



# House of Representatives

General Assembly

**File No. 465**

February Session, 2016

Substitute House Bill No. 5588

*House of Representatives, April 5, 2016*

The Committee on Human Services reported through REP. ABERCROMBIE of the 83rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE TIMING OF PAYMENTS FROM SUPPLEMENTAL INPATIENT PAYMENT POOLS FOR SHORT-TERM GENERAL HOSPITALS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 17b-239e of the 2016 supplement  
2 to the general statutes is repealed and the following is substituted in  
3 lieu thereof (*Effective July 1, 2016*):

4 (b) The commissioner may establish a blended inpatient hospital  
5 case rate that includes services provided to all Medicaid recipients and  
6 may exclude certain diagnoses, as determined by the commissioner, if  
7 the establishment of such rates is needed to ensure that the conversion  
8 to an administrative services organization is cost neutral to hospitals in  
9 the aggregate and ensures patient access. Utilization may be a factor in  
10 determining cost neutrality. The Department of Social Services [may]  
11 shall establish, within available appropriations, (1) a supplemental  
12 inpatient payment pool for [certain] all hospitals, and (2) a

13 supplemental inpatient payment pool for certain small independent  
14 hospitals. No payment shall be made from such supplemental  
15 inpatient payment pools to (A) any hospital which, on or after July 1,  
16 2016, is within the class of hospitals licensed by the Department of  
17 Public Health as a children's general hospital, or (B) a short-term acute  
18 care hospital operated exclusively by the state other than a short-term  
19 acute care hospital operated by the state as a receiver pursuant to  
20 chapter 920. Payments made to hospitals from such supplemental  
21 inpatient payment pools shall be in addition to, and not a replacement  
22 for, payments made to hospitals based on the inpatient Medicaid rates  
23 established pursuant to section 17b-239.

24 (c) The commissioner shall make quarterly payments to all eligible  
25 hospitals from the supplemental inpatient payment pools not later  
26 than the last day of the second month of each quarter. Each quarterly  
27 payment to an eligible hospital from a supplemental inpatient  
28 payment pool shall equal one-quarter of that hospital's total allocated  
29 portion of the applicable supplemental inpatient payment pool for that  
30 year. Following issuance of payments to hospitals from a supplemental  
31 inpatient payment pool for any quarter, the commissioner shall seek  
32 federal matching funds under the medical assistance program for such  
33 quarterly payments. Interest earned on funds in the supplemental  
34 inpatient payment pools shall be credited to the pools. The funds in the  
35 supplemental inpatient payment pools shall not be diverted to any  
36 other state use.

37 Sec. 2. Section 12-263b of the 2016 supplement to the general statutes  
38 is repealed and the following is substituted in lieu thereof (*Effective July*  
39 *1, 2016*):

40 (a) For each calendar quarter commencing on or after July 1, 2011,  
41 there is hereby imposed a tax on the net patient revenue of each  
42 hospital in this state to be paid each calendar quarter. The rate of such  
43 tax shall be up to the maximum rate allowed under federal law. The  
44 Commissioner of Social Services shall determine the base year on  
45 which such tax shall be assessed. The Commissioner of Social Services

46 may, in consultation with the Secretary of the Office of Policy and  
47 Management and in accordance with federal law, exempt a hospital  
48 from the tax on payment earned for the provision of outpatient  
49 services based on financial hardship. Effective July 1, 2012, and for the  
50 succeeding fifteen months, the rates of such tax, the base year on which  
51 such tax shall be assessed, and the hospitals exempt from the  
52 outpatient portion of the tax based on financial hardship shall be the  
53 same tax rates, base year and outpatient exemption for hardship in  
54 effect on January 1, 2012.

55 (b) Each hospital shall, on or before the last day of January, April,  
56 July and October of each year, render to the Commissioner of Revenue  
57 Services a return, on forms prescribed or furnished by the  
58 Commissioner of Revenue Services and signed by one of its principal  
59 officers, stating specifically the name and location of such hospital, and  
60 the amount of its net patient revenue as determined by the  
61 Commissioner of Social Services. [Payment shall be made] Subject to  
62 the provisions of subsection (c) of this section, each hospital shall make  
63 a tax payment with such return. Each hospital shall file such return  
64 electronically with the department and make such payment by  
65 electronic funds transfer in the manner provided by chapter 228g,  
66 irrespective of whether the hospital would otherwise have been  
67 required to file such return electronically or to make such payment by  
68 electronic funds transfer under the provisions of chapter 228g.

