is hereby established in the state treasury an uncompensated care and Medicaid
11 fund which shall consist of the moneys collected pursuant to RSA 84-A. Investment earnings of the
12 fund shall be credited to the fund. Moneys paid into the fund shall be exempt from any state budget
13 reductions, and the commissioner is authorized to expend these funds, together with matching
14 federal funds, as follows:

15 (a)(1) The commissioner shall provide reimbursement for uncompensated care costs in
16 accordance with the approved schedule of payments through either Medicaid rate adjustments or
17 disproportionate share hospital payment adjustments, or a combination thereof, provided however
18 that no hospital shall receive any such reimbursement for uncompensated care costs unless it is a
19 qualified hospital as defined in subparagraph (b)(1). Funds available under this section shall also be
20 used to make provider payments and to support Medicaid services and programs administered by
21 the department in amounts directed by the budget in each year of the biennium.

22 (2) Expenditure of revenues deposited to the uncompensated care and Medicaid fund
23 shall be made for the following purposes in the following order of priority in fiscal year 2015:

24 (A) To support medical provider payments as budgeted in each year of the
25 biennium;

26 (B) To make disproportionate share hospital payments to support up to 75
27 percent of the uncompensated care costs of New Hampshire’s hospitals with critical access
28 designation consistent with the requirements of 42 U.S.C. section 1396r-4(g) and any relevant
29 federal regulations promulgated thereunder as budgeted in each year of the biennium based on
30 available funding, to be shared among such hospitals in proportion to the amount of uncompensated
31 care provided;

32 (C) To make disproportionate share hospital payments to support the
33 uncompensated care costs of New Hampshire’s general hospitals without critical access designation
34 shared among such hospitals consistent with the requirements of 42 U.S.C. section 1396r-4(g) and
35 any relevant federal regulations promulgated thereunder in proportion to the amount of

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1 uncompensated care provided with funds available from net Medicaid enhancement tax revenue
2 received by the state in fiscal year 2015 in excess of \$190,300,000; and

3 (D) To make a disproportionate share hospital payment to each hospital that
4 meets the criteria set forth for “deemed disproportionate share hospitals” as that term is defined
5 under 42 U.S.C. section 1396r-4 up to an amount as budgeted in each year of the biennium based on
6 available funding.

7 (3) Subject to subparagraph (a)(3)(D), expenditure of revenues deposited to the
8 uncompensated care and Medicaid fund shall be made for the following purposes in the following
9 order of priority in fiscal years 2016, 2017, 2018, and 2019, and in addition in fiscal years 2016, 2017,
10 2018, and 2019, if New Hampshire hospitals’ total aggregate uncompensated care costs as reported
11 to the department in any such fiscal year is less than \$350,000,000, the state shall pay
12 New Hampshire’s hospitals not less than \$175,000,000 in disproportionate share hospital payments,
13 shared among such hospitals in proportion to the amount of uncompensated care provided; provided
14 that New Hampshire hospitals with a critical access hospital designation shall continue to receive
15 reimbursements of no less than 75 percent of each hospital’s uncompensated care costs and no
16 hospital shall be paid disproportionate share hospital payments of more than 100 percent of
17 uncompensated care costs:

18 (A) To make disproportionate share hospital payments to New Hampshire
19 hospitals with and without critical access designation in the following order of priority, provided
20 that, in fiscal years 2016 and 2017, the New Hampshire hospitals shall not be paid more than a cap
21 of \$224,000,000 in disproportionate share hospital payments and in fiscal years 2018 and 2019 the
22 New Hampshire hospitals shall not be paid more than a cap of \$241,900,000 in disproportionate
23 share hospital payments:

24 (i) To support 75 percent of the uncompensated care costs of
25 New Hampshire’s hospitals with critical access designation consistent with the requirements of 42
26 U.S.C. section 1396r-4(g) and any relevant federal regulations promulgated thereunder to be shared
27 among such hospitals in proportion to the amount of uncompensated care provided;

28 (ii) To make disproportionate share hospital payments to support 50 percent
29 of the uncompensated care costs of New Hampshire’s hospitals without critical access hospital
30 designation in fiscal year 2016 and 2017 and 55 percent of uncompensated care costs of New
31 Hampshire’s hospitals without critical access hospital designation in fiscal year 2018 and fiscal year
32 2019 and in fiscal years thereafter consistent with the requirements of 42 U.S.C. section 1396r-4(g)
33 and any relevant federal regulations promulgated thereunder in proportion to the amount of
34 uncompensated care provided and up to the remaining amount of the applicable cap set forth in
35 subparagraph (a)(3)(A), but not less than the amount guaranteed in disproportionate share hospital
36 payments as set forth in subparagraph (a)(3); and

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1 (B) To make a disproportionate share hospital payment to each hospital that
2 meets the criteria set forth for “deemed disproportionate share hospitals” as that term is defined
3 under 42 U.S.C. section 1396r-4 up to an amount as budgeted in each year of the biennium.

