

STATE OF NEW YORK

6677

2019-2020 Regular Sessions

IN ASSEMBLY

March 15, 2019

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the general hospital indigent care pool, hospital reimbursements and adjustments to medical assistance rates to enhanced safety net hospitals; and to amend chapter 474 of the laws of 1996 amending the education law and other laws relating to rates for residential health care facilities, in relation to extending the effectiveness of such rates

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5-d of section 2807-k of the public health law, as amended by section 2 of part A of chapter 57 of the laws of 2018, is amended to read as follows:

5-d. (a) Notwithstanding any inconsistent provision of this section, section twenty-eight hundred seven-w of this article or any other contrary provision of law, and subject to the availability of federal financial participation, for periods ~~[on and after January]~~ April first, two thousand ~~[thirteen,]~~ nineteen through ~~[March]~~ December thirty-first, two thousand ~~[twenty]~~ nineteen and each calendar year thereafter, all funds available for distribution pursuant to this section, except for funds distributed pursuant to subparagraph (v) of paragraph (b) of subdivision five-b of this section, and all funds available for distribution pursuant to section twenty-eight hundred seven-w of this article, shall be reserved and set aside and distributed in accordance with the provisions of this subdivision.

(b) The commissioner shall promulgate regulations, and may promulgate emergency regulations, establishing methodologies for the distribution of funds as described in paragraph (a) of this subdivision and such regulations shall include, but not be limited to, the following:

(i) Such regulations shall establish methodologies for determining each facility's relative uncompensated care need amount based on unin-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets ~~[-]~~ is old law to be omitted.

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1 sured inpatient and outpatient units of service from the cost reporting
2 year two years prior to the distribution year, multiplied by the appli-
3 cable medicaid rates in effect January first of the distribution year,
4 as summed and adjusted by a statewide cost adjustment factor and reduced
5 by the sum of all payment amounts collected from such uninsured
6 patients, and as further adjusted by application of a nominal need
7 computation that shall take into account each facility's medicaid inpa-
8 tient share.

9 (ii) Annual distributions pursuant to such regulations ~~[for the two~~
10 ~~thousand thirteen through two thousand nineteen calendar years]~~ for each
11 calendar year beginning with the two thousand nineteen calendar year
12 shall be in accord with the following:

13 (A) ~~[one hundred thirty-nine million four hundred thousand dollars]~~
14 one hundred one million seven hundred thousand dollars for each calendar
15 year (prorated, as may be necessary, to reflect any period less than a
16 year) shall be distributed as Medicaid Disproportionate Share Hospital
17 ("DSH") payments to major public general hospitals; and

18 (B) ~~[nine hundred ninety-four million nine hundred thousand dollars]~~
19 seven hundred seven million six hundred thousand dollars for each calen-
20 dar year (prorated, as may be necessary, to reflect any period less than
21 a year) as Medicaid DSH payments to eligible general hospitals, other
22 than major public general hospitals.

23 (iii) ~~[(A) Such regulations shall establish transition adjustments to~~
24 ~~the distributions made pursuant to clauses (A) and (B) of subparagraph~~
25 ~~(ii) of this paragraph such that no facility experiences a reduction in~~
26 ~~indigent care pool payments pursuant to this subdivision that is greater~~
27 ~~than the percentages, as specified in clause (C) of this subparagraph as~~
28 ~~compared to the average distribution that each such facility received~~
29 ~~for the three calendar years prior to two thousand thirteen pursuant to~~
30 ~~this section and section twenty-eight hundred seven w of this article.~~

31 ~~(B) Such regulations shall also establish adjustments limiting the~~
32 ~~increases in indigent care pool payments experienced by facilities~~
33 ~~pursuant to this subdivision by an amount that will be, as determined by~~
34 ~~the commissioner and in conjunction with such other funding as may be~~
35 ~~available for this purpose, sufficient to ensure full funding for the~~
36 ~~transition adjustment payments authorized by clause (A) of this subpara-~~
37 ~~graph.~~

38 ~~(C) No facility shall experience a reduction in indigent care pool~~
39 ~~payments pursuant to this subdivision that: for the calendar year begin-~~
40 ~~ning January first, two thousand thirteen, is greater than two and one~~
41 ~~half percent; for the calendar year beginning January first, two thou-~~
42 ~~sand fourteen, is greater than five percent; and, for the calendar year~~
43 ~~beginning on January first, two thousand fifteen; is greater than seven~~
44 ~~and one-half percent, and for the calendar year beginning on January~~
45 ~~first, two thousand sixteen, is greater than ten percent; and for the~~
46 ~~calendar year beginning on January first, two thousand seventeen, is~~
47 ~~greater than twelve and one-half percent; and for the calendar year~~
48 ~~beginning on January first, two thousand eighteen, is greater than~~
49 ~~fifteen percent; and for the calendar year beginning on January first,~~
50 ~~two thousand nineteen, is greater than seventeen and one-half percent.~~

