

3582

2009-2010 Regular Sessions

I N S E N A T E

March 25, 2009

Introduced by Sen. KLEIN -- 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 rates of payment for residential health care facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraphs (a), (b) and (c) of subdivision 2-b of section
2 2808 of the public health law, as amended by section 47 of part C of
3 chapter 109 of the laws of 2006, subparagraph (i) of paragraph (a) as
4 amended by section 2 and subparagraph (i) of paragraph (b) as amended by
5 section 3 of part I of chapter 2 of the laws of 2009, subparagraph (iv)
6 of paragraph (a) as amended by section 13 and subparagraph (iv) of para-
7 graph (b) as amended by section 14 of part 00 of chapter 57 of the laws
8 of 2008, are amended to read as follows:

9 (a) (i) Subject to the provisions of subparagraphs (ii) through (vi)
10 of this paragraph, for the two thousand seven rate period the operating
11 cost component of rates of payment shall reflect the operating cost
12 component of rates effective for October first, two thousand six, as
13 adjusted for inflation in accordance with paragraph (c) of subdivision
14 ten of section twenty-eight hundred seven-c of this article; and for the
15 January first, two thousand eight through March thirty-first, two thou-
16 sand nine rate period the operating cost component of rates of payment
17 shall reflect the operating cost component of rates effective for Decem-
18 ber thirty-first, two thousand six, as adjusted for inflation in accord-
19 ance with paragraph (c) of subdivision ten of section twenty-eight
20 hundred seven-c of this article.

21 (ii) Rates for the periods two thousand seven [and], two thousand
22 eight, AND JANUARY FIRST, TWO THOUSAND NINE THROUGH MARCH THIRTY-FIRST,
23 TWO THOUSAND NINE shall be further adjusted by a per diem add-on amount,
24 as determined by the commissioner, reflecting the proportional amount of
25 each facility's projected Medicaid benefit to the total projected Medi-

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

LBD10241-01-9

1 caid benefit for all facilities of the imputed use of the rate-setting
2 methodology set forth in paragraph (b) of this subdivision, provided,
3 however, that for those facilities that do not receive a per diem add-on
4 adjustment pursuant to this subparagraph, rates shall be further
5 adjusted to include the proportionate benefit, as determined by the
6 commissioner, of the expiration of the opening paragraph and paragraph
7 (a) of subdivision sixteen of this section and of paragraph (a) of
8 subdivision fourteen of this section, provided, further, however, that
9 the aggregate total of the rate adjustments made pursuant to this
10 subparagraph shall not exceed one hundred thirty-seven million five
11 hundred thousand dollars for the two thousand seven rate period [and],
12 one hundred sixty-seven million five hundred thousand dollars for the
13 two thousand eight rate period, AND FORTY-ONE MILLION EIGHT HUNDRED
14 SEVENTY-FIVE THOUSAND DOLLARS FOR THE JANUARY FIRST, TWO THOUSAND NINE
15 THROUGH MARCH THIRTY-FIRST, TWO THOUSAND NINE RATE PERIOD.

16 (iii) Revisions to two thousand six rates occurring on and after Janu-
17 ary first, two thousand seven, shall be annually incorporated, retroac-
18 tively and prospectively, into two thousand seven and two thousand eight
19 rates on or about November thirtieth, two thousand seven and November
20 thirtieth, two thousand eight, respectively.

21 (iv) The capital cost component of rates pursuant to this paragraph
22 shall fully reflect the cost of local property taxes and payments made
23 in lieu of local property taxes, as reported in each facility's cost
24 report submitted for the year two years prior to the rate year.

25 (v) Rates [for the two thousand seven and two thousand eight rate
26 periods,] as computed pursuant to this paragraph, shall not be subject
27 to case mix adjustment, provided, however, that a facility may, in
28 accordance with its existing full house schedule of submission of
29 patient review instruments, submit data in support of a request for a
30 rate adjustment to reflect an increased facility case mix equal to or
31 greater than .05, provided further, however, that such a facility will
32 be required to continue to make such full house submissions in accord-
33 ance with its existing submission schedule for rate periods up through
34 December thirty-first, two thousand eight.

35 (vi) For the period January first, two thousand seven through [Decem-
36 ber] MARCH thirty-first, two thousand [eight] NINE, notwithstanding any
37 contrary provision of law or regulation, voluntary facilities shall not
38 be required to deposit reimbursement received for depreciation expenses
39 into a segregated depreciation fund account.

