

# STATE OF NEW YORK

5546

2019-2020 Regular Sessions

## IN SENATE

May 6, 2019

Introduced by Sens. RIVERA, BENJAMIN, LIU -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Subdivision 5-d of section 2807-k of the public health law,  
2 as amended by section 6 of part H of chapter 57 of the laws of 2019, is  
3 amended to read as follows:

4 5-d. (a) Notwithstanding any inconsistent provision of this section,  
5 section twenty-eight hundred seven-w of this article or any other  
6 contrary provision of law, and subject to the availability of federal  
7 financial participation, for periods [~~on and after January~~] April first,  
8 two thousand [~~thirteen,~~] nineteen through [~~March~~] December thirty-first,  
9 two thousand [~~twenty~~] nineteen and each calendar year thereafter, all  
10 funds available for distribution pursuant to this section, [~~except for~~  
11 ~~funds distributed pursuant to subparagraph (v) of paragraph (b) of~~  
12 ~~subdivision five b of this section,~~] and all funds available for  
13 distribution pursuant to section twenty-eight hundred seven-w of this  
14 article, shall be reserved and set aside and distributed in accordance  
15 with the provisions of this subdivision.

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

20 (i) Such regulations shall establish methodologies for determining  
21 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.

LBD10355-03-9

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 twenty calendar years]~~ 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 ~~and for the calendar year beginning on January first, two thousand twen-~~  
52 ~~ty, is greater than twenty percent.~~

53 ~~(iv)]~~ Such regulations shall reserve one percent of the funds avail-  
54 able for distribution in the two thousand fourteen and two thousand  
55 fifteen calendar years, and for calendar years thereafter, pursuant to  
56 this subdivision, subdivision fourteen-f of section twenty-eight hundred

seven-c of this article, and sections two hundred eleven and two hundred twelve of chapter four hundred seventy-four of the laws of nineteen hundred ninety-six, in a "financial assistance compliance pool" and shall establish methodologies for the distribution of such pool funds to facilities based on their level of compliance, as determined by the commissioner, with the provisions of subdivision nine-a of this section.

(c) The commissioner shall annually report to the governor and the legislature on the distribution of funds under this subdivision including, but not limited to:

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

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

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

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

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

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

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

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

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

(iii) twelve million five hundred thousand dollars for those hospitals eligible under subparagraph (ii) of this paragraph for which the combined payments made, or to be made, under subparagraph (ii) of this paragraph and subdivision five-d of section twenty-eight thousand

1 seven-k of this article for calendar year two thousand nineteen, and  
2 each calendar year thereafter, are projected by the commissioner to be  
3 less than payments made to such hospitals pursuant to subdivision five-d  
4 of section twenty-eight thousand seven-k of this article for calendar  
5 year two thousand eighteen.

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

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

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

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

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

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

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

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

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

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

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

1 tal services of 200 million dollars annually, as medical assistance  
2 pursuant to title 11 of article 5 of the social services law for  
3 patients eligible for federal financial participation under title XIX of  
4 the federal social security act, pursuant to federal laws and regu-  
5 lations governing disproportionate share payments to hospitals, based on  
6 the relative share of each such non-state operated public general hospi-  
7 tal medical assistance and uninsured patient losses. The payments may be  
8 added to rates of payment or made as aggregate payments to an eligible  
9 public general hospital.

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

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

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