§ 2807-d. Hospital assessments. 1. (a) Hospitals, as defined in this article, excluding hospitals specified in paragraph (b) of this subdivision, are charged assessments on their gross receipts received from all patient care services and other operating income, less personal needs allowances and refunds, on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. Such assessments shall be submitted by or on behalf of hospitals to the commissioner or his designee.

(b) Subject to the provisions of subdivision twelve of this section, the following categories of hospitals shall not be charged assessments pursuant to this section: (i) voluntary nonprofit and private proprietary general hospitals which qualify for distributions made in accordance with paragraph (c) of subdivision nineteen of section twenty-eight hundred seven-c of this article, or for assessments during the period January first, nineteen hundred ninety-seven through December thirty-first, nineteen hundred ninety-seven voluntary nonprofit and private proprietary general hospitals which qualified for distributions made in accordance with paragraph (c) of subdivision nineteen of section twenty-eight hundred seven-c of this article as of December thirty-first, nineteen hundred ninety-five; (ii) voluntary nonprofit hospitals totally financed by charitable contributions or by the income thereon dedicated to free care of low income patients; and (iii) any facility dedicated solely to the care of police, firefighters, volunteer firefighters, and emergency service personnel.

(c) On and after December first, nineteen hundred ninety-seven, the term "general hospital", as used in this section, includes specialty hospitals for persons who are developmentally disabled, licensed by the office for people with developmental disabilities and which are also issued an operating certificate pursuant to section twenty-eight hundred five of this article.

2. (a) (i) For general hospitals the overall assessment shall be six-tenths of one percent and the assessment shall vary from 0.5% to 0.675% of each general hospital's gross receipts received from all patient care services and other operating income on a cash basis during the period January first, nineteen hundred ninety-one through March thirty-first, nineteen hundred ninety-two for hospital or health-related

services, including but not limited to inpatient service, outpatient service, emergency service, referred ambulatory service and ambulatory surgical service. The assessment shall vary according to the percentage of nineteen hundred eighty-nine medicaid inpatient revenues as a percentage of total nineteen hundred eighty-nine inpatient revenues as reported on the institutional cost report submitted to the department for nineteen hundred eighty-nine according to the following: for hospitals with medicaid revenue up to and including 10%, the assessment shall be .5%, for hospitals with medicaid revenue greater than 10% up to and including 15%, the assessment shall be .525%, for hospitals with medicaid revenue greater than 15% up to and including 20%, the assessment shall be .65%, and for hospitals with medicaid revenue over 20%, the assessment shall be .675%. In the event that the provisions relating to the additional supplementary low income patient adjustment established in accordance with subdivision fourteen-d of section twenty-eight hundred seven-c of this article cannot be implemented, then the general hospital assessment established in accordance with this paragraph shall be calculated without variation specified in this paragraph and the assessment for each general hospital whose assessment was greater than six-tenths of one percent shall become six-tenths of one percent.

(ii) For general hospitals the assessment shall be six-tenths of one percent of each general hospital's gross receipts received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-two for hospital or health-related services, including, but not limited to inpatient service, outpatient service, emergency service, referred ambulatory service and ambulatory surgical service; provided, however, that for all such gross receipts received on or after December first, nineteen hundred ninety-eight, such assessment shall be two-tenths of one percent, and further provided that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be one-tenth of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(iii) For general hospitals an additional assessment shall be one-tenth of one percent of each general hospital's gross receipts

received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-two for hospital or health-related services, including, but not limited to inpatient service, outpatient service, emergency service, referred ambulatory service and ambulatory surgical service; provided, however, that such additional assessment shall expire and be of no further effect for all such gross receipts received on or after December first, nineteen hundred ninety-seven.

(iv) Subject to the provisions of subdivision twelve of this section, the assessment and additional assessment pursuant to subparagraphs (ii) and (iii) of this paragraph during the period January first, nineteen hundred ninety-eight through December thirty-first, nineteen hundred ninety-eight for voluntary nonprofit and private proprietary general hospitals which qualified for distributions made in accordance with paragraph (c) of subdivision nineteen of section twenty-eight hundred seven-c of this article as of December thirty-first, nineteen hundred ninety-five shall be abated by seventy-five percent, and during the period January first, nineteen hundred ninety-nine through December thirty-first, nineteen hundred ninety-nine shall be abated by twenty-five percent.