4 (C) Any remaining funds produced from the Medicaid enhancement tax shall be
5 used to support provider payments and to support Medicaid services and programs administered by
6 the department.

7 (D) Notwithstanding any provision to the contrary, in each of fiscal years 2016,
8 2017, 2018, and 2019, the amount of uncompensated care reimbursed to non-critical access hospitals
9 shall be reduced in both state contribution and federal match by any shortfall in net Medicaid
10 enhancement tax revenues received below the following thresholds: fiscal year 2016 - \$220.5 million;
11 fiscal year 2017 - \$228.1 million; fiscal year 2018 - \$235.9 million; and fiscal year 2019 - \$243.4
12 million. However, to the extent the aggregate uncompensated care for all hospitals falls below \$375
13 million and the Medicaid enhancement tax rate is further reduced as set forth in RSA 84-A:2, V,
14 then the threshold for fiscal year 2018 shall be \$229.4 million and for fiscal year 2019 shall be \$235.7
15 million. Further, the caps in subparagraph (a)(3)(A) and the reimbursements and caps in
16 subparagraph (a)(3)(A)(ii) shall be reduced by 85 percent of the difference between total Medicaid
17 enhancement tax revenue calculated at 5.5 percent of net patient services revenue and Medicaid
18 enhancement tax revenue at the current tax rate for the applicable fiscal year.

19 (b)(1) The commissioner is hereby authorized and directed to develop and implement a
20 schedule of payments for reimbursement of the uncompensated care costs consistent with the level of
21 funding made available for such payments in each year of any biennium, incurred by those hospitals
22 that are qualified as follows:

23 (A) The hospital is a “deemed disproportionate share hospital” as defined by
24 criteria set forth under 42 U.S.C. section 1396r-4 and is not otherwise receiving a disproportionate
25 share hospital payment; or

26 (B) The hospital:

27 (i) Meets the minimum criteria for disproportionate share eligibility under
28 relevant federal statutory changes at 42 U.S.C. 1396r-4(d);

29 (ii) Is not a special hospital for rehabilitation; and

30 (iii) Participates in the provider network of the state Medicaid care
31 management program.

32 (2) The reimbursement of uncompensated care costs paid in state fiscal year 2015
33 and thereafter shall be in accordance with the schedule of payments to hospitals consistent with this
34 section and shall be structured in a manner that is consistent with all federal laws and regulations
35 governing (i) Title XIX disproportionate share hospital payment adjustments and other rate
36 payments, (ii) conditions for receiving federal financial participation, and (iii) permissible sources of

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1 state financial participation as provided for under 42 C.F.R. part 433 and all other applicable federal
 2 regulations. Disproportionate share hospital payments shall be made under this paragraph by May
 3 31 in any fiscal year.

4 (c) For purposes of this section, uncompensated care costs shall include: any charity
 5 care cost, and any portion of Medicaid-covered patient care costs unreimbursed by Medicaid
 6 payments, that the commissioner determines would meet the criteria under 42 U.S.C. section 1396r-
 7 4(g) governing hospital-specific limits on disproportionate share hospital payments under Title XIX
 8 of the Social Security Act and the provisions of all federal regulations promulgated thereunder.

9 (d) One percent of the funds made available for uncompensated care payments shall be
 10 placed in a separate class line reserved for the expenses of the department in administering this
 11 subdivision.

12 II. Moneys in the uncompensated care and Medicaid fund shall be continually appropriated
 13 to the department for the purposes of this subdivision.

14 III. The department shall secure all necessary waivers pursuant to 42 C.F.R. section 433.68
 15 and approvals of state plan amendments from the Centers for Medicare and Medicaid Services
 16 (CMS).

17 IV. Payment of disproportionate share hospital payments under this section is contingent
 18 upon New Hampshire receiving a sufficient federal Medicaid disproportionate share hospital
 19 allotment from CMS.

20 158:14 Uncompensated Care Fund; Definition; Hospital. Amend RSA 167:63, IV to read as
 21 follows:

22 IV. "Hospital" means general hospitals [~~and special hospitals for rehabilitation~~] required to
 23 be licensed under RSA 151, but not including government facilities.

24 158:15 Operating Budget; Department of Health and Human Services; Provider Payments.
 25 Amend 2013, 143:1, 05, 95, 47, 470010, 7940, estimated source of funds for provider payments, to
 26 read as follows:

27 ESTIMATED SOURCE OF FUNDS FOR
 28 PROVIDER PAYMENTS

29 007 Agency Income	18,601,359	19,078,123
30 009 Agency Income	[81,691,149] 153,891,149	[90,291,149] 163,991,149
31 FEDERAL FUNDS	229,814,212	219,781,567
32 GENERAL FUNDS	[115,098,935] 42,898,935	[95,750,212] 22,050,212
33 TOTAL SOURCE OF FUNDS	445,205,655	424,901,051

34 158:16 Estimates Revenues. Amend 2013, 143:17 to read as follows:

35 143:17 Estimates of Unrestricted Revenue.

