STATE OF NEW YORK

87

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the financial services law, the tax law and the public health law, in relation to enacting the Health Care Tax Reform Act

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

Section 1. This act shall be known and may be cited as the "Health Care Tax Reform Act".

§ 2. Legislative findings. The Legislature hereby finds that:

(a) The affordability of health care and health insurance is extremely important in ensuring that the maximum number of New York State residents can obtain high quality affordable health care;

(b) Health care and health insurance are currently subject to several taxes that directly and indirectly increase the cost of health insurance coverage, including an annual flat tax on all privately insured people in New York State called the covered lives assessment that raises the costs to health plans by $1.1 Billion, a 9.63% sales tax surcharge on certain hospital based health services that costs consumers $3.6 Billion, a 1.75% flat tax on all commercial health insurance policies that costs consumers $350 Million, and a gross receipts tax on insurance companies called a section 206 assessment that costs health plans $149 Million a year;

(c) Collectively, the taxes on health care and health insurance cost consumers a total of over $5 Billion in 2018, which exceeds the total amount of taxes paid by corporations through the franchise taxes and exceeds all other types of taxes except for personal income taxes and general sales taxes; and

(d) The taxes on health care and health insurance are fundamentally regressive taxes because the taxes are unrelated to a consumer's wealth or ability to pay, directly impact hospitalization costs at a time when

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

LBD00606-01-3

consumers are facing some of their greatest health care challenges, directly increase the cost of health insurance, and are counterproductive to the public policy objective of making health insurance as affordable as possible.

§ 3. Section 206 of the financial services law is amended by adding a new subsection (g) to read as follows:

(g) For the fiscal year commencing on April first, two thousand twenty-three, the commissioner shall only collect eighty per centum of any assessments collected pursuant to this section in the fiscal year commencing on April first, two thousand twenty-four, and provided further, however, that for the fiscal year commencing on April first, two thousand twenty-six, the commissioner shall only collect sixty per centum of any assessments collected pursuant to this section in the fiscal year commencing on April first, two thousand twenty-four, and provided further, however, that for the fiscal year commencing on April first, two thousand twenty-seven, the commissioner shall only collect forty per centum of any assessments collected pursuant to this section in the fiscal year commencing on April first, two thousand twenty-four, and provided further, however, that for the fiscal year commencing on April first, two thousand twenty-eight, the commissioner shall only collect twenty per centum of any assessments collected pursuant to this section in the fiscal year commencing on April first, two thousand twenty-four, and provided further, however, that for the fiscal year commencing on April first, two thousand twenty-nine, no such assessment under this section shall be collected.

§ 4. Section 1502-a of the tax law, as amended by section 2 of part B-1 of chapter 57 of the laws of 2009 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 1502-a. Tax on non-life insurance corporations. **(a)** In lieu of the tax imposed by section fifteen hundred one of this article, every domestic insurance corporation, every foreign insurance corporation and every alien insurance corporation, other than such corporations transacting the business of life insurance, (1) authorized to transact business in this state under a certificate of authority from the superintendent of financial services[~~,~~] **or** (2) that is a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, [~~**or (3) that is a health maintenance organization required to obtain a certificate of authority under article forty-four of the public health law,**~~] shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums, less return premiums thereon, written on risks located or resident in this state. The tax imposed by this section shall be computed in the manner set forth in subdivision (a) of section fifteen hundred ten of this article as such subdivision applied to taxable years beginning before January first, two thousand three, except that the rate of tax imposed by this section shall be [~~**one and seventy-five hundredths percent on all gross direct premiums, less return premiums thereon, for accident and health insurance contracts, including contracts with health maintenance organizations for health services, and**~~] two percent on all [~~**other**~~] such premiums **except accident and health insurance contracts, including contracts with health maintenance organizations for health services**.

