

PUBLIC WELFARE CODE - OMNIBUS AMENDMENTS
Act of Oct. 22, 2010, P.L. 829, No. 84

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Session of 2010
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SB 922

AN ACT

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," further providing for lifetime limit; further defining "general acute care hospital" and "high volume Medicaid hospital"; further providing for authorization, for administration, for no hold harmless, for tax exemption, for cessation and for Statewide Quality Care Assessment implementation; providing for the availability of and access to a comprehensive trauma care system; imposing powers and duties upon the Department of Public Welfare; and making a related repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 441.4 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, amended December 17, 2009 (P.L.598, No.54), is reenacted to read:

Section 441.4. Reasonable Limits on Allowable Income Deductions for Medical Expenses When Determining Payment Toward the Cost of Long-Term Care Services.--(a) When determining a recipient's payment toward the cost of long-term care services, long-term care medical expenses incurred six months or more prior to application for medical assistance shall be disallowed as a deduction, and medical and remedial expenses that were incurred as a result of a transfer of assets penalty shall be limited to zero unless application of these limits would result in undue hardship.

(b) As used in this section, the term "undue hardship" shall mean that either:

(1) denial of medical assistance would deprive the individual of medical care and endanger the individual's health or life; or

(2) the individual or a financially dependent family member would be deprived of food, shelter or the necessities of life.

Section 2. The definitions of "general acute care hospital" and "high volume Medicaid hospital" in section 801-E of the act, amended or added December 17, 2009 (P.L.598, No.54), are reenacted to read:
Section 801-E. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"General acute care hospital." A hospital other than a hospital that the Secretary of Public Welfare has determined meets one of the following:

(1) Is excluded under 42 CFR 412.23(a), (b), (d), (e) and (f) (relating to Excluded hospitals: Classifications) as of March 20, 2008, from reimbursement of certain Federal funds under the prospective payment system described by 42 CFR 412 (relating to prospective payment systems for inpatient hospital services).

(2) Is a Federal veterans' affairs hospital.

(3) Is a high volume Medicaid hospital.

(4) Provides care, including inpatient hospital services, to all patients free of charge.

"High volume Medicaid hospital." A hospital that the Secretary of Public Welfare has determined meets all of the following:

(1) is a nonprofit hospital subsidiary of a State-related institution as that term is defined in 62 Pa.C.S. § 103 (relating to definitions); and

(2) provides more than 90,000 days of care to medical assistance patients annually.

* * *

Section 3. Sections 802-E, 804-E, 805-E, 807-E and 808-E of the act, amended December 17, 2009 (P.L.598, No.54), are reenacted to read:

Section 802-E. Authorization.

(a) General rule.--In order to generate additional revenues for the purpose of assuring that medical assistance recipients have access to hospital services and that all citizens have access to emergency department services, and subject to the conditions and requirements specified under this article, a municipality may, by ordinance, do the following:

(1) Impose a monetary assessment on the net operating revenue reduced by all revenues received from Medicare of each general acute care hospital located in the municipality.

(2) Beginning on or after July 1, 2009, and subject to the advance written approval by the secretary, impose a monetary assessment on the net operating revenues reduced by all revenues received from Medicare of each high volume Medicaid hospital located in the municipality.

(b) Administrative provisions.--The ordinances adopted pursuant to subsection (a) may include appropriate administrative provisions including, without limitation, provisions for the collection of interest and penalties.

(c) Maximum assessment.--In each year in which the assessment is implemented, the assessment shall be subject to the maximum aggregate amount that may be assessed under 42 CFR 433.68(f)(3)(i) (relating to permissible health care-related taxes) or any other maximum established under Federal law.

Section 804-E. Administration.

(a) Remittance.--Upon collection of the funds generated by the assessment authorized under this article, the municipality shall remit a portion of the funds to the Commonwealth for the purposes set forth under section 802-E, except that the municipality may retain funds in an amount necessary to reimburse it for its reasonable costs in the administration and collection of the assessment and to fund a portion of its costs of operating public health clinics as set forth in an agreement to be entered into between the municipality and the Commonwealth acting through the secretary.