(v) Notwithstanding any contrary provisions of this paragraph or any other provision of law or regulation, for general hospitals the assessment shall be thirty-five hundredths of one percent of each general hospital's gross receipts received from all patient care services and other operating income on a cash basis for the period April first, two thousand five through March thirty-first two thousand seven for hospital or health-related services, including, but not limited to inpatient service, outpatient service, emergency service, referred ambulatory service and ambulatory surgical services, but not including residential health care facilities services or home health care services.

(vi) Notwithstanding any contrary provisions of this paragraph or any other provision of law or regulation, for general hospitals the assessment shall be thirty-five hundredths of one percent of each general hospital's gross receipts received from all patient care services and other operating income on a cash basis for periods on and after April first, two thousand nine, for hospital or health-related

services, including, but not limited to inpatient services, outpatient services, emergency services, referred ambulatory services and ambulatory surgical services, but not including residential health care facilities services or home health care services.

(b) (i) For residential health care facilities the assessment shall be six-tenths of one percent of each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-one for hospital or health-related services, including adult day services; provided, however, that for all such gross receipts received on or after September first, nineteen hundred ninety-seven such assessment shall be three-tenths of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after December first, nineteen hundred ninety-eight.

(ii) For residential health care facilities an additional assessment shall be one and two-tenths percent of each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-two for hospital or health-related services, including adult day services; provided, however, that such additional assessment shall expire and be of no further effect for all such gross receipts received on or after April first, nineteen hundred ninety-nine.

(iii) For residential health care facilities a further additional assessment shall be three and eight tenths percent of each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis for the period of July first, nineteen hundred ninety-five through March thirty-first, nineteen hundred ninety-six for hospital or health-related services, including adult day services. The residential health care facility shall file the assessment return with any balance due or any refund claimed by May first, nineteen hundred ninety-six. Notwithstanding any inconsistent provision of this section, the residential health care facility shall make estimated payments to the commissioner on a monthly basis starting August fifteenth, nineteen hundred ninety-five and continuing on the fifteenth of each month through March fifteenth, nineteen hundred ninety-six equal to one-eighth of the total estimated for this further

additional assessment for the further additional assessment period. If the total of estimated payments is less than ninety-five percent of the actual payment due, the residential health care facility shall pay to the commissioner a penalty of fifteen percent of the difference due for each month in addition to the amount due. The commissioner may recoup deficiencies and penalties pursuant to paragraph (c) of subdivision six of this section.

* (iv) For residential health care facilities a further additional assessment shall be one and nine-tenths percent of each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis for the period of April first, nineteen hundred ninety-six through March thirty-first, nineteen hundred ninety-seven for hospital or health-related services, including adult day services. The residential health care facility shall file the assessment return with any balance due or any refund claimed by May first, nineteen hundred ninety-seven. Notwithstanding any inconsistent provision of this section, the residential health care facility shall make estimated payments to the commissioner on a monthly basis starting May fifteenth, and continuing on the fifteenth of each month through March fifteenth equal to one-eleventh of the total estimated for this further additional assessment for the period April first, nineteen hundred ninety-six through March thirty-first nineteen hundred ninety-seven. If the total of estimated payments is less than ninety-five percent of the actual payment due, the residential health care facility shall pay to the commissioner a penalty of fifteen percent of the difference due each month in addition to the amount due. The commissioner may recoup deficiencies and penalties pursuant to paragraph (c) of subdivision six of this section.

* NB There are 2 subpar (iv)'s

* (iv) For residential health care facilities a further additional assessment shall be one and nine-tenths percent of each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis for the period of April first, nineteen hundred ninety-six through March thirty-first, nineteen hundred ninety-seven for hospital or health-related services, including adult day services. The residential health care facility shall file the assessment return with any balance due or any refund claimed by

May first, nineteen hundred ninety-seven. Notwithstanding any inconsistent provision of this section, the residential health care facility shall make estimated payments to the commissioner on a monthly basis starting May fifteenth, and continuing on the fifteenth of each month through March fifteenth, equal to one-eleventh of the total estimated for this further additional assessment for the period beginning April first of nineteen hundred ninety-six and ending March thirty-first, nineteen hundred ninety-seven. If the total of the eleven required estimated payments is less than ninety-five percent of the actual payment due, the residential health care facility shall pay to the commissioner a penalty of fifteen percent of the difference due for each month in addition to the amount due. The commissioner may recoup deficiencies and penalties pursuant to paragraph (c) of subdivision six of this section.