(b) In lieu of the tax imposed by section fifteen hundred one of this article, every domestic insurance corporation, every foreign insurance

corporation and every alien insurance corporation, other than such corporations transacting the business of life insurance that is a health maintenance organization required to obtain a certificate of authority under article forty-four of the public health law, shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums, less return premiums thereon, written on risks located or resident in this state. The tax imposed by this section shall be computed in the manner set forth in subdivision (a) of section fifteen hundred ten of this article as such subdivision applied to taxable years beginning before January first, two thousand three, except that the rate of tax imposed by this section shall be one and seventy-five hundredths percent on all gross direct premiums, less return premiums thereon, for accident and health insurance contracts, including contracts with health maintenance organizations for health services, provided, however, that for the taxable year beginning January first, two thousand twenty-five, the percentage shall be one and four tenths percent, and provided further, however, that for the taxable year beginning January first, two thousand twenty-six, the percentage shall be one and five hundredths percent, and provided further, however, that for the taxable year beginning January first, two thousand twenty-seven, the percentage shall be seven tenths of one percent, and provided further, however, that for the taxable year beginning January first, two thousand twenty-eight, the percentage shall be thirty-seven hundredths of one percent, and provided further, however, that for the taxable years beginning on and after January first, two thousand twenty-nine, no such tax shall be imposed.

(c) All the other provisions in section fifteen hundred ten of this article as amended from time to time, other than subdivision (b) of such section, shall apply to the tax imposed by this section. In no event shall the tax imposed under this section be less than two hundred fifty dollars.

§ 5. Subdivision 2 of section 2807-j of the public health law, as amended by section 41 of part B of chapter 58 of the laws of 2005 and paragraphs (b), (c), (d), and (e) as amended by section 50 of part B of chapter 58 of the laws of 2009, is amended to read as follows:

2. (a) The total percentage allowance for any period during the period January first, nineteen hundred ninety-seven through December thirty-first, nineteen hundred ninety-nine and on and after January first, two thousand, for a designated provider of services applicable to a payor shall be determined in accordance with this subdivision and applied to net patient service revenues.

(b) The total percentage allowance for each payor, other than governmental agencies, or health maintenance organizations for services provided to subscribers eligible for medical assistance pursuant to title eleven of article five of the social services law, or approved organizations for services provided to subscribers eligible for the family health plus program pursuant to title eleven-D of article five of the social services law, and other than payments for a patient that has no third-party coverage in whole or in part for services provided by a designated provider of services, shall be:

(i) the sum of (A) eight and eighteen-hundredths percent, provided, however, that for services provided on and after July first, two thousand three, the percentage shall be eight and eighty-five hundredths percent, and further provided that for services provided on and after January first, two thousand six, the percentage shall be eight and nine-

ty-five hundredths percent, and further provided that for services provided on and after April first, two thousand nine, the percentage shall be nine and sixty-three hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-four, the percentage shall be twenty-two and sixty-one hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-five, the percentage shall be sixteen and ninety-six hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-six, the percentage shall be eleven and thirty-one hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-seven, the percentage shall be five and sixty-five hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-eight, the percentage shall be zero percent, plus (B) twenty-four percent, provided, however, that for services provided on and after July first, two thousand three, the percentage shall be twenty-five and ninety-seven hundredths percent, and further provided that for services provided on and after January first, two thousand six, the percentage shall be twenty-six and twenty-six hundredths percent, and further provided that for services provided on and after April first, two thousand nine, the percentage shall be twenty-eight and twenty-seven hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-four, the percentage shall be twenty-two and sixty-one hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-five, the percentage shall be sixteen and ninety-six hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-six, the percentage shall be eleven and thirty-one hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-seven, the percentage shall be five and sixty-five hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-eight, the percentage shall be zero percent, and plus (C) for a specified third-party payor as defined in subdivision one-a of section twenty-eight hundred seven-s of this article the percentage allowance applicable for a general hospital for inpatient hospital services pursuant to subdivision two of section twenty-eight hundred seven-s of this article;

(ii) unless (A) an election in accordance with paragraph (a) of subdivision five of this section to pay the allowance directly to the commissioner or the commissioner's designee is in effect for a third-party payor, and in addition (B) for a specified third-party payor an election to pay the assessment in accordance with section twenty-eight hundred seven-t of this article is in effect.

(c) If an election in accordance with subdivision five of this section is in effect for a third-party payor and in addition in accordance with section twenty-eight hundred seven-t of this article for a specified third-party payor, the total percentage allowance factor shall be reduced to eight and eighteen-hundredths percent, provided, however, that for services provided on and after July first, two thousand three the total percentage allowance factor shall be reduced to eight and eighty-five hundredths percent, and further provided that for services provided on and after January first, two thousand six, the total percentage allowance factor shall be reduced to eight and ninety-five hundredths percent, and further provided that for services provided on and after April first, two thousand nine, the total percentage allowance

factor shall be reduced to nine and sixty-three hundredths percent **and further provided that for services provided on and after April first, two thousand twenty-four, the percentage shall be seven and seventy-one hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-five, the percentage shall be five and seventy-nine hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-six, the percentage shall be three and eighty-six hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-seven, the percentage shall be one and ninety-three hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-eight, the percentage shall be zero percent**.

