STATE OF NEW YORK

1366--B

2023-2024 Regular Sessions

IN SENATE

January 11, 2023

Introduced by Sens. RIVERA, ASHBY, BRESLIN, CLEARE, COMRIE, FERNANDEZ, GALLIVAN, GIANARIS, GONZALEZ, GOUNARDES, HARCKHAM, HOYLMAN-SIGAL, JACKSON, KRUEGER, LIU, MAY, MAYER, MYRIE, PERSAUD, RAMOS, SALAZAR, SANDERS, SEPULVEDA, SERRANO, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- 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; and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 9 of section 2807-k of the public health law, as amended by section 1 of subpart C of part Y of chapter 57 of the laws of 2023, is 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 by the commissioner, utilizing~~] **utilize** only a uniform financial assistance **policy and** form developed and provided by the department. **All general hospitals that do not participate in the indigent care pool shall also utilize only the uniform financial assistance policy and form and otherwise comply with subdivision nine-a of this section governing the provision of financial assistance and hospital collection procedures.**

§ 2. Subdivision 9-a of section 2807-k of the public health law, as added by section 39-a of part A of chapter 57 of the laws of 2006, para-

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

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graph (k) as added by section 43 of part B of chapter 58 of the laws of 2008, is amended to read as follows:

9-a. (a) (i) 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-five, 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. This section shall apply to any general hospital including any affiliated providers or entity acting on the general hospital's or affiliated provider's behalf, and shall include any third party or agent thereof if the debt is transferred or sold. As used in this section, "affiliated provider" means a provider that is billing for medical goods or services that were delivered at a general hospital that is: (A) employed by the hospital; (B) under a professional services agreement with the hospital; or (C) a clinical faculty member of a medical school or other school that trains individuals to be providers and that is affiliated with the hospital or health system. General hospitals, shall implement the uniform policy and form for reducing general hospital charges otherwise applicable to low-income individuals [~~without health insurance, or who have exhausted their health insurance benefits, 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 for the purpose of determining financial assistance under this section.

(ii) A general hospital may 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 it has 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.

(iii) Upon submission of a completed application form, the patient is not liable for any bills and no interest may accrue until the general hospital has rendered a decision on the application in accordance with this subdivision.

(b) [~~Such~~] The reductions from charges for [~~uninsured~~] patients described in paragraph (a) of this subdivision with incomes below [~~at least three~~] six 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~~] XVIII of the federal social security act (medicaid), and provided further that such [~~amounts~~] amount 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~~] waive all charges. No nominal payment shall be collected;

(ii) For patients with incomes [~~between at least one~~] above two hundred [~~one~~] percent and [~~one~~] up to 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~~] The schedule shall provide that the amount the hospital may collect for [~~such patients~~] the patient 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~~] XVIII of the federal social security act (medicaid). After receipt of thirty-six months of payment at the agreed upon amount, the patient's bill shall be considered paid in full and any and all collection activities on any balance that remains unpaid shall be prohibited;

(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~~] above four hundred percent and up to six hundred 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~~] XVIII of the federal social security act (medicaid). After receipt of sixty months of payment at the agreed upon amount, the patient's bill shall be considered paid in full and any and all collection activities on any balance that remains unpaid shall be prohibited.

[~~(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)~~] **(c)** Nothing in this [~~paragraph~~] **subdivision** 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~~] **subdivision**.

[~~(c) Such policies and procedures shall be clear, understandable, in writing and publicly available in summary form and each~~] **(d) Each** general hospital participating in the pool shall ensure that every patient is made aware of the existence of [~~such policies and procedures~~] **the uniform financial assistance form and policy** and is provided, in a timely manner, with a [~~summary~~] **copy** of [~~such policies and procedures upon request~~] **the policy and form at intake, admission, and discharge**. [~~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 hospitals with twenty-four hour emergency departments, such policies and procedures~~] **A plain language summary of the collections process must also be made available. A general hospital** shall [~~require the notification of patients~~] **notify patients by providing written materials to patients or their authorized representatives** during the intake and registration process**, by making materials available in conspicuous locations in the hospital including emergency departments, waiting areas and other places patients congregate,** through the conspicuous posting of language-appropriate information in the general hospital, and **by including** 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 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 policy and form, and the summary of the collection process, in a conspicuous location and downloadable form on the general hospital's website. The commissioner shall post the uniform financial assistance form and policy in downloadable form on the department's hospital profile page or any successor website.

[~~(d) Such polices and procedures~~] (e) 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 shall not be liable for any bills until the general hospital has rendered a decision on the application in accordance with this subdivision. The application materials shall include specific information as the income levels used to determine eligibility for financial assistance and the means to apply for assistance. Nothing in this subdivision shall be construed as precluding the use of presumptive eligibility determinations by hospitals on behalf of patients. The uniform application form and policy 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~~] the uniform policy 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~~]. Installment plan payments may not be required to begin before one hundred eighty days after the date of the service or discharge, whichever is later. The policy shall allow the patient and the hospital to mutually agree to modify the terms of an installment plan. The rate of interest charged to the patient on the unpaid balance, if any, shall not exceed [~~the rate for a ninety-day security issued by the United States Department of Treasury, plus .5 percent~~] two percentum per annum 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 uniform 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~~]. The hospital shall refund any payments made by the patient before the determination of eligibility for financial assistance that exceeds the patient's liability after discounts are applied. Such policies and procedures shall be applied consistently to all eligible patients.

