

# STATE OF NEW YORK

5954

2021-2022 Regular Sessions

## IN SENATE

March 24, 2021

Introduced by Sen. RIVERA -- 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 the general hospital indigent care pool and funding for safety net and 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 additional payments for certain inpatient hospital services

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

1 Section 1. Subparagraph (ii) of paragraph b of subdivision 5-d of  
2 section 2807-k of the public health law, as amended by section 3 of part  
3 KK of chapter 56 of the laws of 2020, is amended to read as follows:

4 (ii) Annual distributions pursuant to such regulations for the calen-  
5 dar year two thousand [~~twenty through two thousand twenty-two calendar~~  
6 ~~years~~] twenty-one and each year thereafter shall be in accord with the  
7 following:

8 (A) one hundred thirty-nine million four hundred thousand dollars  
9 shall be distributed as Medicaid Disproportionate Share Hospital ("DSH")  
10 payments to major public general hospitals; and

11 (B) nine hundred sixty-nine million nine hundred thousand dollars as  
12 Medicaid DSH payments to eligible general hospitals, other than major  
13 public general hospitals.

14 For the calendar years two thousand twenty through two thousand [~~twen-~~  
15 ~~ty-two,~~] twenty-one and each calendar year thereafter the total distrib-  
16 utions to eligible general hospitals, other than major public general  
17 hospitals, shall be subject to an aggregate reduction of [~~one hundred~~  
18 ~~fifty~~] two hundred seventy-five million dollars annually, provided that  
19 eligible general hospitals, other than major public general hospitals,  
20 that qualify as enhanced safety net hospitals under section two thousand

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

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1 eight hundred seven-c of this article shall not be subject to such  
2 reduction.

3 Such reduction shall be determined by a methodology to be established  
4 by the commissioner. Such methodology may take into account the payor  
5 mix of each non-public general hospital, including the percentage of  
6 inpatient days paid by Medicaid.

7 § 2. Section 2807 of the public health law is amended by adding a new  
8 subdivision 22 to read follows:

9 22. Adjustments to Medicaid rates. (a) The commissioner shall make  
10 adjustments to medical assistance rates in accordance with this subdivi-  
11 sion to enhanced safety net hospitals, as defined in paragraph (a) of  
12 subdivision thirty-four of section twenty-eight hundred seven-c of this  
13 article, and to qualified safety net hospitals, as defined in paragraph  
14 (b) of this subdivision, for the purposes of supporting critically need-  
15 ed health care services and to ensure the continued maintenance and  
16 operation of such hospitals.

17 (b) For the purposes of this subdivision, a "qualified safety net  
18 hospital" shall mean a general hospital, other than an enhanced safety  
19 net hospital that in any of the previous three calendar years:

20 (i) has met four of the five criteria listed under subparagraph (i) of  
21 paragraph (a) of subdivision thirty-four of section twenty-eight hundred  
22 seven-c of this article; or

23 (ii) has met the following criteria:

24 (A) not less than forty-five percent of the patients it treats receive  
25 medical assistance or are medically uninsured;

26 (B) not less than thirty-six percent of its inpatient discharges are  
27 covered by Medicaid;

28 (C) twenty-eight percent or less of its discharged patients are  
29 commercially insured;

30 (D) not less than two percent of the patients it provides services to  
31 are attributed to the care of uninsured patients; and

32 (E) provides care to uninsured patients in its emergency room, hospi-  
33 tal-based clinics and community based clinics, including the provision  
34 of important community services, such as dental care and prenatal care;  
35 or

36 (iii) is so designated by the commissioner pursuant to findings that  
37 takes into account the following criteria:

38 (A) the hospital is operating under financial hardship, evidenced by  
39 the operating losses of the hospital or the system of hospitals to which  
40 the hospital belongs and/or participation by the hospital in programs  
41 established by the commissioner to enable hospitals in financial  
42 distress to maintain operations and vital services;

43 (B) the volume of Medicaid and/or medically uninsured patients served  
44 by the hospital exceeds the average volume of such services provided by  
45 other hospitals in the hospital's region; and

46 (C) the importance of the hospital in enabling Medicaid and/or  
47 medically uninsured patients' access to health care services in inpa-  
48 tient, outpatient and community settings within the hospital's region.

