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:

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

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

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

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

For the calendar years two thousand twenty through two thousand [~~twenty-two,~~] **twenty-one and each calendar year thereafter** the total distributions to eligible general hospitals, other than major public general hospitals, shall be subject to an aggregate reduction of [~~one hundred fifty~~] **two hundred seventy-five** million dollars annually, provided that eligible general hospitals, other than major public general hospitals, 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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eight hundred seven-c of this article shall not be subject to such reduction.

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

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

22. Adjustments to Medicaid rates. (a) The commissioner shall 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 general hospital, other than an enhanced safety net hospital that in any of the previous three calendar years:

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

(ii) has met the following criteria:

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

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

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

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

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

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

(A) the hospital is operating under 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;

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

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

(c) For the state fiscal year commencing April first, two thousand twenty-two 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-four million one hundred twenty-five thousand dollars for enhanced safety net hospitals that are major public general hospitals;

(ii) two hundred twenty-eight million three hundred seventy-five 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-two 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 first and April first 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-two 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-two 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-two 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, 2022, 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, 2022, 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 to subdivision 5-d of section 2807-k of the public health law made by section one of this act shall not affect the expiration of such subdivision and shall expire and be deemed repealed therewith; and provided further that the amendments 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.