STATE OF NEW YORK

8076--A

IN SENATE

March 16, 2020

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to standardized patient financial liability forms; to amend the public health law, in relation to the general hospital indigent care pool; to amend the civil practice law and rules, in relation to claims payment interest rates; to amend the financial services law, in relation to services rendered by a non-participating provider

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

Section 1. The public health law is amended by adding a new section 2828 to read as follows:

§ 2828. Standardized patient financial liability forms. 1. Every hospital, health system, hospital-based facility, affiliated provider, and provider shall use the uniform patient financial liability form which shall be developed by the commissioner. The standardized form shall disclose to the patient whether services, supplies and drugs provided to the patient are in-network or out-of-network and, to the extent reasonably known by the hospital, health system, hospital-based facility, affiliated provider, or provider, whether services, supplies and drugs provided to the patient are a covered benefit for a third-party payer of the patient, and the nature and amount of the patient's projected financial liability.

2. A patient shall not be financially liable for any services, supplies or drugs subject to this section that is not charged or billed in accordance with this section.

3. The commissioner shall develop and issue the uniform financial liability form within six months of the effective date of this section. The form shall be adopted and used pursuant to this section by all hospitals, health systems, hospital-based facilities, affiliated providers, and providers not later than sixty days of after the commissioner issues such form.

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

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4. A violation of this section shall be deemed a deceptive act or practice subject to enforcement under article twenty-two-A of the general business law. Nothing in this section shall be construed to restrict any right which any person may have under any other statute or the common law.

§ 2. Subdivisions 9 and 9-a of section 2807-k of the public health law, subdivision 9 as amended by section 17 of part B of chapter 60 of the laws of 2014, subdivision 9-a as added by section 39-a of part A of chapter 57 of the laws of 2006 and paragraph (k) of subdivision 9-a as added by section 43 of part B of chapter 58 of the laws of 2008, are amended to read as follows:

9. In order for a general hospital to participate in the distribution of funds from the pool, the general hospital must implement minimum collection policies and procedures [~~approved~~] provided by the commissioner.

9-a. (a) As a condition for participation in pool distributions authorized pursuant to this section and section twenty-eight hundred seven-w of this article for periods on and after January first, two thousand nine, general hospitals shall, effective for periods on and after January first, two thousand [~~seven, establish~~] twenty-one, adopt and implement the uniform financial [~~aid policies and procedures, in accordance with the provisions of this subdivision~~] assistance form and policy, to be developed and issued by the commissioner no later than one hundred eighty days after the effective date of a chapter of the laws of two thousand twenty that amended this subdivision. No later than thirty days after the issuance of the uniform financial assistance form and policy, general hospitals shall implement such form and policy, for reducing hospital charges and charges for physicians who work in the hospital otherwise applicable to low-income individuals without health insurance, or who have [~~exhausted their~~] health insurance [~~benefits~~] that does not cover or limits coverage of the service, and who can demonstrate an inability to pay full charges, and also, at the hospital's discretion, for reducing or discounting the collection of co-pays and deductible payments from those individuals who can demonstrate an inability to pay such amounts. Immigration status shall not be an eligibility criterion. General hospitals shall use the New York state of health marketplace eligibility determination page to establish the patient's household income and residency in lieu of the financial application form, provided they have secured the consent of the patient. A general hospital shall not require a patient to apply for coverage through the New York state of health marketplace in order to receive care or financial assistance.

(b) Such reductions from charges for uninsured patients with incomes below at least [~~three~~] four hundred percent of the federal poverty level shall result in a charge to such individuals that does not exceed [~~the greater of~~] the amount that would have been paid for the same services [~~by the "highest volume payor" for such general hospital as defined in subparagraph (v) of this paragraph, or for services provided pursuant to title XVIII of the federal social security act (medicare), or for services~~] provided pursuant to title XIX of the federal social security act (medicaid), and provided further that such amounts shall be adjusted according to income level as follows:

(i) For patients with incomes at or below at least [~~one~~] two hundred percent of the federal poverty level, the hospital shall collect no more than a nominal payment amount, consistent with guidelines established by the commissioner;