51 ~~(iv)]~~ Such regulations shall reserve one percent of the funds avail-
52 able for distribution in the two thousand fourteen and two thousand
53 fifteen calendar years, and for calendar years thereafter, pursuant to
54 this subdivision, subdivision fourteen-f of section twenty-eight hundred
55 seven-c of this article, and sections two hundred eleven and two hundred
56 twelve of chapter four hundred seventy-four of the laws of nineteen

1 hundred ninety-six, in a "financial assistance compliance pool" and
2 shall establish methodologies for the distribution of such pool funds to
3 facilities based on their level of compliance, as determined by the
4 commissioner, with the provisions of subdivision nine-a of this section.

5 (c) The commissioner shall annually report to the governor and the
6 legislature on the distribution of funds under this subdivision includ-
7 ing, but not limited to:

8 (i) the impact on safety net providers, including community providers,
9 rural general hospitals and major public general hospitals;

10 (ii) the provision of indigent care by units of services and funds
11 distributed by general hospitals; and

12 (iii) the extent to which access to care has been enhanced.

13 § 2. Section 2807 of the public health law is amended by adding a new
14 subdivision 23 to read follows:

15 23. Adjustments to medicaid rates. (a) The commissioner is authorized
16 to make adjustments to medical assistance rates in accordance with this
17 subdivision to enhanced safety net hospitals, as defined in paragraph
18 (a) of subdivision thirty-four of section twenty-eight hundred seven-c
19 of this article, and to qualified safety net hospitals, as defined in
20 paragraph (b) of this subdivision, for the purposes of supporting crit-
21 ically needed health care services and to ensure the continued mainte-
22 nance and operation of such hospitals.

23 (b) For the purposes of this subdivision, a "qualified safety net"
24 hospital shall mean a hospital, other than an enhanced safety net hospi-
25 tal, so designated by the commissioner pursuant to criteria developed by
26 the commissioner that take into account: (i) the hospital's financial
27 hardship, evidenced by the operating losses of the hospital or the
28 system of hospitals to which the hospital belongs and/or participation
29 by the hospital in programs established by the commissioner to enable
30 hospitals in financial distress to maintain operations and vital
31 services; (ii) the volume of Medicaid and/or medically uninsured
32 patients served by the hospital compared to other hospitals in the
33 hospital's region; and/or (iii) the importance of the hospital in the
34 hospital's region in enabling Medicaid and/or medically uninsured
35 patients' access to health care services in inpatient, outpatient and
36 community settings.

37 (c) For the state fiscal year commencing April first, two thousand
38 nineteen, and each state fiscal year thereafter, the commissioner shall
39 increase medical assistance rates of payments for inpatient and/or
40 outpatient services made by either state governmental agencies or organ-
41 izations operating in accordance with article forty-three of the insur-
42 ance law or article forty-four of this chapter by an aggregate of:

43 (i) thirty-seven million seven hundred thousand dollars for enhanced
44 safety net hospitals that are major public general hospitals;

45 (ii) two hundred seventy-four million eight hundred thousand dollars
46 for qualified safety net hospitals and enhanced safety net hospitals
47 other than major public general hospitals, of which at least twelve
48 million five hundred thousand dollars shall be allocated to enhanced
49 safety net hospitals that are federally designated as critical access or
50 sole community hospitals; and

51 (iii) twelve million five hundred thousand dollars for those hospitals
52 eligible under subparagraph (ii) of this paragraph for which the
53 combined payments made, or to be made, under subparagraph (ii) of this
54 paragraph and subdivision five-d of section twenty-eight thousand
55 seven-k of this article for calendar year two thousand nineteen, and
56 each calendar year thereafter, are projected by the commissioner to be

1 less than payments made to such hospitals pursuant to subdivision five-d
2 of section twenty-eight thousand seven-k of this article for calendar
3 year two thousand eighteen.