(d) The total percentage allowance for payments by governmental agencies, as determined in accordance with paragraphs (a) and (a-1) of subdivision one of section twenty-eight hundred seven-c of this article as in effect on December thirty-first, nineteen hundred ninety-six, or health maintenance organizations for services provided to subscribers eligible for medical assistance pursuant to title eleven of article five of the social services law, or approved organizations for services provided to subscribers eligible for the family health plus program pursuant to title eleven-D of article five of the social services law, shall be five and ninety-eight-hundredths percent, provided, however, that for services provided on and after July first, two thousand three the total percentage allowance shall be six and forty-seven hundredths percent, and further provided that for services provided on and after January first, two thousand six, the total percentage allowance shall be six and fifty-four hundredths percent, and further provided that for services provided on and after April first, two thousand nine, the total percentage allowance shall be seven and four hundredths percent **and further provided that for services provided on and after April first, two thousand twenty-four, the percentage shall be five and sixty-three hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-five, the percentage shall be four and twenty-two hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-six, the percentage shall be two and eighty-two hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-seven, the percentage shall be one and forty-one hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-eight, the percentage shall be zero percent**.

(e) The total percentage allowance for payments for services provided by designated providers of services for which there is no third-party coverage in whole or in part shall be eight and eighteen-hundredths percent, provided, however, that for services provided on and after July first, two thousand three the total percentage allowance shall be eight and eighty-five hundredths percent, and further provided that for services provided on and after January first, two thousand six, the total percentage allowance shall be eight and ninety-five hundredths percent, and further provided that for services provided on and after April first, two thousand nine, the total percentage allowance shall be nine and sixty-three hundredths percent **and further provided that for services provided on and after April first, two thousand twenty-four, the percentage shall be seven and seventy-one hundredths percent, and further provided that for services provided on and after April first,**

two thousand twenty-five, the percentage shall be five and seventy-nine hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-six, the percentage shall be three and eighty-six hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-seven, the percentage shall be one and ninety-three hundredths percent, and further provided that for services provided on and after April first, two thousand twenty-eight, the percentage shall be zero percent. This paragraph shall not apply to patient deductibles and coinsurance amounts.

(f) The total percentage allowance for patient deductibles and coinsurance amounts shall be the same percentage allowance applicable to payments by the primary third-party payor covering the patient in each case determined in accordance with paragraphs (a), (b) and (c) of this subdivision.

(g) The total percentage allowance for secondary third-party payors under coordination of benefits principles shall be the same percentage allowance applicable to payments by the primary third-party payor in the case determined in accordance with paragraphs (a), (b) and (c) of this subdivision.

§ 6. Subdivision 2 of section 2807-s of the public health law, as added by chapter 639 of the laws of 1996, subparagraph (ii) of paragraph (b) as amended by chapter 1 of the laws of 1999, paragraph (c) as amended by section 15 of part A-3 of chapter 62 of the laws of 2003, subparagraph (ii) of paragraph (c) as amended and subparagraph (iii) of paragraph (c) as added by section 31 of part B of chapter 58 of the laws of 2005, and subparagraph (iv) of paragraph (c) as added by section 21 of part A of chapter 58 of the laws of 2007, is amended to read as follows:

2. (a) The regional percentage allowance for any period during the period January first, nineteen hundred ninety-seven through December thirty-first, nineteen hundred ninety-nine for all general hospitals in the region applicable to a specified third-party payor, and applicable to related patient coinsurance and deductible amounts and to secondary third-party payors under coordination of benefits principles, shall be the following, and shall be applied to inpatient hospital net patient service revenues:

(b) the result expressed as a percentage of:

(i) for each region, the amount allocated to the region in accordance with subdivision six of this section, divided by

(ii) the total estimated nineteen hundred ninety-six general hospital inpatient revenue of all general hospitals in the region, excluding (A) an estimate of revenue from services provided to beneficiaries of title XVIII of the federal social security act (medicare), (B) an estimate of revenue from services provided to patients eligible for payments by governmental agencies, patients eligible for payments pursuant to the comprehensive motor vehicle insurance reparations act, the workers' compensation law, the volunteer firefighters' benefit law, and the volunteer ambulance workers' benefit law, and self-pay patients, (C) from general hospitals providing graduate medical education in the aggregate an amount equal to the amount specified in subparagraph (i) of this subdivision, other than the components of such amount allocable to payors specified in clause (B) of this subparagraph, and (D) an estimate of revenue reductions related to negotiated reimbursement in nineteen hundred ninety-seven with specified third-party payors which shall be a uniform statewide percentage estimated reduction.