(ii) For patients with incomes between at least [~~one~~] two hundred one percent and [~~one~~] four hundred [~~fifty~~] percent of the federal poverty level, the hospital shall collect no more than the amount identified after application of a proportional sliding fee schedule under which patients with lower incomes shall pay the lowest amount. Such schedule shall provide that the amount the hospital may collect for such patients increases from the nominal amount described in subparagraph (i) of this paragraph in equal increments as the income of the patient increases, up to a maximum of twenty percent of the greater of the amount that would have been paid for the same services [~~by the "highest volume payor" for such general hospital, as defined in subparagraph (v) of this paragraph, or for services provided pursuant to title XVIII of the federal social security act (medicare) or for services~~] provided pursuant to title XIX of the federal social security act (medicaid);

(iii) [~~For patients with incomes between at least one hundred fifty-one percent and two hundred fifty percent of the federal poverty level, the hospital shall collect no more than the amount identified after application of a proportional sliding fee schedule under which patients with lower income shall pay the lowest amounts. Such schedule shall provide that the amount the hospital may collect for such patients increases from the twenty percent figure described in subparagraph (ii) of this paragraph in equal increments as the income of the patient increases, up to a maximum of the greater of the amount that would have been paid for the same services by the "highest volume payor" for such general hospital, as defined in subparagraph (v) of this paragraph, or for services provided pursuant to title XVIII of the federal social security act (medicare) or for services provided pursuant to title XIX of the federal social security act (medicaid); and~~

~~(iv)~~] For patients with incomes [~~between at least two hundred fifty-one percent and three hundred~~] at or above four hundred one percent of the federal poverty level, the hospital shall collect no more than the greater of the amount that would have been paid for the same services [~~by the "highest volume payor" for such general hospital as defined in subparagraph (v) of this paragraph, or for services provided pursuant to title XVIII of the federal social security act (medicare), or for services~~] provided pursuant to title XIX of the federal social security act (medicaid)[~~.~~]; and

[~~(v) For the purposes of this paragraph, "highest volume payor" shall mean the insurer, corporation or organization licensed, organized or certified pursuant to article thirty-two, forty-two or forty-three of the insurance law or article forty-four of this chapter, or other third-party payor, which has a contract or agreement to pay claims for services provided by the general hospital and incurred the highest volume of claims in the previous calendar year.

(vi) A hospital may implement policies and procedures to permit, but not require, consideration on a case-by-case basis of exceptions to the requirements described in subparagraphs (i) and (ii) of this paragraph based upon the existence of significant assets owned by the patient that should be taken into account in determining the appropriate payment amount for that patient's care, provided, however, that such proposed policies and procedures shall be subject to the prior review and approval of the commissioner and, if approved, shall be included in the hospital's financial assistance policy established pursuant to this section, and provided further that, if such approval is granted, the maximum amount that may be collected shall not exceed the greater of the amount that would have been paid for the same services by the "highest

~~volume payor" for such general hospital as defined in subparagraph (v) of this paragraph, or for services provided pursuant to title XVIII of the federal social security act (medicare), or for services provided pursuant to title XIX of the federal social security act (medicaid). In the event that a general hospital reviews a patient's assets in determining payment adjustments such policies and procedures shall not consider as assets a patient's primary residence, assets held in a tax-deferred or comparable retirement savings account, college savings accounts, or cars used regularly by a patient or immediate family members.~~

~~(vii)~~] (iv) Nothing in this paragraph shall be construed to limit a hospital's ability to establish patient eligibility for payment discounts at income levels higher than those specified herein and/or to provide greater payment discounts for eligible patients than those required by this paragraph.

(c) [~~Such policies and procedures shall be clear, understandable, in writing and publicly available in summary form and each~~] Each general hospital participating in the pool shall ensure that every patient is made aware of the existence of such [~~policies and procedures~~] uniform financial assistance form and policy and is provided, in a timely manner, with a [~~summary~~] copy of such [~~policies and procedures~~] form and policy upon request. [~~Any summary provided to patients shall, at a minimum, include specific information as to income levels used to determine eligibility for assistance, a description of the primary service area of the hospital and the means of applying for assistance. For general~~] General hospitals with twenty-four hour emergency departments, [~~such policies and procedures~~] shall require the notification of patients during the intake and registration process, through the conspicuous posting of language-appropriate information in the general hospital, and information on bills and statements sent to patients, that financial [~~aid~~] assistance may be available to qualified patients and how to obtain further information. For specialty hospitals without twenty-four hour emergency departments, such notification shall take place through written materials provided to patients during the intake and registration process prior to the provision of any health care services or procedures, and through information on bills and statements sent to patients, that financial [~~aid~~] assistance may be available to qualified patients and how to obtain further information. [~~Application materials shall include a notice to patients that upon submission of a completed application, including any information or documentation needed to determine the patient's eligibility pursuant to the hospital's financial assistance policy, the patient may disregard any bills until the hospital has rendered a decision on the application in accordance with this paragraph~~] General hospitals shall post the uniform financial assistance application form and policy in a conspicuous location on the general hospital's website. The commissioner shall likewise post the uniform financial assistance form and policy on the department's hospital profile page related to the general hospital's or any successor website.