4 (d) Payments made pursuant to this subdivision may be added to rates
5 of payment, or made as aggregate payments of equal amounts on October
6 one and April one of each state fiscal year, to such enhanced safety net
7 hospitals and qualified safety net hospitals in accordance with a meth-
8 odology to be established by the commissioner; provided, however, that,
9 the commissioner may make the twelve million five hundred thousand
10 dollars in payments due to eligible hospitals under subparagraph (iii)
11 of paragraph (c) of this subdivision by instead increasing the amount
12 otherwise awarded to such eligible hospitals under programs established
13 by the commissioner to enable hospitals in financial distress to main-
14 tain operations and vital services while working to achieve longer-term
15 sustainability, including, but not limited to, the Value Based Payment
16 Quality Improvement Program.

17 § 3. Subparagraph (v) of paragraph (a) of subdivision 1 of section
18 2807-c of the public health law, as amended by chapter 639 of the laws
19 of 1996, is amended and a new subparagraph (vi) is added to read as
20 follows:

21 (v) adjustments for any modifications to the case payments determined
22 in accordance with paragraph (a), (b), (c) or (d) of subdivision four of
23 this section[-]; and

24 (vi) adjustments for any modifications to the case payments determined
25 in accordance with subdivision twenty-three of section twenty-eight
26 hundred seven of this article.

27 § 4. Subparagraph (v) of paragraph (a) of subdivision 1 of section
28 2807-c of the public health law, as amended by chapter 731 of the laws
29 of 1993, is amended and a new subparagraph (vi) is added to read as
30 follows:

31 (v) adjustments for any modifications to the case payments determined
32 in accordance with paragraph (a), (b), (c) or (d) of subdivision four of
33 this section[-]; and

34 (vi) adjustments for any modifications to the case payments determined
35 in accordance with subdivision twenty-three of section twenty-eight
36 hundred seven of this article.

37 § 5. Subdivision 34 of section 2807-c of the public health law is
38 amended by adding a new paragraph (d) to read as follows:

39 (d) Notwithstanding any inconsistent provision of law or regulation to
40 the contrary, adjustments made pursuant to this subdivision shall be in
41 addition to any adjustments made to medical assistance rates to enhanced
42 safety net hospitals authorized by subdivision twenty-three of section
43 twenty-eight hundred seven of this article.

44 § 6. Subdivision 1 of section 211 of chapter 474 of the laws of 1996
45 amending the education law and other laws relating to rates for residen-
46 tial health care facilities is amended by adding a new paragraph (g) to
47 read as follows:

48 (g) Notwithstanding any inconsistent provision of law or regulation to
49 the contrary, effective for the state fiscal year beginning April 1,
50 2019, and annually thereafter, the department of health is authorized to
51 pay public general hospitals, other than those operated by the state of
52 New York or the state university of New York, as defined in subdivision
53 10 of section 2801 of the public health law, located in a city with a
54 population of over one million, additional payments for inpatient hospi-
55 tal services of 200 million dollars annually, as medical assistance
56 pursuant to title 11 of article 5 of the social services law for

1 patients eligible for federal financial participation under title XIX of
2 the federal social security act, pursuant to federal laws and regu-
3 lations governing disproportionate share payments to hospitals, based on
4 the relative share of each such non-state operated public general hospi-
5 tal medical assistance and uninsured patient losses. The payments may be
6 added to rates of payment or made as aggregate payments to an eligible
7 public general hospital.

8 § 7. Subdivision 1 of section 212 of chapter 474 of the laws of 1996
9 amending the education law and other laws relating to rates for residen-
10 tial health care facilities, is amended by adding a new paragraph (c) to
11 read as follows:

12 (c) Notwithstanding any inconsistent provision of law or regulation to
13 the contrary, effective for the state fiscal year beginning April 1,
14 2019, and annually thereafter, the department of health is authorized to
15 pay public general hospitals, as defined in subdivision 10 of section
16 2801 of the public health law, operated by the state of New York or the
17 state university of New York or by a county, which shall not include a
18 city with a population of over one million, of the state of New York,
19 and those public general hospitals located in the county of Westchester,
20 the county of Erie or the county of Nassau, additional payments for
21 inpatient hospital services of 100 million dollars annually, as medical
22 assistance payments pursuant to title 11 of article 5 of the social
23 services law for patients eligible for federal financial participation
24 under title XIX of the federal social security act, pursuant to federal
25 laws and regulations governing disproportionate share payments to hospi-
26 tals. The payments may be added to rates of payment or made as aggregate
27 payments to an eligible public general hospital.

28 § 8. This act shall take effect immediately; provided however, that
29 the amendments made to paragraph (a) of subdivision 1 of section 2807-c
30 of the public health law by section three of this act shall be subject
31 to the expiration and reversion of such paragraph when upon such date
32 the provisions of section four of this act shall take effect.