40 (b) (i) Subject to the provisions of subparagraphs (ii) through (xiv)
41 of this paragraph, for periods on and after April first, two thousand
42 nine the operating cost component of rates of payment shall reflect
43 allowable operating costs as reported in each facility's cost report for
44 the two thousand two calendar year, as adjusted for inflation on an
45 annual basis in accordance with the methodology set forth in paragraph
46 (c) of subdivision ten of section twenty-eight hundred seven-c of this
47 article, provided, however, that for those facilities which do not
48 receive a per diem add-on adjustment pursuant to subparagraph (ii) of
49 paragraph (a) of this subdivision, rates shall be further adjusted to
50 include the proportionate benefit, as determined by the commissioner, of
51 the expiration of the opening paragraph and paragraph (a) of subdivision
52 sixteen of this section and of paragraph (a) of subdivision fourteen of
53 this section, and provided further that the operating cost component of
54 rates of payment for those facilities which did not receive a per diem
55 adjustment in accordance with subparagraph (ii) of paragraph (a) of this
56 subdivision shall not be less than the operating component such facili-

1 ties received in the two thousand eight rate period, as adjusted for
2 inflation on an annual basis in accordance with the methodology set
3 forth in paragraph (c) of subdivision ten of section twenty-eight
4 hundred seven-c of this article and further provided, however, that
5 rates for facilities whose operating cost component reflects base year
6 costs subsequent to January first, two thousand two shall have rates
7 computed in accordance with this paragraph, utilizing allowable operat-
8 ing costs as reported in such subsequent base year period, and trended
9 forward to the rate year in accordance with applicable inflation
10 factors.

11 (ii) The operating component of rates shall be subject to case mix
12 adjustment through application of the relative resource utilization
13 groups system of patient classification (RUG-III) employed by the feder-
14 al government with regard to payments to skilled nursing facilities
15 pursuant to title XVIII of the federal social security act (Medicare),
16 as revised by regulation to reflect New York state wages and fringe
17 benefits, provided, however, that such RUG-III classification system
18 weights shall be increased in the following amounts for the following
19 categories of residents: (A) thirty minutes for the impaired cognition A
20 category, (B) forty minutes for the impaired cognition B category, and
21 (C) twenty-five minutes for the reduced physical functions B category.
22 Such adjustments shall be made in January and July of each calendar
23 year. Such adjustments and related patient classifications in each
24 facility shall be subject to audit review in accordance with regulations
25 promulgated by the commissioner.

26 (iii) Specified adjustments to the operating component of rates in
27 effect for periods prior to [January] APRIL first, two thousand nine,
28 with regard to extended care for persons with traumatic brain injury and
29 for the cost of providing hepatitis B vaccinations shall continue on and
30 after [January] APRIL first, two thousand nine.

31 (iv) The capital cost component of rates on and after [January] APRIL
32 first, two thousand nine shall fully reflect the cost of local property
33 taxes and payments made in lieu of local property taxes, as reported in
34 each facility's cost report submitted for the year two years prior to
35 the rate year.

36 (v) The direct component of the operating component of rates of
37 payment shall include allowable direct therapy costs and associated
38 overhead costs and shall exclude administrative overhead costs related
39 to pharmacy services and the costs of non-prescription drugs and
40 supplies, which shall be reflected in facility rates as non-comparable
41 costs.

42 (vi) For purposes of computing peer group cost ceilings for the direct
43 and indirect component of the operating component of rates, facilities
44 shall be organized into peer groups consisting of: (A) free-standing
45 facilities with certified bed capacities of less than three hundred
46 beds; (B) free-standing facilities with certified bed capacities of
47 three hundred beds or more; and (C) hospital based facilities.

48 (vii) In determining the operating cost component of rates, for each
49 peer group, a corridor shall be developed around the statewide mean
50 direct and indirect price per day, provided, however, that the corridor
51 around each mean direct and indirect price per day shall have a base no
52 less than eighty-five percent and no greater than ninety percent of each
53 mean direct and indirect price per day and a ceiling no greater than one
54 hundred fifteen percent and no less than one hundred ten percent of each
55 mean direct and indirect price per day, and further provided, however,
56 that the total financial impact of the application of the ceiling shall

1 be substantially equal to the total financial impact of the application
2 of the base.