(c) (i) The regional percentage allowance for the periods January first, two thousand through June thirtieth, two thousand three, for all general hospitals in the region applicable to specified third-party payors, and applicable to related patient coinsurance and deductible amounts, shall be the same regional percentage allowance calculated pursuant to paragraph (b) of this subdivision for the period January first, nineteen hundred ninety-nine through December thirty-first, nineteen hundred ninety-nine.

(ii) The regional percentage allowance for the periods July first, two thousand three through December thirty-first, two thousand five, for all general hospitals in the region applicable to specified third-party payors, and applicable to related patient coinsurance and deductible amounts, shall be the same regional percentage allowance calculated pursuant to paragraph (b) of this subdivision for the period January first, nineteen hundred ninety-nine through December thirty-first, nineteen hundred ninety-nine multiplied by one hundred eight and nineteen hundredths percent.

(iii) The regional percentage allowance for the periods January first, two thousand six through June thirtieth, two thousand seven, for all general hospitals in the region applicable to specified third-party payors, and applicable to related patient coinsurance and deductible amounts, shall be the same regional percentage allowance calculated pursuant to subparagraph (ii) of this paragraph for the period January first, two thousand five through December thirty-first, two thousand five multiplied by one hundred one and thirteen hundredths percent.

(iv) The regional percentage allowance for periods [~~on and after~~] July first, two thousand seven **through March thirtieth, two thousand twenty-four**, for all general hospitals in the region applicable to specified third-party payors, and applicable to related patient coinsurance and deductible amounts, shall be the same regional percentage allowance calculated pursuant to subparagraph (iii) of this paragraph for the period January first, two thousand six through June thirtieth, two thousand seven.

(v) The regional percentage allowance for periods April first, two thousand twenty-four through March thirtieth, two thousand twenty-five, for all general hospitals in the region applicable to specified third-party payors, and applicable to related patient coinsurance and deductible amounts, shall be the same regional percentage allowance calculated pursuant to paragraph (b) of this subdivision for the period January first, nineteen hundred ninety-nine through December thirty-first, nineteen hundred ninety-nine multiplied by ninety-seven and seventy-one hundredths percent.

(vi) The regional percentage allowance for periods April first, two thousand twenty-five through March thirtieth, two thousand twenty-six, for all general hospitals in the region applicable to specified third-party payors, and applicable to related patient coinsurance and deductible amounts, shall be the same regional percentage allowance calculated pursuant to paragraph (b) of this subdivision for the period January first, nineteen hundred ninety-nine through December thirty-first, nineteen hundred ninety-nine multiplied by seventy-three and twenty-nine hundredths percent.

(vii) The regional percentage allowance for periods April first, two thousand twenty-six through March thirtieth, two thousand twenty-seven, for all general hospitals in the region applicable to specified third-party payors, and applicable to related patient coinsurance and deductible amounts, shall be the same regional percentage allowance calculated

pursuant to paragraph (b) of this subdivision for the period January first, nineteen hundred ninety-nine through December thirty-first, nineteen hundred ninety-nine multiplied by forty-eight and eighty-six hundredths percent.

(viii) The regional percentage allowance for periods April first, two thousand twenty-seven through March thirtieth, two thousand twenty-eight, for all general hospitals in the region applicable to specified third-party payors, and applicable to related patient coinsurance and deductible amounts, shall be the same regional percentage allowance calculated pursuant to paragraph (b) of this subdivision for the period January first, nineteen hundred ninety-nine through December thirty-first, nineteen hundred ninety-nine multiplied by twenty-four and forty-three hundredths percent.

§ 7. This act shall take effect immediately; provided, however, that the amendments to section 2807-j of the public health law made by section five of this act shall not affect the expiration of such section and shall be deemed to expire therewith; provided further, however, that the amendments to section 2807-s of the public health law made by section six of this act shall not affect the expiration of such section and shall be deemed to expire therewith.