STATE OF NEW YORK

6785

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. WALKER -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to setting reimbursement rates for essential safety net hospitals

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

Section 1. Legislative intent. Essential safety net hospitals predominately serve historically marginalized neighborhoods and communities of color, with Medicaid and uninsured patients comprising 36 percent or more of their patient population. Years of disinvestment and the current financing system impedes the ability of these facilities to provide equitable care in the communities they serve. The perpetual cycle of underfunding of these hospitals prevents critical investment in services and requires annual supplemental state support to simply remain open to provide care. The legislature seeks to implement a permanent solution to address decades-long inequities faced by communities served by essential safety net hospitals. It is the intent of the legislature to provide enhanced rates to essential safety net hospitals to support investments to stabilize the safety net workforce, allow for investment in critical hospital infrastructure, and provide expanded and equitable programs and services to underserved communities. This legislation will promote access to care by ensuring that essential safety net hospitals in New York's most marginalized communities remain open and are better positioned to successfully meet community needs. It is recognized that this legislation may require eligible hospitals to waive the receipt of Medicaid Disproportionate Share Hospital allotments as a condition of receiving enhanced reimbursement rates as a result of this legislation. It is further recognized that an eligible essential safety net hospital may decline to participate in the reimbursement structure created by this legislation.

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

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§ 2. Section 2807-c of the public health law is amended by adding a new subdivision 34-a to read as follows:

34-a. Health equity stabilization and transformation act. (a) For the purposes of this subdivision, "essential safety net hospital" shall mean:

(i) Any hospital eligible for participation in the directed payment template (DPT) preprint submitted by the state to the Centers for Medicaid and Medicare Services for fiscal year two thousand twenty-three;

(ii) Any non-state public hospital operated by a county, municipality or public benefit corporation; or

(iii) Any voluntary hospital certified under this article that is a general hospital, which, in any of the previous three calendar years, has met the following criteria:

(A) at least thirty-six percent of inpatient volumes are associated with Medicaid and uninsured individuals;

(B) at least thirty-six percent of outpatient volumes are associated with Medicaid and uninsured individuals;

(C) no more than twenty percent of inpatient volumes are associated with commercially insured individuals; and

(D) the hospital is not part of a private health system with ten billion dollars or more in annual total patient revenue.

(b) For purposes of this subdivision, "essential safety net hospital" shall not include hospitals that are (i) public hospitals operated by the state; (ii) federally designated as a critical access hospital; (iii) federally designated as a sole community hospital; (iv) specialty hospitals; or (v) children's hospitals.

(c) For purposes of this subdivision, "health care services" shall include, but is not limited to, acute inpatient discharges, inpatient psychiatric days, ambulatory surgery visits, emergency room visits, and outpatient clinic services.

(d) For essential safety net hospitals that qualify pursuant to paragraph (a) of this subdivision, the commissioner shall, subject to federal approval, require inpatient hospitals rates and hospital outpatient rates paid by the medical assistance program for services provided to patients enrolled in Medicaid managed care to reimburse the entire class of essential safety net hospitals in each geographic region at no less than regional average commercial rates for health care services provided by all hospitals in the same geographic region, as reported in a benchmarking database maintained by a nonprofit organization specified by the commissioner. Such nonprofit organization shall not be affiliated with an insurer, a corporation subject to article forty-three of the insurance law, a municipal cooperative health benefit plan certified pursuant to article forty-seven of the insurance law, a health maintenance organization certified pursuant to article forty-four of this chapter, or a provider licensed under this chapter. For purposes of this paragraph:

(i) The commissioner shall establish two geographic regions within the state for establishing the regional average commercial rate. The first region shall consist of the average commercial rate for services provided in the following counties: Bronx, Kings, New York, Queens, and Richmond. The second region shall consist of the average commercial rate for services provided in all of the remaining counties.

(ii) The regional average commercial rate for health care services shall reflect the most recent twelve-month period in which data on commercial rates is available, and shall be updated no less frequently than every three years, provided that the average commercial rate shall

be trended forward to adjust for inflation on an annual basis between such updates.

(iii) The commissioner shall ensure that all essential safety net hospitals shall receive the rates defined in this paragraph. The commissioner shall not exclude any qualifying essential safety net hospitals, including public hospitals.

(e) In the event it is determined by the commissioner that the state will be unable to secure all necessary federal approvals for the purposes of implementation of this subdivision, the commissioner shall seek approval for reimbursement rates that are as close to the average commercial rate as possible in order to obtain all necessary federal approvals.

(f) Managed care organizations shall provide written certification to the commissioner on a quarterly basis that all payments to essential safety net hospitals are made in compliance with this subdivision and in accordance with section three thousand two hundred twenty-four-a of the insurance law. Managed care organizations shall also report to the commissioner claim denial information for claims submitted by essential safety net hospitals, in a manner specified by the commissioner, to be made publicly available.

(g) Any hospital qualifying under this subdivision shall annually report to the department demonstrating that it meets the criteria as an essential safety net hospital. The report shall also include information to demonstrate how increased reimbursement has been utilized to improve patient access, patient quality and patient experience.

(h) The commissioner shall make any quality data reported by essential safety net hospitals pursuant to paragraph (g) of this subdivision publicly available in a manner that is useful for patients to make quality determinations.

(i) No later than September first, two thousand twenty-three, the commissioner shall provide the governor, the temporary president of the senate and the speaker of the assembly with a report on the feasibility of obtaining a state plan amendment to modify the Medicaid fee-for-service rates for health care services in the manner prescribed in this subdivision.

§ 3. This act shall take effect April 1, 2023. Effective immediately the commissioner of health or their designees shall make such rules and regulations, and seek any federal approvals necessary for the implementation of this act on its effective date.