S T A T E O F N E W Y O R K

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:

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

(a) (i) Subject to the provisions of subparagraphs (ii) through (vi) of this paragraph, for the two thousand seven rate period the operating cost component of rates of payment shall reflect the operating cost component of rates effective for October first, two thousand six, as adjusted for inflation in accordance with paragraph (c) of subdivision ten of section twenty-eight hundred seven-c of this article; and for the January first, two thousand eight through March thirty-first, two thousand nine rate period the operating cost component of rates of payment shall reflect the operating cost component of rates effective for December thirty-first, two thousand six, as adjusted for inflation in accordance with paragraph (c) of subdivision ten of section twenty-eight hundred seven-c of this article.

(ii) Rates for the periods two thousand seven [and], two thousand eight, AND JANUARY FIRST, TWO THOUSAND NINE THROUGH MARCH THIRTY-FIRST, TWO THOUSAND NINE shall be further adjusted by a per diem add-on amount, as determined by the commissioner, reflecting the proportional amount of 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.

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

(iii) Revisions to two thousand six rates occurring on and after January first, two thousand seven, shall be annually incorporated, retroactively and prospectively, into two thousand seven and two thousand eight rates on or about November thirtieth, two thousand seven and November thirtieth, two thousand eight, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) In order to ensure that the quality of resident care is maintained and improved for rate periods on and after January first, two thousand seven, no less than sixty-five percent of the additional Medicaid reimbursement received by a residential health care facility that is attributable to the per-diem add-on amount received pursuant to subparagraph (ii) of paragraph (a) of this subdivision or, for rate periods on and after [January] APRIL first, two thousand nine, that is related to utilization of two thousand two reported base year costs, as compared to the reimbursement each such facility would have received had such facility's Medicaid reimbursement rates continued to reflect base year costs used with regard to such facility's two thousand six rates, shall be allocated for the purpose of recruitment and retention of non-supervisory workers or any worker with direct resident care responsibility or for purposes authorized under the nursing home quality improvement demonstration program as established by section twenty-eight hundred eight-d of this article, provided, however, in no circumstance shall facilities be required to spend more than seventy-five percent of such funds for these purposes, and provided further, the commissioner is authorized to audit each such facility for the purpose of ensuring compliance with the provisions of this paragraph and shall recoup any amount determined to have been in contravention of the requirements of this paragraph, provided, however, that, upon application of a facility, the commissioner may, after determining that other funds are not available, waive the application of this paragraph insofar as it is determined by the commissioner that additional funds must be expended by such facility to correct deficiencies that constitute a threat to resident safety.

S 2. This act shall take effect immediately.