* NB There are 2 subpar (iv)'s

* (v) For residential health care facilities in addition a further additional assessment shall be (a) two and three-tenths percent of each residential care facility's gross receipts received from all patient care services and other operating income on a cash basis beginning May first, nineteen hundred ninety-six through December thirty-first, nineteen hundred ninety-six for hospital or health-related services, including adult day services and (b) one and nine-tenths percent of each residential care facility's gross receipts received from all patient care services and other operating income on a cash basis beginning January first, nineteen hundred ninety-seven and ending February twenty-eighth, nineteen hundred ninety-seven for hospital or health-related services, including adult day services.

* NB There are 2 subpar (v)'s

* (v) For residential health care facilities in addition a further additional assessment shall be (a) two and three-tenths percent of each residential care facility's gross receipts received from all patient care services and other operating income on a cash basis beginning May first, nineteen hundred ninety-six and ending December thirty-first, nineteen hundred ninety-six for hospital or health-related services, including adult day services and (b) one and nine-tenths percent of each residential care facility's gross receipts received from all patient care services and other operating income on a cash basis beginning

January first, nineteen hundred ninety-seven and ending February twenty-eighth, nineteen hundred ninety-seven for hospital or health-related services, including adult day services; provided, however, that for all such gross receipts received on or after April first, nineteen hundred ninety-seven, such further additional assessment shall be three and six-tenths percent, and further provided that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such further additional assessment shall be two and four-tenths percent, and further provided that such further additional assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

* NB There are 2 subpar (v)'s

(vi) Notwithstanding any contrary provision of this paragraph or any other provision of law or regulation to the contrary, for residential health care facilities the assessment shall be six percent of each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis for the period April first, two thousand two through March thirty-first, two thousand three for hospital or health-related services, including adult day services; provided, however, that residential health care facilities' gross receipts attributable to payments received pursuant to title XVIII of the federal social security act (medicare) shall be excluded from the assessment; provided, however, that for all such gross receipts received on or after April first, two thousand three through March thirty-first, two thousand five, such assessment shall be five percent, and further provided that for all such gross receipts received on or after April first, two thousand five through March thirty-first, two thousand nine, and on or after April first, two thousand nine through March thirty-first, two thousand eleven such assessment shall be six percent, and further provided that for all such gross receipts received on or after April first, two thousand eleven through March thirty-first, two thousand thirteen such assessment shall be six percent, and further provided that for all such gross receipts received on or after April first, two thousand thirteen through March thirty-first, two thousand fifteen such assessment shall be six percent, and further provided that for all such gross receipts received on or after April first, two thousand fifteen through March thirty-first, two

thousand seventeen such assessment shall be six percent, and further provided that for all such gross receipts received on or after April first, two thousand seventeen through March thirty-first, two thousand nineteen such assessment shall be six percent, and further provided that for all such gross receipts received on or after April first, two thousand nineteen through March thirty-first, two thousand twenty-one such assessment shall be six percent, and further provided that for all such gross receipts received on or after April first, two thousand twenty-one through March thirty-first, two thousand twenty-three such assessment shall be six percent, and further provided that for all such gross receipts received on or after April first, two thousand twenty-three through March thirty-first, two thousand twenty-five such assessment shall be six percent, and further provided that for all such gross receipts received on or after April first, two thousand twenty-five through March thirty-first, two thousand twenty-nine such assessment shall be six percent.

