

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 payer" 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 payer" 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 payer" 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 payer" 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 payer" 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 payer, 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 payer" 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

1 description of the primary service area of the hospital and the means to
2 apply for assistance. Such policies and procedures shall include clear,
3 objective criteria for determining a patient's ability to pay and for
4 providing such adjustments to payment requirements as are necessary. In
5 addition to adjustment mechanisms such as sliding fee schedules and
6 discounts to fixed standards, such policies and procedures shall also
7 provide for the use of installment plans for the payment of outstanding
8 balances by patients pursuant to the provisions of the hospital's finan-
9 cial assistance policy. The monthly payment under such a plan shall not
10 exceed [~~ten~~] five percent of the gross monthly income of the patient[~~7~~
11 ~~provided, however, that if patient assets are considered under such a~~
12 ~~policy, then patient assets which are not excluded assets pursuant to~~
13 ~~subparagraph (vi) of paragraph (b) of this subdivision may be considered~~
14 ~~in addition to the limit on monthly payments~~]. The rate of interest
15 charged to the patient on the unpaid balance, if any, shall not exceed
16 the [~~rate for a ninety-day security~~] federal funds rate issued by the
17 United States Department of Treasury[~~7, plus .5 percent~~] and no plan
18 shall include an accelerator or similar clause under which a higher rate
19 of interest is triggered upon a missed payment. [~~If such policies and~~
20 ~~procedures~~] The policy shall not include a requirement of a deposit
21 prior to [~~non-emergent, medically necessary~~] care[~~7, such deposit must be~~
22 ~~included as part of any financial aid consideration~~]. Such policies and
23 procedures shall be applied consistently to all eligible patients.

24 (e) Such policies and procedures shall permit patients to apply for
25 assistance within at least [~~ninety~~] two hundred forty days of the date
26 of discharge or date of service and provide at least [~~twenty~~] sixty days
27 for patients to submit a completed application. Such policies and proce-
28 dures may require that patients seeking payment adjustments provide
29 [~~appropriate~~] the following financial information and documentation in
30 support of their application[~~7, provided, however, that such application~~
31 ~~process shall not be unduly burdensome or complex~~] that are used by the
32 New York state of health marketplace: pay checks or pay stubs; rent
33 receipts; a letter from the patient's employer attesting to the
34 patient's gross income; or, if none of the aforementioned information
35 and documentation are available, a written self-attestation of the
36 patient's income. General hospitals shall, upon request, assist patients
37 in understanding the hospital's policies and procedures and in applying
38 for payment adjustments. [~~Application forms shall be printed~~] The
39 commissioner shall translate the financial assistance application form
40 and policy into the "primary languages" of each general hospital. Each
41 general hospital shall print and post these materials to its website in
42 the "primary languages" of patients served by the general hospital. For
43 the purposes of this paragraph, "primary languages" shall include any
44 language that is either (i) used to communicate, during at least five
45 percent of patient visits in a year, by patients who cannot speak, read,
46 write or understand the English language at the level of proficiency
47 necessary for effective communication with health care providers, or
48 (ii) spoken by non-English speaking individuals comprising more than one
49 percent of the primary hospital service area population, as calculated
50 using demographic information available from the United States Bureau of
51 the Census, supplemented by data from school systems. Decisions regard-
52 ing such applications shall be made within thirty days of receipt of a
53 completed application. Such policies and procedures shall require that
54 the hospital issue any denial/approval of such application in writing
55 with information on how to appeal the denial and shall require the
56 hospital to establish an appeals process under which it will evaluate

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

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

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

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

35 (iii) require the hospital to notify the commissioner upon making any
36 change to its primary service area, and to include a description of its
37 primary service area in the hospital's annual implementation report
38 filed pursuant to subdivision three of section twenty-eight hundred
39 three-1 of this article.

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

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

1 ~~ies and procedures~~ policy shall provide for written notification,
2 which shall include notification on a patient bill, to a patient not
3 less than thirty days prior to the referral of debts for collection and
4 shall require that the collection agency obtain the hospital's written
5 consent prior to commencing a legal action. Such ~~[policies and proce-~~
6 ~~dures]~~ policy shall require all general hospital staff who interact with
7 patients or have responsibility for billing and collections to be
8 trained in such ~~[policies and procedures]~~ policy, and require the imple-
9 mentation of a mechanism for the general hospital to measure its compli-
10 ance with ~~[such policies and procedures]~~ the policy. Such ~~[policies and~~
11 ~~procedures]~~ policy shall require that any collection agency under
12 contract with a general hospital for the collection of debts follow the
13 ~~[hospital's]~~ uniform financial assistance policy, including providing
14 information to patients on how to apply for financial assistance where
15 appropriate. Such ~~[policies and procedures]~~ policy shall prohibit
16 collections from a patient who is determined to be eligible for medical
17 assistance pursuant to title XIX of the federal social security act at
18 the time services were rendered and for which services medicaid payment
19 is available.

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

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

32 (ii) hospital costs incurred and uncollected amounts for deductibles
33 and coinsurance for eligible patients with insurance or other third-par-
34 ty payor coverage;

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

40 (iv) the reimbursement received for indigent care from the pool estab-
41 lished pursuant to this section;

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

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

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

53 (viii) the number of referrals to collection agents or outside vendor
54 court cases and liens placed on ~~[the primary]~~ any residences of patients
55 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;

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

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

13 (4) an insured for services rendered by a non-participating provider
14 when the insured reasonably relied upon a statement that the non-parti-
15 cipating provider was a participating provider made by the non-partici-
16 pating provider, or agent or representative of the non-participating
17 provider, or as specified on the non-participating provider's website;
18 or

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

23 § 5. This act shall take effect immediately.