# STATE OF NEW YORK

6677--B

2019-2020 Regular Sessions

# IN ASSEMBLY

March 15, 2019

Introduced by M. of A. GOTTFRIED, REYES, DICKENS, MOSLEY, WEPRIN, RODRIGUEZ, SANTABARBARA, CRUZ, BARRON, NIOU, CRESPO, PAULIN -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 6 of part H of chapter 57 of the laws of 2019, 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,~~] twenty through [~~March~~] December thirty-first, two thousand twenty 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.

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

LBD10355-05-0

(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 uninsured inpatient and outpatient units of service from the cost reporting year two years prior to the distribution year, multiplied by the applicable medicaid rates in effect January first of the distribution year, as summed and adjusted by a statewide cost adjustment factor and reduced by the sum of all payment amounts collected from such uninsured patients, and as further adjusted by application of a nominal need computation that shall take into account each facility's medicaid inpatient share.

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

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

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

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

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

~~(C) No facility shall experience a reduction in indigent care pool payments pursuant to this subdivision that: for the calendar year beginning January first, two thousand thirteen, is greater than two and one-half percent; for the calendar year beginning January first, two thousand fourteen, is greater than five percent; and, for the calendar year beginning on January first, two thousand fifteen; is greater than seven and one-half percent, and for the calendar year beginning on January first, two thousand sixteen, is greater than ten percent; and for the calendar year beginning on January first, two thousand seventeen, is greater than twelve and one-half percent; and for the calendar year beginning on January first, two thousand eighteen, is greater than fifteen percent; and for the calendar year beginning on January first, two thousand nineteen, is greater than seventeen and one-half percent;~~

~~and for the calendar year beginning on January first, two thousand twenty, is greater than twenty percent.~~

~~(iv)~~] Such regulations shall reserve one percent of the funds available for distribution in the two thousand fourteen and two thousand fifteen calendar years, and for calendar years thereafter, pursuant to 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 twenty, 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 hundred seven-k of this article for calendar year two thousand twenty, and each calendar year thereafter, are projected by the commissioner to be less than payments made to such hospitals pursuant to subdivision five-d of section twenty-eight hundred seven-k of this article for calendar year two thousand eighteen.

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

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

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

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

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

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

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

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

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

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

(g) Notwithstanding any inconsistent provision of law or regulation to the contrary, effective for the state fiscal year beginning April 1, 2020, and annually thereafter, the department of health is authorized to pay public general hospitals, other than those operated by the state of New York or the state university of New York, as defined in subdivision 10 of section 2801 of the public health law, located in a city with a population of over one million, additional payments for inpatient hospital services of 200 million dollars annually, as medical assistance pursuant to title 11 of article 5 of the social services law for patients eligible for federal financial participation under title XIX of the federal social security act, pursuant to federal laws and regulations governing disproportionate share payments to hospitals, based on the relative share of each such non-state operated public general hospital medical assistance and uninsured patient losses. The payments may be added to rates of payment or made as aggregate payments to an eligible public general hospital.

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

(c) Notwithstanding any inconsistent provision of law or regulation to the contrary, effective for the state fiscal year beginning April 1, 2020, and annually thereafter, the department of health is authorized to pay public general hospitals, as defined in subdivision 10 of section 2801 of the public health law, operated by the state of New York or the state university of New York or by a county, which shall not include a city with a population of over one million, of the state of New York, and those public general hospitals located in the county of Westchester, the county of Erie or the county of Nassau, additional payments for inpatient hospital services of 100 million dollars annually, as medical assistance payments pursuant to title 11 of article 5 of the social services law for patients eligible for federal financial participation under title XIX of the federal social security act, pursuant to federal laws and regulations governing disproportionate share payments to hospitals. The payments may be added to rates of payment or made as aggregate payments to an eligible public general hospital.

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