36 GENERAL FUND	<u>FY 2014</u>	<u>FY 2015</u>
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1	BUSINESS PROFITS TAX	\$276,010,000	\$281,700,000
2	BUSINESS ENTERPRISE TAX	<u>73,600,000</u>	<u>75,100,000</u>
3	SUBTOTAL BUSINESS TAXES	349,610,000	356,800,000
4	MEALS AND ROOMS TAX	242,400,000	247,360,000
5	TOBACCO TAX	127,000,000	121,900,000
6	TRANSFER FROM LIQUOR	133,400,000	136,800,000
7	INTEREST AND DIVIDENDS TAX	96,100,000	98,000,000
8	INSURANCE	86,900,000	109,500,000
9	COMMUNICATIONS TAX	62,500,000	62,500,000
10	REAL ESTATE TRANSFER TAX	63,575,000	64,835,000
11	COURT FINES & FEES	13,000,000	13,000,000
12	SECURITIES REVENUE	37,600,000	37,600,000
13	UTILITY CONSUMPTION TAX	6,000,000	6,000,000
14	BOARD AND CARE	27,500,000	28,200,000
15	BEER TAX	13,200,000	13,200,000
16	OTHER REVENUES	77,200,000	77,500,000
17	TOBACCO SETTLEMENT	2,400,000	1,900,000
18	SUBTOTAL	1,338,385,000	1,375,095,000
19	MEDICAID ENHANCEMENT TAX	72,200,000	73,700,000
20	MEDICAID RECOVERIES	5,400,000	5,400,000
21	TOTAL GENERAL FUND	[1,415,985,000] <u>1,343,785,000</u>	[1,454,195,000] <u>1,380,495,000</u>
22			
23	EDUCATION FUND	<u>FY 2014</u>	<u>FY 2015</u>
24	BUSINESS PROFITS TAX	58,550,000	59,800,000
25	BUSINESS ENTERPRISE TAX	<u>149,440,000</u>	<u>152,600,000</u>
26	SUBTOTAL BUSINESS TAXES	207,990,000	212,400,000
27	MEALS AND ROOMS TAX	7,800,000	7,840,000
28	TOBACCO TAX	74,600,000	71,600,000
29	REAL ESTATE TRANSFER TAX	31,325,000	31,925,000
30	TRANSFER FROM LOTTERY	73,100,000	75,000,000
31	TRANSFER FROM RACING		
32	& CHARITABLE GAMING	3,400,000	3,400,000
33	TOBACCO SETTLEMENT	40,000,000	40,000,000
34	UTILITY PROPERTY TAX	34,500,000	35,400,000
35	STATEWIDE PROPERTY TAX	<u>363,600,000</u>	<u>363,600,000</u>
36	TOTAL EDUCATION FUND	<u>836,315,000</u>	<u>841,165,000</u>

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1			
2	HIGHWAY FUND	<u>FY 2014</u>	<u>FY 2015</u>
3	GASOLINE ROAD TOLL	122,750,000	122,050,000
4	MOTOR VEHICLE FEES	109,473,000	109,873,000
5	MISCELLANEOUS	<u>15,800,000</u>	<u>15,000,000</u>
6	TOTAL HIGHWAY FUND	<u>248,023,000</u>	<u>246,923,000</u>

7			
8	FISH AND GAME FUND	<u>FY 2014</u>	<u>FY 2015</u>
9	FISH AND GAME LICENSES	8,500,000	8,500,000
10	FINES AND MISCELLANEOUS	<u>1,644,000</u>	<u>1,644,000</u>
11	TOTAL FISH AND GAME FUND	<u>10,144,000</u>	<u>10,144,000</u>

12 158:17 Applicability. Sections 2-4, and 9-12 of this act shall take effect upon its passage and
13 shall apply to taxable periods beginning on or after July 1, 2013.

14 158:18 Applicability; Medicaid Enhancement Tax; Uncompensated Care Fund; Definition of
15 Hospital. Sections 1 and 14 of this act, deleting special hospitals for rehabilitation from the
16 definition of “hospital” under the Medicaid enhancement tax and the uncompensated care and
17 Medicaid fund, shall take effect on July 1, 2014, and shall apply to the taxable period ending June
18 30, 2014 and to every taxable period thereafter.

19 158:19 Reports.

20 I. The department of revenue administration shall submit a report to the fiscal committee of
21 the general court on the details of the reporting plan required by RSA 84-A:3, II, as inserted by
22 section 6 of this act, on or before September 30, 2014.

23 II. The department of revenue administration and the department of health and human
24 services shall submit a report to the fiscal committee of the general court recommending
25 adjustments to the uncompensated care program that reflect funding levels at no less than those
26 provided by this act for fiscal year 2019. Such report shall be submitted no later than October 1,
27 2018.

28 158:20 Effective Date.

29 I. Sections 6-8 of this act shall take effect July 1, 2014.

30 II. The remainder of this act shall take effect upon its passage.

31
32 Approved: June 30, 2014

33 Effective Date: I. Sections 6-8 shall take effect July 1, 2014.

34 II. Remainder shall take effect June 30, 2014.