

## Georgia Amends Its “Hospital Bed Tax”

March 4, 2013

### Overview

In 2010 Georgia adopted the Provider Payment Agreement Act,<sup>1</sup> which included a “provider payment tax” imposed on hospital “net patient revenue” at a rate of 1.45%.<sup>2</sup> Dubbed the “hospital bed tax” by critics, the tax was due to expire on June 30, 2013.<sup>3</sup> Recently, however, the Hospital Medicaid Financing Program Act (Senate Bill 24, “S.B. 24”)<sup>4</sup> was enacted, extending the applicable statute for four years<sup>5</sup> and granting the Board of Community Health (the “Board”) authority to establish rules and regulations to assess and collect the tax.<sup>6</sup> In this Tax Alert we summarize the provisions of S.B. 24.

### The Hospital Medicaid Financing Program Act

Currently, the Georgia Medicaid Program faces an approximate \$700MM budget short fall for the fiscal year. In an effort to address this short-fall, S.B. 24 transfers the authority to impose the provider payment tax from the Department of Community Health (the “Department”)<sup>7</sup> to the Board.<sup>8</sup> S.B. 24 does not statutorily specify a tax rate to be imposed under the amended law but, instead, states only that “[t]he board shall be authorized to establish and assess . . . one or more provider payments on hospitals . . . .”<sup>9</sup> As mentioned previously, prior law imposed a 1.45% tax on a tax base of net patient revenue.<sup>10</sup> It is unclear at this time whether the “provider payments” under S.B. 24 will continue to be calculated in this manner. However, it is conceivable that at least initially the tax base may continue to be net patient revenue and the tax rate may remain at 1.45%. As of the issuance date of this Tax Alert, the Board has not formally adopted rules or regulations clarifying the tax base, tax rate, or general compliance requirements.

S.B. 24 also establishes the following limitations on provider payment assessments:

- Any provider payment assessed may not exceed the amount necessary to obtain federal financial participation.<sup>11</sup>
- The aggregate amount of any fees established and assessed may not exceed those percentages of net patient revenues set forth in the General Appropriations Act.<sup>12</sup>
- No assessments may be levied on provider payments that are not eligible for federal matching funds.<sup>13</sup>
- No assessments may be levied on provider payments if: “the Department: reduces Medicaid payment rates to hospitals . . . [that] are in effect on June 30, 2012; reduces the provider payment rate adjustment factors utilized in developing the state Fiscal Year 2013 capitated rates for

<sup>1</sup> 2010 Ga. Laws 360, § 2-1 (2009 Ga. H.B. 1055, May 12, 2010).

<sup>2</sup> O.C.G.A. § 31-8-179.3(a), as enacted in 2010 and amended in 2011. O.C.G.A. § 31-8-179.1(3), as enacted in 2010, defines “net patient revenue” as , “the total gross patient revenue of a hospital less contractual adjustments; charity care; bad debt; Hill-Burton commitments; and indigent care as defined by and calculated in the department's annual hospital financial survey.”

<sup>3</sup> O.C.G.A. § 31-8-179.8, as enacted in 2010.

<sup>4</sup> 2013 Ga. Laws (2013 Ga. S.B. 24, Feb. 13, 2013). S.B. 24 became effective February 13, 2013. S.B. 24 Sec. 2.

<sup>5</sup> S.B. 24 Sec. 1, amending O.C.G.A. § 31-8-179.6 (extending the repeal date to June 30, 2017).

<sup>6</sup> S.B. 24 Sec. 1, amending O.C.G.A. § 31-8-179.2.

<sup>7</sup> O.C.G.A. § 31-8-179.3(a), (b), as enacted in 2010 and amended in 2011.

<sup>8</sup> S.B. 24 Sec. 1, amending O.C.G.A. § 31-8-179.2.

<sup>9</sup> S.B. 24 Sec. 1, amending O.C.G.A. § 31-8-179.2(a).

<sup>10</sup> O.C.G.A. § 31-8-179.3(a), as enacted in 2010.

<sup>11</sup> S.B. 24 Sec. 1, amending O.C.G.A. § 31-8-179.2(a).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Medicaid managed care organizations; or alters any payment methodology, administrative rule, or payment policy as are in effect on June 30, 2012, or creates any new methodology, rule, or policy that has the effect of reducing Medicaid payments to hospitals.”<sup>14</sup>

- The General Assembly has the authority to override any provider payment assessed by the Board.<sup>15</sup>

## Contacts

For additional guidance regarding S.B. 24, please contact any of the Healthcare or Georgia Multistate Tax professionals listed below.

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<sup>14</sup> *Id.*

<sup>15</sup> S.B. 24 Sec. 1, adding O.C.G.A. § 31-8-179.2(a.1).