69 (c) A hospital may deduct from each quarterly tax payment due  
70 pursuant to this section an amount equal to the total payments  
71 authorized but remaining unpaid, inclusive of the state and federal  
72 shares of such authorized payments, from a supplemental inpatient  
73 hospital payment pool or small hospital payment pool established  
74 pursuant to section 17b-239e, as amended by this act, or any other  
75 hospital payment pool established by the General Assembly to be  
76 funded in whole or in part by hospital tax payments. A hospital may  
77 deduct such amount for that quarter or any preceding quarter.

78 [(c)] (d) Notwithstanding any other provision of law, for each

79 calendar quarter commencing on or after July 1, 2015, and prior to  
80 January 1, 2016, the amount of tax credit or credits otherwise allowable  
81 against the taxes imposed under sections 12-263a to 12-263e, inclusive,  
82 and 12-263i shall not exceed fifty and one one-hundredths per cent of  
83 the amount of tax due under sections 12-263a to 12-263e, inclusive, and  
84 12-263i with respect to such calendar quarter prior to the application of  
85 such credit or credits. For each calendar quarter commencing on or  
86 after January 1, 2016, and prior to January 1, 2017, the amount of tax  
87 credit or credits otherwise allowable against the taxes imposed under  
88 sections 12-263a to 12-263e, inclusive, and 12-263i shall not exceed  
89 fifty-five per cent of the amount of tax due under sections 12-263a to  
90 12-263e, inclusive, and 12-263i with respect to such calendar quarter  
91 prior to the application of such credit or credits. For each calendar  
92 quarter commencing on or after January 1, 2017, and prior to January  
93 1, 2018, the amount of tax credit or credits otherwise allowable against  
94 the taxes imposed under sections 12-263a to 12-263e, inclusive, and 12-  
95 263i shall not exceed sixty per cent of the amount of tax due under  
96 sections 12-263a to 12-263e, inclusive, and 12-263i with respect to such  
97 calendar quarter prior to the application of such credit or credits. For  
98 each calendar quarter commencing on or after January 1, 2018, and  
99 prior to January 1, 2019, the amount of tax credit or credits otherwise  
100 allowable against the taxes imposed under sections 12-263a to 12-263e,  
101 inclusive, and 12-263i shall not exceed sixty-five per cent of the amount  
102 of tax due under sections 12-263a to 12-263e, inclusive, and 12-263i  
103 with respect to such calendar quarter prior to the application of such  
104 credit or credits. For each calendar quarter commencing on or after  
105 January 1, 2019, the amount of tax credit or credits otherwise allowable  
106 against the taxes imposed under sections 12-263a to 12-263e, inclusive,  
107 and 12-263i shall not exceed seventy per cent of the amount of tax due  
108 under sections 12-263a to 12-263e, inclusive, and 12-263i with respect  
109 to such calendar quarter prior to the application of such credit or  
110 credits.

111 Sec. 3. Section 12-263c of the general statutes is repealed and the  
112 following is substituted in lieu thereof (*Effective July 1, 2016*):

113 (a) If any hospital fails to pay the amount of tax reported to be due  
114 on its return, less any deduction made pursuant to subsection (c) of  
115 section 12-263b, as amended by this act, within the time specified  
116 under the provisions of section 12-263b, as amended by this act, there  
117 shall be imposed a penalty equal to ten per cent of such amount due  
118 and unpaid, or fifty dollars, whichever is greater. The tax shall bear  
119 interest at the rate of one per cent per month or fraction thereof, from  
120 the due date of such tax until the date of payment.

121 (b) If any hospital has not made its return within one month after  
122 the time specified in section 12-263b, as amended by this act, the  
123 Commissioner of Revenue Services may make such return at any time  
124 thereafter, according to the best information obtainable and according  
125 to the form prescribed. To the tax imposed upon the basis of such  
126 return, there shall be added an amount equal to ten per cent of such  
127 tax, or fifty dollars, whichever is greater. The tax shall bear interest at  
128 the rate of one per cent per month or fraction thereof, from the due  
129 date of such tax until the date of payment.