(c) For all other facilities issued an operating certificate pursuant to section twenty-eight hundred five of this article, including diagnostic and treatment centers, the assessment shall be six-tenths of one percent of each facility's gross receipts received from all patient care services and other operating income on a cash basis beginning January first, nineteen hundred ninety-one for hospital or health-related services, including diagnostic and treatment center services; provided, however, that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be two-tenths of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

3. Gross receipts received from all patient care services and other operating income for purposes of the assessment pursuant to this section shall include, but not be limited to:

(a) for general hospitals, all monies received for or on account of inpatient hospital service, outpatient service, emergency service, referred ambulatory service and ambulatory surgical service, or other hospital or health-related services, excluding, subject to the provisions of subdivision twelve of this section: distributions from bad

debt and charity care regional pools, primary health care services regional pools, bad debt and charity care for financially distressed hospitals statewide pools and bad debt and charity care and capital statewide pools created in accordance with section twenty-eight hundred seven-c of this article and the components of rates of payment or charges related to the allowances provided in accordance with subdivisions fourteen, fourteen-b and fourteen-c, the adjustment provided in accordance with subdivision fourteen-a, the adjustment provided in accordance with subdivision fourteen-d, the adjustment for health maintenance organization reimbursement rates provided in accordance with section twenty-eight hundred seven-f of this article, the adjustment for commercial insurer reimbursement rates provided in accordance with paragraph (i) of subdivision eleven of section twenty-eight hundred seven-c of this article or, if effective, the adjustment provided in accordance with subdivision fifteen of section twenty-eight hundred seven-c of this article or the adjustment provided in accordance with section eighteen of chapter two hundred sixty-six of the laws of nineteen hundred eighty-six as amended and physician practice or faculty practice plan revenue received by a general hospital based on discrete billings for private practicing physician services, revenue received by a general hospital from a public hospital pursuant to an affiliation agreement contract for the delivery of health care services to such public hospital, revenue received pursuant to paragraph (i) of subdivision thirty-five of section twenty-eight hundred seven-c of this article, revenue received pursuant to section twenty-eight hundred seven-w of this article, all revenue received as disproportionate share hospital payments, in accordance with title nineteen of the federal Social Security Act, revenue received pursuant to sections eleven, twelve, thirteen and fourteen of part A of chapter one of the laws of two thousand two, revenue received pursuant to sections thirteen and fourteen of part B of chapter one of the laws of two thousand two, revenue from patient personal fund allowances, revenue from income earned on patient funds, investment income from externally restricted funds, revenue from investment sinking funds, revenue from investment operating escrow accounts, investment income from funded depreciation, investment income from mortgage repayment escrow accounts, revenue derived from the operation of schools leading to licensure, and

revenue from the collection of sales and excise taxes;

(b) for residential health care facilities, all monies received for or on account of hospital or health-related service, including adult day services, excluding subject to the provisions of subdivision twelve of this section the component of rates of payment related to the adjustment provided in accordance with subdivision twelve of section twenty-eight hundred eight of this article;

(c) for all other facilities issued an operating certificate pursuant to section twenty-eight hundred five of this article, including diagnostic and treatment centers, all monies received for or on account of hospital or health-related services, however, subject to the provisions of subdivision twelve of this section, excluding the component of rates of payment related to the allowance provided in accordance with paragraph (f) of subdivision two of section twenty-eight hundred seven of this article, excluding for a diagnostic and treatment center operated by a health maintenance organization operating in accordance with the provisions of article forty-four of this chapter or article forty-three of the insurance law monies received for or on account of services provided to subscribers of such health maintenance organization and excluding patient care services which if provided to persons eligible for medical assistance pursuant to title eleven of article five of the social services law would be eligible for ninety percent federal funds as set forth in section nineteen hundred three of the federal social security act; and

(d) for all hospitals, excluding diagnostic and treatment centers operated by a health maintenance organization operating in accordance with the provisions of article forty-four of this chapter or article forty-three of the insurance law, shall include monies received for or on account of such revenue sources as investment income, parking lots, cafeterias, gift shops and rental income, provided, however, that subject to the provisions of subdivision twelve of this section income received from grants, charitable contributions, donations and bequests and governmental deficit financing and the component of rates of payment reflecting any cost of the assessment reimbursable pursuant to subdivision ten of this section shall not be included.