3 (viii) The operating component of rates shall be adjusted to reflect a
4 per diem add-on amount of eight dollars, trended forward to reflect
5 applicable inflation factors from two thousand six to two thousand nine
6 and prospectively thereafter, for each patient who: (A) qualifies under
7 both the RUG-III impaired cognition and the behavioral problems catego-
8 ries, or (B) has been diagnosed with Alzheimer's disease or dementia, is
9 classified in the reduced physical functions A, B or C, or in behavioral
10 problems A or B categories, and has an activities of daily living index
11 score of ten or less.

12 (ix) The operating component of rates shall be adjusted to reflect a
13 per diem add-on amount of seventeen dollars, trended forward to reflect
14 applicable inflation factors from two thousand six to two thousand nine
15 and prospectively thereafter, for each patient whose body mass index is
16 greater than thirty-five.

17 (x) For periods on and after [January] APRIL first, two thousand nine,
18 notwithstanding any contrary provision of law or regulation, voluntary
19 facilities shall not be required to deposit reimbursement received for
20 depreciation expenses into a segregated depreciation fund account.

21 (xi) Public facilities, and non-public facilities with fewer than
22 eighty certified beds, which have a facility specific direct adjusted
23 payment price per day equal to the ceiling direct price per day shall
24 have such direct adjusted payment price per day further adjusted through
25 the addition of fifty percent of the difference between the facility's
26 specific direct cost per day and the ceiling direct price per day.
27 Public facilities, and non-public facilities with fewer than eighty
28 certified beds, which have a facility specific indirect adjusted payment
29 price per day equal to the ceiling indirect price per day shall have
30 such indirect adjusted payment price per day further adjusted through
31 the addition of fifty percent of the difference between the facility's
32 specific indirect cost per day and the ceiling indirect price per day.
33 Such adjustments to direct and indirect adjusted payment prices per day
34 shall be increased to the rate year by application of the applicable
35 inflation factor and adjusted by the regional direct and indirect input
36 price adjustment factors calculated pursuant to subdivision seventeen of
37 this section.

38 (xii) Public facilities shall receive rates that are consistent with
39 the provisions of this paragraph, provided, however, that in no event
40 shall such rates, in aggregate, exceed the amount permitted under feder-
41 al upper payment limits applicable to public facilities. In the event
42 such public facilities are, pursuant to this subparagraph, subject to
43 limitations on such rates, the commissioner shall make grants from state
44 funds to such facilities equal to one-half of the additional amount that
45 such facilities would have received if such limitations had not been
46 applied.

47 (xiii) The appointment of a receiver or the establishment of a new
48 operator or replacement or renovation of an existing facility on or
49 after January first, two thousand seven shall not result in a revision
50 to the operating component of the facility's rates for any rate period
51 through December thirty-first, two thousand eleven, provided, however,
52 that the provisions of this subparagraph shall not apply to a facility
53 which has a certificate of need application filed with the department as
54 of December thirty-first, two thousand six, which is subsequently
55 approved and which otherwise meets existing department criteria for the
56 establishment of a new base year for rate-setting purposes.

1 (xiv) The commissioner may promulgate regulations, including emergency
2 regulations, to implement the provisions of this paragraph.

3 (c) In order to ensure that the quality of resident care is maintained
4 and improved for rate periods on and after January first, two thousand
5 seven, no less than sixty-five percent of the additional Medicaid
6 reimbursement received by a residential health care facility that is
7 attributable to the per-diem add-on amount received pursuant to subpara-
8 graph (ii) of paragraph (a) of this subdivision or, for rate periods on
9 and after [January] APRIL first, two thousand nine, that is related to
10 utilization of two thousand two reported base year costs, as compared to
11 the reimbursement each such facility would have received had such facil-
12 ity's Medicaid reimbursement rates continued to reflect base year costs
13 used with regard to such facility's two thousand six rates, shall be
14 allocated for the purpose of recruitment and retention of non-superviso-
15 ry workers or any worker with direct resident care responsibility or for
16 purposes authorized under the nursing home quality improvement demon-
17 stration program as established by section twenty-eight hundred eight-d
18 of this article, provided, however, in no circumstance shall facilities
19 be required to spend more than seventy-five percent of such funds for
20 these purposes, and provided further, the commissioner is authorized to
21 audit each such facility for the purpose of ensuring compliance with the
22 provisions of this paragraph and shall recoup any amount determined to
23 have been in contravention of the requirements of this paragraph,
24 provided, however, that, upon application of a facility, the commis-
25 sioner may, after determining that other funds are not available, waive the
26 application of this paragraph insofar as it is determined by the commis-
27 sioner that additional funds must be expended by such facility to
28 correct deficiencies that constitute a threat to resident safety.

29 S 2. This act shall take effect immediately.