130 (c) Subject to the provisions of section 12-3a, the commissioner may  
131 waive all or part of the penalties provided under this section when it is  
132 proven to his satisfaction that the failure to pay any tax on time was  
133 due to reasonable cause and was not intentional or due to neglect.

134 (d) The commissioner shall notify the Commissioner of Social  
135 Services of any amount delinquent under sections 12-263a to 12-263e,  
136 inclusive, [and, upon] less any deduction made pursuant to subsection  
137 (c) of section 12-263b, as amended by this act. Upon receipt of such  
138 notice, the Commissioner of Social Services shall deduct and withhold  
139 such amount from amounts otherwise payable by the Department of  
140 Social Services to the delinquent hospital. In no event shall the  
141 Commissioner of Social Services deduct and withhold any amounts  
142 based on a deduction made pursuant to subsection (c) of section 12-  
143 263b, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2016</i>	17b-239e(b)
Sec. 2	<i>July 1, 2016</i>	12-263b
Sec. 3	<i>July 1, 2016</i>	12-263c

**HS**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 17 \$</b>	<b>FY 18 \$</b>
Social Services, Dept.	GF - Potential Cost	Up to \$110.2 Million	Up to \$110.2 Million
Social Services, Dept.	GF - Revenue Loss	Between \$164.3 and \$556.1 Million	Between \$164.3 and \$556.1 Million

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill may result in a cost to the Department of Social Services (DSS) of up to \$110.2 million annually in the event federal funds are delayed or never received for inpatient Medicaid supplemental hospital payments and supplemental payments for small hospitals. This amount reflects the FY 16 anticipated federal share of supplemental hospital payments (\$100.6 million for the inpatient pool and \$9.6 million for the small hospital pool). For FY 16, total supplemental payments to hospitals include (1) \$150.2 million in inpatient supplemental payments (\$100.6 million federal and \$49.6 million state) and (2) \$14.1 million to small hospitals (\$9.6 million federal and \$4.7 million state).

In addition, the bill may result in a revenue loss to the state of between \$164.3 million and \$556.1 million. The bill allows hospitals to deduct from their quarterly tax payments the total supplemental payments remaining, including both the state and federal share, which is \$164.3 million annually. There is no mechanism in the bill to allow the state to recoup tax payments in the event the state pays a hospital their total supplemental payment by the end of a fiscal year. The

deduction is tied to timely quarterly payments to hospitals.

Secondly, the bill may result in a revenue loss due to violating the federal hold harmless prohibition required for the hospital user fee/tax and making the state subject to federal penalties. The state currently taxes hospitals 6% of net inpatient and outpatient revenue, which generates \$556.1 million. If the full penalty is applied, the revenue loss would be \$556.1 million. The bill may be interpreted to include a hold harmless provision for taxpayer hospitals as it includes a tax offset in the event authorized supplemental payments have not been made, which is in violation of federal law. The federal law requires a reduction in the amount of revenue received by the state if there is a hold harmless provision. It is unclear if the revenue impact would be cumulative.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to the amount of hospital supplemental payments, the amount of any federal funds not received at all or in a timely fashion, and the amount if any in revenue offsets due to a statutory hold harmless provision for taxpayer hospitals.

**OLR Bill Analysis****sHB 5588*****AN ACT CONCERNING THE TIMING OF PAYMENTS FROM SUPPLEMENTAL INPATIENT PAYMENT POOLS FOR SHORT-TERM GENERAL HOSPITALS.*****SUMMARY:**

This bill requires the Department of Social Services (DSS), within available appropriations, to make quarterly Medicaid supplemental payments to hospitals and allows hospitals to deduct unpaid supplemental payments from the amount they owe in quarterly provider taxes. Federal law allows states to make supplemental Medicaid payments to hospitals and receive federal reimbursement for doing so (see BACKGROUND).