4. For periods prior to January first, two thousand five, the

commissioner is authorized to contract with the article forty-three insurance law plans, or if not available such other administrators as the commissioner shall designate, to receive and distribute hospital assessment funds. In the event contracts with the article forty-three insurance law plans or other commissioner's designees are effectuated, the commissioner shall conduct annual audits of the receipt and distribution of the assessment funds. The reasonable costs and expenses of an administrator as approved by the commissioner, not to exceed for personnel services on an annual basis four hundred thousand dollars for all assessments established pursuant to this section, shall be paid from the assessment funds.

5. Estimated payments by or on behalf of hospitals to the commissioner or his designee of funds due from the assessments pursuant to subdivision two of this section shall be made on a monthly basis. Estimated payments shall be due on or before the fifteenth day following the end of a calendar month to which an assessment applies.

6. (a) If an estimated payment made for a month to which an assessment applies is less than seventy percent of an amount the commissioner determines is due, based on evidence of prior period moneys received by a hospital or evidence of moneys received by such hospital for that month, the commissioner may estimate the amount due from such hospital and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for a month to which an assessment applies is less than ninety percent of an amount the commissioner determines is due, based on evidence of prior period moneys received by a hospital or evidence of moneys received by such hospital for that month, and at least two previous estimated payments within the preceding six months were less than ninety percent of the amount due, based on similar evidence, the commissioner may estimate the amount due from such hospital and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of a hospital's deficiency under this section, the comptroller or a fiscal intermediary designated by the director of the budget, or the commissioner of social

services, or a corporation organized and operating in accordance with article forty-three of the insurance law, or an organization operating in accordance with article forty-four of this chapter shall withhold from the amount of any payment to be made by the state or by such article forty-three corporation or article forty-four organization to the hospital the amount of the deficiency determined under paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section. Upon withholding such amount, the comptroller or a designated fiscal intermediary, or the commissioner of social services, or corporation organized and operating in accordance with article forty-three of the insurance law or organization operating in accordance with article forty-four of this chapter shall pay the commissioner, or his designee, such amount withheld on behalf of the hospital.

(d) The commissioner shall provide a hospital with notice of any estimate of an amount due for an assessment pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section at least three days prior to collection of such amount by the commissioner. Such notice shall contain the financial basis for the commissioner's estimate.

(e) In the event a hospital objects to an estimate by the commissioner pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section of the amount due for an assessment, the hospital, within sixty days of notice of an amount due, may request a public hearing. If a hearing is requested, the commissioner shall provide the hospital an opportunity to be heard and to present evidence bearing on the amount due for an assessment within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later. An administrative hearing is not a prerequisite to seeking judicial relief.

(f) The commissioner may direct that a hearing be held without any request by a hospital.

7. (a) Every hospital shall submit reports on a cash basis of actual gross receipts received from all patient care services and operating income for each month as follows:

(i) for the period January first, nineteen hundred ninety-one through January thirty-first, nineteen hundred ninety-one, the report shall be

filed on or before March fifteenth, nineteen hundred ninety-one; and

(ii) for the quarter year ending March thirty-first, nineteen hundred ninety-one and for each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of such quarter.

(b) Every hospital shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all patient care services and operating income.

(c) The reports shall be in such form as may be prescribed by the commissioner to accurately disclose information required to implement this section, provided, however, that for periods on and after July first, two thousand twelve, such reports and any associated certifications shall be submitted electronically in a form as may be required by the commissioner.

(d) Final payments shall be due for all hospitals for the assessments pursuant to subdivision two of this section upon the due date for submission of the applicable quarterly report.

(e) The commissioner may recoup deficiencies in final payments pursuant to paragraph (c) of subdivision six of this section. Delinquent amounts which have been referred for recoupment or offset pursuant to paragraph (c) of subdivision six of this section, or which have been referred to the office of the attorney general for collection, shall be deemed final and not subject to further revision or reconciliation by the commissioner based on any additional reports or other information submitted by the hospital, provided, however, that such delinquencies shall not be referred for such recoupment or for such collection based on estimated amounts unless the hospital has received written notification of such delinquencies and has been given no less than thirty days in which to submit delinquent reports.

