

STATE OF NEW YORK

5905--B

2023-2024 Regular Sessions

IN ASSEMBLY

March 24, 2023

Introduced by M. of A. WOERNER, McDONALD, STIRPE, MAGNARELLI, CLARK, THIELE, JENSEN, FAHY, HUNTER, LUNSFORD, LUPARDO, WEPRIN, STERN, LAVINE, SOLAGES, SMITH, DURSO, J. A. GIGLIO, FITZPATRICK, FLOOD, McDONOUGH, SIMPSON, JONES, MANKTELOW -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to residential health care facility rates

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

1 Section 1. Paragraphs (a), (b), (c) and (d) of subdivision 2-c of
2 section 2808 of the public health law, paragraphs (a), (b) and (c) as
3 added by section 95 of part H of chapter 59 of the laws of 2011, para-
4 graph (d) as amended by section 2 of part M of chapter 57 of the laws of
5 2022, are amended and a new paragraph (b-1) is added to read as follows:
6 (a) Notwithstanding any inconsistent provision of this section or any
7 other contrary provision of law and subject to the availability of
8 federal financial participation, the non-capital component of rates of
9 payment by governmental agencies for inpatient services provided by
10 residential health care facilities on or after October first, two thou-
11 sand eleven, but no later than January first, two thousand twelve, shall
12 reflect a direct statewide price component, and indirect statewide price
13 component, and a facility specific non-comparable component, utilizing
14 allowable operating costs for a base year as determined by the commis-
15 sioner by regulation. Such rate components shall be periodically updated
16 to reflect changes in operating costs, provided however that such rate
17 components shall be updated no later than April first, two thousand

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

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1 twenty-five and at least every five years thereafter, using the most
2 currently available cost report data, which updates shall include but
3 not be limited to an update of rate components to reflect actual base
4 year costs.

5 (b) The direct and indirect statewide price components shall be
6 adjusted by a wage equalization factor and such other factors as deter-
7 mined to be appropriate to recognize legitimate cost differentials and
8 the direct statewide price component shall be subject to a case mix
9 adjustment utilizing the patients that are eligible for medical assist-
10 ance pursuant to title eleven of article five of the social services
11 law. Such wage equalization factor and other factors shall be period-
12 ically updated to reflect current labor market and other conditions,
13 provided however that such updates shall be implemented no later than
14 April first, two thousand twenty-five, and at least every five years
15 thereafter, based on the most currently available cost report data.

16 (b-1) For purposes of the updates required by paragraphs (a) and (b)
17 of this subdivision and associated changes in the rate-setting methodol-
18 ogy, the department shall establish and consult with a technical assist-
19 ance workgroup that includes external experts with professional exper-
20 tise in nursing home rate setting.

21 (c) The non-capital component of the rates for: (i) AIDS facilities or
22 discrete AIDS units within facilities; (ii) discrete units for residents
23 receiving care in a long-term inpatient rehabilitation program for trau-
24 matic brain injured persons; (iii) discrete units providing specialized
25 programs for residents requiring behavioral interventions; (iv) discrete
26 units for long-term ventilator dependent residents; and (v) facilities
27 or discrete units within facilities that provide extensive nursing,
28 medical, psychological and counseling support services solely to chil-
29 dren shall reflect the rates in effect for such facilities on January
30 first, two thousand nine, as adjusted for inflation and rate appeals in
31 accordance with applicable statutes, provided, however, that such rates
32 for facilities described in subparagraph (i) of this paragraph shall
33 reflect the application of the provisions of section twelve of part D of
34 chapter fifty-eight of the laws of two thousand nine, and provided
35 further, however, that insofar as such rates reflect trend adjustments
36 for trend factors attributable to the two thousand eight and two thou-
37 sand nine calendar years the aggregate amount of such trend factor
38 adjustments shall be subject to the provisions of section two of part D
39 of chapter fifty-eight of the laws of two thousand nine, as amended.
40 Notwithstanding the elimination of a trend factor from rates of payment
41 paid to other residential health care facilities or any other inconsist-
42 ent provision of law, commencing on and after April first, two thousand
43 twenty-five, the non-capital component of rates established pursuant to
44 this paragraph shall be adjusted for inflation.

45 (d) The commissioner shall promulgate regulations, and may promulgate
46 emergency regulations, to implement the provisions of this subdivision,
47 including regulations to implement the updates to the rate components
48 and associated changes in the methodology as set forth in paragraphs (a)
49 and (b) of this subdivision. Such regulations shall be developed in
50 consultation with the nursing home industry and advocates for residen-
51 tial health care facility residents and, further, the commissioner shall
52 provide notification concerning such regulations to the chairs of the
53 senate and assembly health committees, the chair of the senate finance
54 committee and the chair of the assembly ways and means committee. Such
55 regulations shall include provisions for rate adjustments or payment
56 enhancements to facilitate a minimum four-year transition of facilities

1 to the rate-setting methodology established by this subdivision and may
2 also include, but not be limited to, provisions for facilitating quality
3 improvements in residential health care facilities, provided however
4 that regulations governing the updates set forth in paragraphs (a) and
5 (b) of this subdivision and associated changes in the methodology may
6 include a transition period as determined by the commissioner in consul-
7 tation with the stakeholders described in this paragraph and the work-
8 group set forth in paragraph (b-1) of this subdivision. For purposes of
9 facilitating quality improvements through the establishment of a nursing
10 home quality pool to be funded at the discretion of the commissioner by
11 (i) adjustments in medical assistance rates, (ii) funds made available
12 through state appropriations, or (iii) a combination thereof, those
13 facilities that contribute to the quality pool, but are deemed ineligi-
14 ble for quality pool payments due exclusively to a specific case of
15 employee misconduct, shall nevertheless be eligible for a quality pool
16 payment if the facility properly reported the incident, did not receive
17 a survey citation from the commissioner or the Centers for Medicare and
18 Medicaid Services establishing the facility's culpability with regard to
19 such misconduct and, but for the specific case of employee misconduct,
20 the facility would have otherwise received a quality pool payment. Regu-
21 lations pertaining to the facilitation of quality improvement may be
22 made effective for periods on and after January first, two thousand
23 thirteen.

24 § 2. This act shall take effect immediately.