(d) The commissioner shall provide application materials to general hospitals, including the uniform financial assistance application form and policy. These application materials shall include a notice to patients that upon submission of a completed application form, the patient may disregard any bills until the general hospital has rendered a decision on the application in accordance with this paragraph. The application materials shall include specific information as the income levels used to determine eligibility for financial assistance, a

description of the primary service area of the hospital and the means to apply for assistance. Such policies and procedures shall include clear, objective criteria for determining a patient's ability to pay and for providing such adjustments to payment requirements as are necessary. In addition to adjustment mechanisms such as sliding fee schedules and discounts to fixed standards, such policies and procedures shall also provide for the use of installment plans for the payment of outstanding balances by patients pursuant to the provisions of the hospital's financial assistance policy. The monthly payment under such a plan shall not exceed [~~ten~~] five percent of the gross monthly income of the patient[~~, provided, however, that if patient assets are considered under such a policy, then patient assets which are not excluded assets pursuant to subparagraph (vi) of paragraph (b) of this subdivision may be considered in addition to the limit on monthly payments~~]. The rate of interest charged to the patient on the unpaid balance, if any, shall not exceed the [~~rate for a ninety-day security~~] federal funds rate issued by the United States Department of Treasury[~~, plus .5 percent~~] and no plan shall include an accelerator or similar clause under which a higher rate of interest is triggered upon a missed payment. [~~If such policies and procedures~~] The policy shall not include a requirement of a deposit prior to [~~non-emergent, medically necessary~~] care[~~, such deposit must be included as part of any financial aid consideration~~]. Such policies and procedures shall be applied consistently to all eligible patients.

(e) Such policies and procedures shall permit patients to apply for assistance within at least [~~ninety~~] two hundred forty days of the date of discharge or date of service and provide at least [~~twenty~~] sixty days for patients to submit a completed application. Such policies and procedures may require that patients seeking payment adjustments provide [~~appropriate~~] the following financial information and documentation in support of their application[~~, provided, however, that such application process shall not be unduly burdensome or complex~~] that are used by the New York state of health marketplace: pay checks or pay stubs; rent receipts; a letter from the patient's employer attesting to the patient's gross income; or, if none of the aforementioned information and documentation are available, a written self-attestation of the patient's income. General hospitals shall, upon request, assist patients in understanding the hospital's policies and procedures and in applying for payment adjustments. [~~Application forms shall be printed~~] The commissioner shall translate the financial assistance application form and policy into the "primary languages" of each general hospital. Each general hospital shall print and post these materials to its website in the "primary languages" of patients served by the general hospital. For the purposes of this paragraph, "primary languages" shall include any language that is either (i) used to communicate, during at least five percent of patient visits in a year, by patients who cannot speak, read, write or understand the English language at the level of proficiency necessary for effective communication with health care providers, or (ii) spoken by non-English speaking individuals comprising more than one percent of the primary hospital service area population, as calculated using demographic information available from the United States Bureau of the Census, supplemented by data from school systems. Decisions regarding such applications shall be made within thirty days of receipt of a completed application. Such policies and procedures shall require that the hospital issue any denial/approval of such application in writing with information on how to appeal the denial and shall require the hospital to establish an appeals process under which it will evaluate

the denial of an application. [~~Nothing in this subdivision shall be interpreted as prohibiting a hospital from making the availability of financial assistance contingent upon the patient first applying for coverage under title XIX of the social security act (medicaid) or another insurance program if, in the judgment of the hospital, the patient may be eligible for medicaid or another insurance program, and upon the patient's cooperation in following the hospital's financial assistance application requirements, including the provision of information needed to make a determination on the patient's application in accordance with the hospital's financial assistance policy.~~]