(f) Payments and reports submitted or required to be submitted to the commissioner or to the commissioner's designee pursuant to this section shall be subject to audit by the commissioner for a period of six years following the close of the calendar year in which such payments and reports are due, after which such payments shall be deemed final and not subject to further adjustment or reconciliation, including through offset adjustments or reconciliations made to subsequent payments made pursuant to this section, provided, however, that nothing herein shall be construed as precluding the commissioner from pursuing collection of

any such payments which are identified as delinquent within such six year period, or which are identified as delinquent as a result of an audit commenced within such six year period, or from conducting an audit of any adjustment or reconciliation made by a hospital.

8. (a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus four percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(b) If an estimated payment made for a month to which an assessment applies is less than seventy percent of the actual amount due for such month, a penalty shall be due and payable to the commissioner of five percent of the difference between the amount paid and the amount due for such month when the failure to pay is for a duration of not more than one month after the due date of the payment with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. A penalty may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(c) Overpayment by a hospital of an estimated payment shall be applied to any other payment due from the hospital pursuant to this section, or, if no payment is due, at the election of the hospital shall be applied to future estimated payments or refunded to the hospital. Interest shall be paid on overpayments from the date of overpayment to the date of crediting or refund at the rate determined in accordance with paragraph (a) of this subdivision if the overpayment was made at the direction of

the commissioner. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

9. Funds accumulated, including income from invested funds, from the assessments specified in this section, including interest and penalties, shall be deposited by the commissioner and:

(a) credited to the general fund;

(b) provided, however, that funds accumulated, including income from invested funds, from the assessments provided in accordance with subparagraph (v) of paragraph (a) and subparagraphs (iii), (iv), (v) and (vi) of paragraph (b) of subdivision two of this section, including interest and penalties, shall be deposited by the commissioner and credited to the special revenue fund-other, miscellaneous special revenue fund (339), medical assistance account. To the extent of funds appropriated therefor, funds shall be made available for payments under the medical assistance program provided pursuant to title eleven of article five of the social services law;

(c) and provided further, however, that funds accumulated, including income from invested funds, for a period from the assessment and additional assessment provided in accordance with subparagraphs (ii) and (iii) of paragraph (a) of subdivision two of this section, including interest and penalties, on voluntary nonprofit and private proprietary general hospitals which qualified for distributions made in accordance with paragraph (c) of subdivision nineteen of section twenty-eight hundred seven-c of this article as of December thirty-first, nineteen hundred ninety-five shall be transferred by the commissioner and consolidated with funds accumulated from the allowance pursuant to subdivision two of section twenty-eight hundred seven-j of this article for such period and allocated in accordance with subdivision nine of section twenty-eight hundred seven-j of this article.

10. Notwithstanding any inconsistent provision of law or regulation to the contrary:

(a) the assessments pursuant to this section shall not be an allowable cost in the determination of reimbursement rates pursuant to this article;

(b) provided, however, that for purposes of determining rates of

payment pursuant to this article for residential health care facilities, for the period January first, nineteen hundred ninety-two through March thirty-first, nineteen hundred ninety-nine, the additional assessment of one and two-tenths percent, and for the period July first, nineteen hundred ninety-five through March thirty-first, nineteen hundred ninety-six the further additional assessment of three and eight-tenths percent, and for the period April first, nineteen hundred ninety-six through March thirty-first, nineteen hundred ninety-seven the further additional assessment of one and nine-tenths percent, and for the period May first, nineteen hundred ninety-six through December thirty-first, nineteen hundred ninety-six the further additional assessment of two and three-tenths percent and for the period January first, nineteen hundred ninety-seven through February twenty-eighth, nineteen hundred ninety-seven the further additional assessment of one and nine-tenths percent, and for the period April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-nine the further additional assessment of three and six-tenths percent, and for the period April first, nineteen hundred ninety-nine through December thirty-first, nineteen hundred ninety-nine the further additional assessment of two and four-tenths percent, imposed pursuant to this section shall be a reimbursable cost to be reflected as timely as practicable in rates of payment applicable within the assessment period, contingent, for payments by governmental agencies, on all federal approvals necessary by federal law and regulations for federal financial participation in payments made for beneficiaries eligible for medical assistance under title XIX of the federal social security act.