The bill requires DSS to establish, within available appropriations, one supplemental inpatient payment pool for all hospitals and one such pool for certain small independent hospitals. It eliminates a provision allowing DSS to establish a supplemental inpatient pool for certain hospitals. In practice, this pool funds supplemental payments to unaffiliated small hospitals with less than 180 licensed beds. The bill prohibits funds in the supplemental pools from being diverted to any other state use.

It also makes conforming changes.

EFFECTIVE DATE: July 1, 2016

**SUPPLEMENTAL INPATIENT PAYMENT POOLS*****Payments and Exceptions***

The bill prohibits DSS from making supplemental pool payments to (1) any hospital classified by the Department of Public Health as a children's general hospital beginning July 1, 2016 or (2) state-operated

short-term acute care hospitals other than those operated by the state as receiver.

Under the bill, supplemental pool payments are in addition to hospital Medicaid payments based on inpatient rates established in statute and do not replace such payments.

### ***Payment Schedule***

The bill requires the DSS commissioner to make quarterly supplemental pool payments to all eligible hospitals before the last day of the second month of each quarter. A hospital's quarterly payment must equal one-quarter of the hospital's total allocated portion of that year's applicable supplemental pool. The bill requires the DSS commissioner to seek federal matching funds under the medical assistance program for quarterly payments after issuing them (see BACKGROUND). It requires interest earned on funds in the supplemental inpatient payment pools to be credited to the pools.

### **HOSPITAL TAX DEDUCTIONS**

The bill allows a hospital to deduct unpaid supplemental payments from the amount it owes for each quarterly provider tax payment (see BACKGROUND). Under the bill, the allowable deduction is for the full amount of the supplemental payment, including the state and federal share, from supplemental pools required by the bill and any other hospital payment pool established by the General Assembly that receives any funding from hospital tax payments. The bill allows the hospital to make the deduction for that quarter or any preceding quarter. The bill subtracts deductions from the tax amount hospitals must pay to avoid a penalty.

By law, the Department of Revenue Services (DRS) commissioner must notify the DSS commissioner when hospitals are delinquent on their provider tax. The law requires the DSS commissioner to deduct and withhold delinquent amounts from other payments owed by DSS to the delinquent hospital. The bill prohibits the DSS commissioner from deducting or withholding any amounts based on deductions

hospitals make to their provider taxes for unpaid supplemental payments.

## **BACKGROUND**

### ***Supplemental Medicaid Payments to Hospitals***

Federal Medicaid law requires states to reimburse health care providers at a rate that ensures efficiency and economy (42 U.S.C. § 1396a(30)(A)). While states have some discretion in how they construct their payments, the Upper Payment Limit (UPL), as specified in federal regulations, limits payments to hospitals and certain other institutional providers by prohibiting federal matching funds for payments in excess of a total based on what Medicare would pay for comparable services. Because the regulations allow federal matching payments up to the UPL, states may make supplemental payments to hospitals based on the difference between the state's regular Medicaid payments for hospital services and the UPL.

Generally, DSS specifies the allocation and eligibility for supplemental payments through Medicaid state plan amendments, which must be submitted to and approved by the federal Centers for Medicare and Medicaid Services.

### ***Federal Matching Funds for Supplemental Payments***

State Medicaid programs generally receive federal reimbursement (i.e., federal medical assistance percentage or FMAP) at a rate based on the state's per capita income. Connecticut's regular FMAP is 50%, but certain payments under the federal Affordable Care Act are reimbursed at an enhanced FMAP that can be up to 100%. The amount of the federal reimbursement for supplemental payments is a blended rate, generally between the state's regular FMAP and an enhanced FMAP. For FY 16, it was approximately 66%.

### ***Hospital Provider Tax***

Connecticut's hospital tax applies to all short-term general hospitals except the Connecticut Children's Medical Center and John Dempsey Hospital. The tax is based on a hospital's net patient revenue (defined

as the amount of accrued payments a hospital earned for providing inpatient and outpatient services).

The rate, set by DSS, is currently set at 6% of all net patient revenue. By law, the DSS commissioner must determine the base year on which the tax will be assessed.

Hospitals must file their hospital tax returns and pay the tax quarterly to DRS. Late filers are subject to a penalty of 10% of the tax due or \$50, whichever is greater, plus interest of 1% per month.

**COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/17/2016)