(f) Such policies and procedures shall provide that patients with incomes below [~~three~~] **four** hundred percent of the federal poverty level are deemed presumptively eligible for payment adjustments and shall conform to the requirements set forth in paragraph (b) of this subdivision, provided, however, that nothing in this subdivision shall be interpreted as precluding hospitals from extending such payment adjustments to other patients, either generally or on a case-by-case basis. Such [~~policies and procedures~~] **policy** shall provide financial [~~aid~~] **assistance** for emergency hospital services, including emergency transfers pursuant to the federal emergency medical treatment and active labor act (42 USC 1395dd), to patients who reside in New York state and for medically necessary hospital services for patients who reside in the hospital's primary service area as determined according to criteria established by the commissioner. In developing such criteria, the commissioner shall consult with representatives of the hospital industry, health care consumer advocates and local public health officials. Such criteria shall be made available to the public no less than thirty days prior to the date of implementation and shall, at a minimum:

(i) prohibit a hospital from developing or altering its primary service area in a manner designed to avoid medically underserved communities or communities with high percentages of uninsured residents;

(ii) ensure that every geographic area of the state is included in at least one general hospital's primary service area so that eligible patients may access care and financial assistance; and

(iii) require the hospital to notify the commissioner upon making any change to its primary service area, and to include a description of its primary service area in the hospital's annual implementation report filed pursuant to subdivision three of section twenty-eight hundred three-l of this article.

(g) Nothing in this subdivision shall be interpreted as precluding hospitals from extending payment adjustments for medically necessary non-emergency hospital services to patients outside of the hospital's primary service area. For patients determined to be eligible for financial [~~aid~~] **assistance** under the terms of [~~a hospital's~~] **the uniform** financial [~~aid~~] **assistance** policy, such [~~policies and procedures~~] **policy** shall prohibit any limitations on financial [~~aid~~] **assistance** for services based on the medical condition of the applicant, other than typical limitations or exclusions based on medical necessity or the clinical or therapeutic benefit of a procedure or treatment.

(h) Such policies and procedures shall not permit the **securance of a lien or** forced sale or foreclosure of a patient's primary residence in order to collect an outstanding medical bill and shall require the hospital to refrain from sending an account to collection if the patient has submitted a completed application for financial [~~aid, including any required supporting documentation~~] **assistance**, while the hospital determines the patient's eligibility for such [~~aid~~] **assistance**. Such [~~poli-~~

~~cies and procedures~~] policy shall provide for written notification, which shall include notification on a patient bill, to a patient not less than thirty days prior to the referral of debts for collection and shall require that the collection agency obtain the hospital's written consent prior to commencing a legal action. Such [~~policies and procedures~~] policy shall require all general hospital staff who interact with patients or have responsibility for billing and collections to be trained in such [~~policies and procedures~~] policy, and require the implementation of a mechanism for the general hospital to measure its compliance with [~~such policies and procedures~~] the policy. Such [~~policies and procedures~~] policy shall require that any collection agency under contract with a general hospital for the collection of debts follow the [~~hospital's~~] uniform financial assistance policy, including providing information to patients on how to apply for financial assistance where appropriate. Such [~~policies and procedures~~] policy shall prohibit collections from a patient who is determined to be eligible for medical assistance pursuant to title XIX of the federal social security act at the time services were rendered and for which services medicaid payment is available.

(i) Reports required to be submitted to the department by each general hospital as a condition for participation in the pools, and which contain, in accordance with applicable regulations, a certification from an independent certified public accountant or independent licensed public accountant or an attestation from a senior official of the hospital that the hospital is in compliance with conditions of participation in the pools, shall also contain, for reporting periods on and after January first, two thousand seven:

(i) a report on hospital costs incurred and uncollected amounts in providing services to [~~eligible~~] patients [~~without insurance~~] found eligible for financial assistance, including the amount of care provided for a nominal payment amount, during the period covered by the report;

(ii) hospital costs incurred and uncollected amounts for deductibles and coinsurance for eligible patients with insurance or other third-party payor coverage;

(iii) the number of patients, organized according to United States postal service zip code, who applied for financial assistance pursuant to the [~~hospital's~~] uniform financial assistance policy, and the number, organized according to United States postal service zip code, whose applications were approved and whose applications were denied;