(c) provided, however, that for the purposes of determining rates of payment pursuant to this article for residential health care facilities, the assessment imposed pursuant to subparagraph (vi) of paragraph (b) of subdivision two of this section shall be a reimbursable cost to be reflected as timely as practicable, and subsequently reconciled to actual cost, in rates of payment applicable within the assessment period, provided further, however, that insofar as such assessment is in excess of six percent it shall not be deemed a reimbursable cost and shall not be reflected in such rates of payment.

(d) provided, however, that the adjustment to rates of payment made pursuant to paragraph (c) of this subdivision shall be calculated on a

per diem basis and based on total reported patient days of care minus reported days attributable to title XVIII of the federal social security act (medicare) units of service.

(e) the provisions of paragraphs (c) and (d) of this subdivision shall each be contingent upon receipt of all federal approvals required by federal law and regulations for federal financial participation in payments made in accordance with paragraphs (c) and (d) of this subdivision.

11. (a) (ii) The assessment shall not be collected in excess of one hundred thirty-four million three hundred thousand dollars from general hospitals for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected pursuant to paragraph (a) of subdivision two of this section in excess of one hundred thirty-four million three hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to general hospitals by the commissioner based on the ratio which a general hospital's assessment for such period bears to the total of the assessments for such period paid by general hospitals.

(iii) The additional assessment shall not be collected in excess of fourteen million nine hundred thousand dollars from general hospitals for the period of April first, nineteen hundred ninety-seven through November thirtieth, nineteen hundred ninety-seven. The amount of the additional assessment collected pursuant to paragraph (a) of subdivision two of this section in excess of fourteen million nine hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through November thirtieth, nineteen hundred ninety-seven shall be refunded to general hospitals by the commissioner based on the ratio which a general hospital's additional assessment for such period bears to the total of the additional assessments for such period paid by general hospitals.

(b) (ii) The assessment shall not be collected in excess of fifteen million dollars from residential health care facilities for the period of April first, nineteen hundred ninety-eight through March thirty-first, nineteen hundred ninety-nine. The amount of the assessment collected pursuant to paragraph (b) of subdivision two of this section

in excess of fifteen million dollars for the period of April first, nineteen hundred ninety-eight through March thirty-first, nineteen hundred ninety-nine shall be refunded to residential health care facilities by the commissioner based on the ratio which a residential health care facility's assessment for such period bears to the total of the assessments for such period paid by residential health care facilities.

(iii) The additional assessment shall not be collected in excess of eighty-nine million nine hundred thousand dollars from residential health care facilities for the period of April first, nineteen hundred ninety-eight through March thirty-first, nineteen hundred ninety-nine. The amount of the additional assessment collected pursuant to paragraph (b) of subdivision two of this section in excess of eighty-nine million nine hundred thousand dollars for the period of April first, nineteen hundred ninety-eight through March thirty-first, nineteen hundred ninety-nine shall be refunded to residential health care facilities by the commissioner based on the ratio which a residential health care facility's additional assessment for such period bears to the total of the additional assessments for such period paid by residential health care facilities.

(iv) The further additional assessment shall not be collected in excess of one hundred sixty-four million seven hundred thousand dollars from residential health care facilities for the period July first, nineteen hundred ninety-five through March thirty-first, nineteen hundred ninety-six. The amount of the further additional assessment collected pursuant to paragraph (b) of subdivision two of this section in excess of one hundred sixty-four million seven hundred thousand dollars for the period of July first, nineteen hundred ninety-five through March thirtyfirst, nineteen hundred ninety-six shall be refunded to residential health care facilities by the commissioner based on the ratio which a residential health care facility's further additional assessment for such period bears to the total of the further additional assessments for such period paid by residential health care facilities.

(v) The further additional assessment imposed pursuant to subparagraph (iv) of paragraph (b) of subdivision two of this section shall not be collected in excess of one hundred twelve million dollars from residential health care facilities for the period April first, nineteen

hundred ninety-six through March thirty-first, nineteen hundred ninety-seven. The amount of the further additional assessment collected pursuant to subparagraph (iv) of paragraph (b) of subdivision two of this section in excess of one hundred twelve million dollars for the period of April first, nineteen hundred ninety-six through March thirty-first, nineteen hundred ninety-seven shall be refunded to residential health care facilities by the commissioner based on the ratio which a residential health care facility's further additional assessment for such period bears to the total of the further additional assessments for such period paid by residential health care facilities.