49 (c) For the state fiscal year commencing April first, two thousand  
50 twenty-two and each state fiscal year thereafter, the commissioner shall  
51 increase medical assistance rates of payments for inpatient and/or  
52 outpatient services made by either state governmental agencies or organ-  
53 izations operating in accordance with article forty-three of the insur-  
54 ance law or article forty-four of this chapter by an aggregate of:

55 (i) thirty-four million one hundred twenty-five thousand dollars for  
56 enhanced safety net hospitals that are major public general hospitals;

1 (ii) two hundred twenty-eight million three hundred seventy-five thou-  
2 sand dollars for qualified safety net hospitals and enhanced safety net  
3 hospitals other than major public general hospitals, of which at least  
4 twelve million five hundred thousand dollars shall be allocated to  
5 enhanced safety net hospitals that are federally designated as critical  
6 access or sole community hospitals; and

7 (iii) twelve million five hundred thousand dollars for those hospitals  
8 eligible under subparagraph (ii) of this paragraph for which the  
9 combined payments made, or to be made, under subparagraph (ii) of this  
10 paragraph and subdivision five-d of section twenty-eight hundred seven-k  
11 of this article for calendar year two thousand twenty-two and each  
12 calendar year thereafter, are projected by the commissioner to be less  
13 than payments made to such hospitals pursuant to subdivision five-d of  
14 section twenty-eight hundred seven-k of this article for calendar year  
15 two thousand eighteen.

16 (d) Payments made pursuant to this subdivision may be added to rates  
17 of payment, or made as aggregate payments of equal amounts on October  
18 first and April first of each state fiscal year, to such enhanced safety  
19 net hospitals and qualified safety net hospitals in accordance with a  
20 methodology to be established by the commissioner; provided, however,  
21 that, the commissioner may make the twelve million five hundred thousand  
22 dollars in payments due to eligible hospitals under subparagraph (iii)  
23 of paragraph (c) of this subdivision by instead increasing the amount  
24 otherwise awarded to such eligible hospitals under programs established  
25 by the commissioner to enable hospitals in financial distress to main-  
26 tain operations and vital services while working to achieve longer-term  
27 sustainability, including, but not limited to, the value based payment  
28 quality improvement program.

29 § 3. Subparagraph (v) of paragraph (a) of subdivision 1 of section  
30 2807-c of the public health law, as amended by chapter 639 of the laws  
31 of 1996, is amended and a new subparagraph (vi) is added to read as  
32 follows:

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

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

39 § 4. Subparagraph (v) of paragraph (a) of subdivision 1 of section  
40 2807-c of the public health law, as amended by chapter 731 of the laws  
41 of 1993, is amended and a new subparagraph (vi) is added to read as  
42 follows:

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

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

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

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

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

5 (g) Notwithstanding any inconsistent provision of law or regulation to  
6 the contrary, effective for the state fiscal year beginning April 1,  
7 2022, and annually thereafter, the department of health is authorized to  
8 pay public general hospitals, other than those operated by the state of  
9 New York or the state university of New York, as defined in subdivision  
10 10 of section 2801 of the public health law, located in a city with a  
11 population of over one million, additional payments for inpatient hospi-  
12 tal services of 200 million dollars annually, as medical assistance  
13 pursuant to title 11 of article 5 of the social services law for  
14 patients eligible for federal financial participation under title XIX of  
15 the federal social security act, pursuant to federal laws and regu-  
16 lations governing disproportionate share payments to hospitals, based on  
17 the relative share of each such non-state operated public general hospi-  
18 tal medical assistance and uninsured patient losses. The payments may be  
19 added to rates of payment or made as aggregate payments to an eligible  
20 public general hospital.

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

25 (c) Notwithstanding any inconsistent provision of law or regulation to  
26 the contrary, effective for the state fiscal year beginning April 1,  
27 2022, and annually thereafter, the department of health is authorized to  
28 pay public general hospitals, as defined in subdivision 10 of section  
29 2801 of the public health law, operated by the state of New York or the  
30 state university of New York or by a county, which shall not include a  
31 city with a population of over one million, of the state of New York,  
32 and those public general hospitals located in the county of Westchester,  
33 the county of Erie or the county of Nassau, additional payments for  
34 inpatient hospital services of 100 million dollars annually, as medical  
35 assistance payments pursuant to title 11 of article 5 of the social  
36 services law for patients eligible for federal financial participation  
37 under title XIX of the federal social security act, pursuant to federal  
38 laws and regulations governing disproportionate share payments to hospi-  
39 tals. The payments may be added to rates of payment or made as aggregate  
40 payments to an eligible public general hospital.

41 § 8. This act shall take effect immediately; provided, however that  
42 the amendments to subdivision 5-d of section 2807-k of the public health  
43 law made by section one of this act shall not affect the expiration of  
44 such subdivision and shall expire and be deemed repealed therewith; and  
45 provided further that the amendments to paragraph (a) of subdivision 1  
46 of section 2807-c of the public health law made by section three of this  
47 act shall be subject to the expiration and reversion of such paragraph  
48 when upon such date the provisions of section four of this act shall  
49 take effect.