(iv) the reimbursement received for indigent care from the pool established pursuant to this section;

(v) the amount of funds that have been expended on [~~charity care~~] financial assistance from charitable bequests made or trusts established for the purpose of providing financial assistance to patients who are eligible in accordance with the terms of such bequests or trusts;

(vi) for hospitals located in social services districts in which the district allows hospitals to assist patients with such applications, the number of applications for eligibility under title XIX of the social security act (medicaid) that the hospital assisted patients in completing and the number denied and approved;

(vii) the hospital's financial losses resulting from services provided under medicaid; and

(viii) the number of referrals to collection agents or outside vendor court cases and liens placed on [~~the primary~~] any residences of patients through the collection process used by a hospital.

(j) [~~Within ninety days of the effective date of this subdivision each hospital shall submit to the commissioner a written report on its policies and procedures for financial assistance to patients which are used by the hospital on the effective date of this subdivision. Such report shall include copies of its policies and procedures, including material which is distributed to patients, and a description of the hospital's financial aid policies and procedures. Such description shall include the income levels of patients on which eligibility is based, the financial aid eligible patients receive and the means of calculating such aid, and the service area, if any, used by the hospital to determine eligibility~~] **The commissioner shall include the data collected under paragraph (i) of this subdivision in regular audits of the annual general hospital institutional cost report**.

(k) In the event it is determined by the commissioner that the state will be unable to secure all necessary federal approvals to include, as part of the state's approved state plan under title nineteen of the federal social security act, a requirement[~~, as set forth in paragraph one of this subdivision,~~] that compliance with this subdivision is a condition of participation in pool distributions authorized pursuant to this section and section twenty-eight hundred seven-w of this article, then such condition of participation shall be deemed null and void and, notwithstanding section twelve of this chapter, failure to comply with the provisions of this subdivision by a hospital on and after the date of such determination shall make such hospital liable for a civil penalty not to exceed ten thousand dollars for each such violation. The imposition of such civil penalties shall be subject to the provisions of section twelve-a of this chapter.

§ 3. Section 5004 of the civil practice law and rules, as amended by chapter 258 of the laws of 1981, is amended to read as follows:

§ 5004. Rate of interest. Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute**, provided that in medical debt actions by a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law the interest rate shall be calculated at the one-year United States treasury bill rate. For the purposes of this section, the "one-year United States treasury bill rate" means the weekly average one-year constant maturity treasury yield, as published by the board of governors of the federal reserve system, for the calendar week preceding the date of the entry of the judgment awarding damages. Provided however, that this section shall not apply to any provision of the tax law which provides for the annual rate of interest to be paid on a judgment or accrued claim**.

§ 4. Subsection (h) of section 603 of the financial services law, as added by section 26 of part H of chapter 60 of the laws of 2014, is amended to read as follows:

(h) "Surprise bill" means a bill for health care services, other than emergency services, received by:

(1) an insured for services rendered by a non-participating physician at a participating hospital or ambulatory surgical center, where a participating physician is unavailable or a non-participating physician renders services without the insured's knowledge, or unforeseen medical services arise at the time the health care services are rendered; provided, however, that a surprise bill shall not mean a bill received for health care services when a participating physician is available and the insured has elected to obtain services from a non-participating physician;

(2) an insured for services rendered by a non-participating provider, where the services were referred by a participating physician to a non-participating provider without explicit written consent of the insured acknowledging that the participating physician is referring the insured to a non-participating provider and that the referral may result in costs not covered by the health care plan; [~~or~~]

(3) **an insured for services rendered by a non-participating provider when the insured reasonably relied upon an oral or written statement that the non-participating provider was a participating provider made by a health care plan, or agent or representative of a health care plan, or as specified in the health care plan provider listing or directory, or provider information on the health plan's website;**

(4) an insured for services rendered by a non-participating provider when the insured reasonably relied upon a statement that the non-participating provider was a participating provider made by the non-participating provider, or agent or representative of the non-participating provider, or as specified on the non-participating provider's website; or

(5) a patient who is not an insured for services rendered by a physician at a hospital or ambulatory surgical center, where the patient has not timely received all of the disclosures required pursuant to section twenty-four of the public health law.

§ 5. This act shall take effect immediately.