(vi) The further additional assessment shall not be collected in excess of one hundred ten million dollars from residential health care facilities for the period May first, nineteen hundred ninety-six through February twenty-eighth, nineteen hundred ninety-seven. The amount of the further additional assessment collected pursuant to subparagraph (v) of paragraph (b) of subdivision two of this section in excess of one hundred ten million dollars for the period May first, nineteen hundred ninety-six through February twenty-eighth, nineteen hundred ninety-seven shall be refunded to residential health care facilities by the commissioner based on the ratio which a residential health care facility's further additional assessment for such period bears to the total of the further additional assessments for such period paid by residential health care facilities.

(vii) The further additional assessment shall not be collected in excess of two hundred forty million dollars from residential health care facilities for the period April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the further additional assessment collected pursuant to subparagraph (v) of paragraph (b) of subdivision two of this section in excess of two hundred forty million dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to residential health care facilities by the commissioner based on the ratio which a residential health care facility's further additional assessments for such a period bears to the total of the further additional assessments for such period paid by residential health care facilities.

(viii) The further additional assessment shall not be collected in

excess of two hundred fifty-six million eight hundred thousand dollars from residential health care facilities for the period April first, nineteen hundred ninety-eight through March thirty-first, nineteen hundred ninety-nine. The amount of the further additional assessment collected pursuant to subparagraph (v) of paragraph (b) of subdivision two of this section in excess of two hundred fifty-six million eight hundred thousand dollars for the period April first, nineteen hundred ninety-eight through March thirty-first, nineteen hundred ninety-nine shall be refunded to residential health care facilities by the commissioner based on the ratio which a residential health care facility's further additional assessments for such period bears to the total of the further additional assessments for such period paid by residential health care facilities.

(c) (ii) The assessment shall not be collected in excess of seven million four hundred thousand dollars from all other facilities issued an operating certificate pursuant to section twenty-eight hundred five of this article for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected pursuant to paragraph (c) of subdivision two of this section in excess of seven million four hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded by the commissioner based on the ratio which a facility's assessment for such period bears to the total of the assessments for such period paid by such facilities.

12. (a) Each exclusion of hospitals or sources of gross receipts received from the assessments effective on or after April first, nineteen hundred ninety-two, and prior to April first, two thousand two, established pursuant to this section shall be contingent upon either: (i) qualification of the assessments for waiver pursuant to federal law and regulation; or (ii) consistent with federal law and regulation, not requiring a waiver by the secretary of the department of health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of the revenues received by the state pursuant to the assessments not reducing the amount expended by the state as medical

assistance for purposes of federal financial participation. The commissioner shall collect the assessments relying on such exclusions, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, then the exclusion shall be deemed to have been null and void as of April first, nineteen hundred ninety-two, and the commissioner shall collect any retroactive amount due as a result, without interest or penalty provided the hospital pays the retroactive amount due within ninety days of notice from the commissioner to the hospital that an exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner to the hospital.

(b) The exclusion of the hospitals described in paragraph (b) of subdivision one of this section and the exclusion of revenue described in subdivision two of this section from the assessments set forth in subdivision two of this section for periods on and after April first, two thousand two shall be contingent upon either: (i) qualification of the assessments for waiver pursuant to federal law and regulation; or (ii) consistent with federal law and regulation, not requiring a waiver by the secretary of the department of health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of the revenues received by the state pursuant to the assessments not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner shall collect such assessments relying on such exclusion, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that such assessments do not so qualify based on such exclusion, then the commissioner shall, to the extent necessary to achieve such qualification for federal financial participation, deem such exclusions null and void as of the first day of the period for which such assessments apply, and the commissioner shall collect any retroactive amount due as a result, without interest or penalty provided the hospital pays the retroactive amount due within ninety days of notice from the commissioner to the hospital that such exclusion is null

and void.

(c) No hospital shall be obligated to pay assessments pursuant to subparagraph (v) of paragraph (a) of subdivision two of this section prior to December first, two thousand five. The commissioner shall collect payment obligations incurred prior to December first, two thousand five proportionally over the remaining months in the state fiscal year.