[~~(e) Such policies and procedures shall permit patients to~~] (f) In any legal action by or on behalf of a hospital to collect a medical debt, the complaint shall be accompanied by an affidavit by the hospital's chief financial officer stating that the hospital has taken reasonable steps to determine whether the patient qualifies for financial assistance and upon information and belief the patient does not meet the income or residency criteria for financial assistance. Patients may apply for financial assistance [~~within at least ninety days of the date of discharge or date of service and provide at least twenty days for~~

~~patients to submit a completed application~~] at any time during the collection process, including after the commencement of a medical debt court action or upon the plaintiff obtaining a default judgment. A determination that a patient is eligible for financial assistance shall be valid for a minimum of twelve months and will apply to all outstanding medical bills. A hospital may use credit scoring software for the purposes of establishing income eligibility and approving financial assistance, but only if the hospital makes clear to the patient that providing a social security number is not mandatory and the scoring does not negatively impact the patient's credit score. However, credit scoring software shall not be solely relied upon by the hospital in denying a patient's application for financial assistance. Further, propensity to pay scores may not disqualify patients who otherwise qualify for eligibility from receiving financial assistance. [~~Such policies and procedures may require that~~] The uniform policy and form shall allow patients seeking [~~payment adjustments~~] financial assistance to 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~~]: pay checks or pay stubs; unemployment documentation; social security income; rent receipts; a letter from the patient's employer attesting to the patient's gross income; documentation of eligibility for other means-tested government benefits; or, if none of the aforementioned information and documentation are available, a written self-attestation of the patient's income may be used. General hospitals shall[~~, upon request,~~] take reasonable steps to assist patients in understanding the [~~hospital's, policies and procedures~~] uniform policy and form, and in applying for payment adjustments. [~~Application forms shall be printed~~] The commissioner shall translate the uniform 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~~] limited-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~~] The uniform financial assistance policy shall require that the hospital issue any [~~denial/approval~~] denial or approval of [~~such~~] the application in writing which clearly communicates the amount of assistance granted, any amounts still owed with information on how to appeal the [~~denial~~] decision and shall require the hospital to establish an appeals process under which it will evaluate the [~~denial of~~] decision about 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~~] prevent a hospital from informing and assisting a patient with an application for health insurance coverage with a local services district or the marketplace. A hospital shall not make the availability of financial assistance contingent upon the patient's application for health insurance coverage. The hospital shall inform patients on how to file a complaint against the hospital or a debt collector that is contracted on behalf of the hospital regarding the patient's bill. General hospitals are required to take reasonable measures to determine if a patient is eligible for financial assistance including prior to making a referral to a third-party debt collector or other extraordinary collections measures.

[~~(f) Such policies and procedures~~] (g) The uniform financial assistance policy shall provide that patients with incomes below [~~three~~] six 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 shall provide financial aid 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)~~] (h) 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~~] the uniform financial assistance 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 forced~~] (i) A hospital or its agent shall not commence a legal action or force a 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~~] not send an account to collection [~~if the patient has submitted a completed application for financial aid, including any required supporting documentation, while the hospital determines the patient's eligibility for such aid~~] until the hospital has determined that the patient is not eligible for financial assistance. [~~Such policies and procedures~~] The uniform 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~~] The uniform 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~~] the uniform policy, and require the implementation of a mechanism for the general hospital to measure its compliance with [~~such policies and procedures~~] the uniform policy. [~~Such policies and procedures~~] The uniform policy shall require that any collection agency, lawyer or firm 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~~] The uniform 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~~] under title eleven of article five of the social services law at the time services were rendered and for which services medicaid payment is available.

[~~(i)~~] (j) 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,~~] shall contain: (i) 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)~~] (ii) 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~~] patients under two hundred percent poverty, during the period covered by the report;

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

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

[~~(iv)~~] (v) the reimbursement received for indigent care from the pool established [~~pursuant to~~] under this section;

[~~(v)~~] (vi) 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~~] the bequests or trusts;

[~~(vi)~~] (vii) 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 for medicaid under title [~~XIX of the social security act (medicaid)~~] eleven of article five of the social services law that the hospital assisted patients in completing and the number denied and approved;

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

[~~(viii)~~] (ix) the number of referrals to collection agents or contracted external collection vendors, 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.~~]

(k) The commissioner shall include the data collected under paragraph (i) of this subdivision in regular audits of the annual general hospital institutional cost report.

(1) In the event [~~it is determined by the commissioner that~~] the state [~~will be~~] is 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~~]. Notwithstanding section twelve of this chapter, failure to comply with [~~the provisions of~~] this subdivision by a general hospital [~~on and after the date of such determination~~] shall make [~~such~~] the hospital liable for a civil penalty not to exceed ten thousand dollars for each [~~such~~] violation. The imposition of [~~such~~] the civil penalties shall be subject to [~~the provisions of~~] section twelve-a of this chapter.

(m) A hospital or its collection agent shall not commence a civil action against a patient or delegate a collection activity to a debt collector for nonpayment for one hundred eighty days after the first post-service bill is issued and until a hospital has made reasonable efforts to determine whether a patient qualifies for financial assistance. A hospital or its collection agency, lawyer or firm shall not commence a civil action against a patient or delegate a collection activity to a debt collector, if: the hospital was notified that an appeal or a review of a health insurance decision is pending within the immediately preceding sixty days; or the patient has a pending application for or qualifies for financial assistance.

§ 3. Subdivision 14 of section 2807-k of the public health law is REPEALED and subdivisions 15, 16 and 17 are renumbered subdivisions 14, 15 and 16.

§ 4. This act shall take effect January 1, 2025.