

STATE OF NEW YORK

5905

2023-2024 Regular Sessions

IN ASSEMBLY

March 24, 2023

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

AN ACT to amend the public health law, in relation to residential health care facility rates

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

1 Section 1. Paragraphs (a), (b), (c) and (d) of subdivision 2-c of
2 section 2808 of the public health law, paragraphs (a), (b) and (c) as
3 added by section 95 of part H of chapter 59 of the laws of 2011, para-
4 graph (d) as amended by section 2 of part M of chapter 57 of the laws of
5 2022, are amended and new paragraph (b-1) is added to read as follows:

6 (a) Notwithstanding any inconsistent provision of this section or any
7 other contrary provision of law and subject to the availability of
8 federal financial participation, the non-capital component of rates of
9 payment by governmental agencies for inpatient services provided by
10 residential health care facilities on or after October first, two thou-
11 sand eleven, but no later than January first, two thousand twelve, shall
12 reflect a direct statewide price component, and indirect statewide price
13 component, and a facility specific non-comparable component, utilizing
14 allowable operating costs for a base year as determined by the commis-
15 sioner by regulation. Such rate components shall be periodically updated
16 to reflect changes in operating costs, provided however that such rate
17 components shall be updated no later than January first, two thousand
18 twenty-five and no less than every five years thereafter, using the most
19 currently available cost report data, which updates shall include but
20 not be limited to an update of rate components to reflect actual base
21 year costs.

22 (b) The direct and indirect statewide price components shall be
23 adjusted by a wage equalization factor and such other factors as deter-
24 mined to be appropriate to recognize legitimate cost differentials and
25 the direct statewide price component shall be subject to a case mix

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

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1 adjustment utilizing the patients that are eligible for medical assist-
2 ance pursuant to title eleven of article five of the social services
3 law. Such wage equalization factor and other factors shall be period-
4 ically updated to reflect current labor market and other conditions,
5 provided however that such updates shall be implemented no later than
6 January first, two thousand twenty-five, and no less than every five
7 years thereafter, based on the most currently available cost report
8 data.

9 (b-1) For purposes of the updates required by paragraphs (a) and (b)
10 of this subdivision and associated changes in the rate-setting methodol-
11 ogy, the department shall establish and consult with a technical assist-
12 ance workgroup that includes external experts with professional exper-
13 tise in nursing home rate setting.

14 (c) The non-capital component of the rates for: (i) AIDS facilities or
15 discrete AIDS units within facilities; (ii) discrete units for residents
16 receiving care in a long-term inpatient rehabilitation program for trau-
17 matic brain injured persons; (iii) discrete units providing specialized
18 programs for residents requiring behavioral interventions; (iv) discrete
19 units for long-term ventilator dependent residents; and (v) facilities
20 or discrete units within facilities that provide extensive nursing,
21 medical, psychological and counseling support services solely to chil-
22 dren shall reflect the rates in effect for such facilities on January
23 first, two thousand nine, as adjusted for inflation and rate appeals in
24 accordance with applicable statutes, provided, however, that such rates
25 for facilities described in subparagraph (i) of this paragraph shall
26 reflect the application of the provisions of section twelve of part D of
27 chapter fifty-eight of the laws of two thousand nine, and provided
28 further, however, that insofar as such rates reflect trend adjustments
29 for trend factors attributable to the two thousand eight and two thou-
30 sand nine calendar years the aggregate amount of such trend factor
31 adjustments shall be subject to the provisions of section two of part D
32 of chapter fifty-eight of the laws of two thousand nine, as amended.
33 Notwithstanding the elimination of a trend factor from rates of payment
34 paid to other residential health care facilities or any other inconsis-
35 tent provision of law, commencing on and after January first, two thou-
36 sand twenty-three, the non-capital component of rates established pursu-
37 ant to this paragraph shall be adjusted for inflation.

38 (d) The commissioner shall promulgate regulations, and may promulgate
39 emergency regulations, to implement the provisions of this subdivision,
40 including regulations to implement the updates to the rate components
41 and associated changes in the methodology as set forth in paragraphs (a)
42 and (b) of this subdivision. Such regulations shall be developed in
43 consultation with the nursing home industry and advocates for residen-
44 tial health care facility residents and, further, the commissioner shall
45 provide notification concerning such regulations to the chairs of the
46 senate and assembly health committees, the chair of the senate finance
47 committee and the chair of the assembly ways and means committee. Such
48 regulations shall include provisions for rate adjustments or payment
49 enhancements to facilitate a minimum four-year transition of facilities
50 to the rate-setting methodology established by this subdivision and may
51 also include, but not be limited to, provisions for facilitating quality
52 improvements in residential health care facilities, provided however
53 that regulations governing the updates set forth in paragraphs (a) and
54 (b) of this subdivision and associated changes in the methodology may
55 include a transition period as determined by the commissioner in consul-
56 tation with the stakeholders described in this paragraph and the work-

1 group set forth in paragraph (b-1) of this subdivision. For purposes of
2 facilitating quality improvements through the establishment of a nursing
3 home quality pool to be funded at the discretion of the commissioner by
4 (i) adjustments in medical assistance rates, (ii) funds made available
5 through state appropriations, or (iii) a combination thereof, those
6 facilities that contribute to the quality pool, but are deemed ineligi-
7 ble for quality pool payments due exclusively to a specific case of
8 employee misconduct, shall nevertheless be eligible for a quality pool
9 payment if the facility properly reported the incident, did not receive
10 a survey citation from the commissioner or the Centers for Medicare and
11 Medicaid Services establishing the facility's culpability with regard to
12 such misconduct and, but for the specific case of employee misconduct,
13 the facility would have otherwise received a quality pool payment. Regu-
14 lations pertaining to the facilitation of quality improvement may be
15 made effective for periods on and after January first, two thousand
16 thirteen.

17 § 2. This act shall take effect immediately.