(b) Establishment.--There is established a restricted account in the General Fund for the receipt and deposit of funds under subsection (a). Funds in the account are hereby appropriated to the department for purposes of making supplemental or increased medical assistance payments for emergency department services to general acute care hospitals within the municipality and to maintain or increase other medical assistance payments to hospitals within the municipality, as specified in the Commonwealth's approved Title XIX State Plan.

Section 805-E. No hold harmless.

No general acute care hospital or high volume Medicaid hospital shall be directly guaranteed a repayment of its assessment in derogation of 42 CFR 433.68(f) (relating to permissible health care-related taxes), except that, in each fiscal year in which an assessment is implemented, the department shall use a portion of the funds received under section 804-E(a) for the purposes outlined under section 804-E(b) to the extent permissible under Federal and State law or regulation and without creating an indirect guarantee to hold harmless, as those terms are used under 42 CFR 433.68(f)(i). The secretary shall submit any State Medicaid plan amendments

to the United States Department of Health and Human Services that are necessary to make the payments authorized under section 804-E(b).
Section 807-E. Tax exemption.

Notwithstanding any exemptions granted by any other Federal, State or local tax or other law, including section 204(a)(3) of the act of May 22, 1933 (P.L.853, No.155), known as The General County Assessment Law, no general acute care hospital or high volume Medicaid hospital in the municipality shall be exempt from the assessment.
Section 808-E. Time period.

(a) Cessation.--The assessment authorized under this article shall cease June 30, 2013.

(b) Assessment.--A municipality shall have the power to enact the assessment authorized in section 802-E(a)(2) either prior to or during its fiscal year ending June 30, 2010.

Section 4. Section 803-G(c) of the act, added July 9, 2010 (P.L.336, No.49), is amended to read:

Section 803-G. Implementation.

* * *

(c) Adjustments to assessment percentage.--The secretary may adjust the assessment percentage specified in subsection [(b) (2)] **(b)**, subject to the following:

(1) Before adjusting, the secretary shall publish a notice in the Pennsylvania Bulletin that specifies the proposed assessment percentage and identifies the aggregate impact on covered hospitals subject to the assessment. Interested parties shall have 30 days in which to submit comments to the secretary. Upon expiration of the 30-day comment period, the secretary, after consideration of the comments, shall publish a second notice in the Pennsylvania Bulletin announcing the assessment percentage.

(2) The secretary may not adjust the assessment percentages to exceed 2.95% of the net inpatient revenue of covered hospitals.

(3) An adjustment in the assessment percentage shall be approved by the Governor.

* * *

Section 5. The act is amended by adding an article to read:

ARTICLE VIII-H

PENNSYLVANIA TRAUMA SYSTEMS STABILIZATION

Section 801-H. Scope of article.

This article relates to Pennsylvania trauma systems stabilization.

Section 802-H. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Comprehensive emergency services." The capacity of a hospital emergency department to maintain staff and provide immediate and advanced care for Pennsylvania patients who require trauma care treatment 24 hours per day and seven days per week based on the availability of the following services:

(1) At least two qualified physicians to staff the emergency department during periods of peak utilization.

(2) At least one registered nurse or technician with specialized training in advanced life support techniques.

(3) Anesthesia services at all times.

(4) Physician specialists who can immediately consult by telephone or radio and can report immediately to the hospital emergency department as needed.

(5) Ancillary services, such as laboratory, radiology, pharmacy and respiratory therapy, at all times, with appropriate personnel who can report immediately to the hospital emergency department as needed.

"Foundation." The Pennsylvania Trauma Systems Foundation as defined in 35 Pa.C.S. § 8103 (relating to definitions).

"Hospital." An entity located in this Commonwealth that is licensed as a hospital under the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, or an out-of-State hospital licensed by its home state.

"Trauma care." Medical services provided to an individual with a severe, life-threatening injury which is likely to produce mortality or permanent disability.

"Trauma center." Includes:

(1) A hospital accredited as a Level I, Level II or Level III trauma center by the Pennsylvania Trauma Systems Foundation in accordance with this article and 35 Pa.C.S. § 8107 (relating to Pennsylvania Trauma Systems Foundation).

(2) An out-of-State hospital that qualifies as a trauma center under the State plan for medical assistance and:

(i) has paid to the foundation the annual participation fees that would be due if it were to obtain accreditation from the foundation; and

(ii) has submitted to the foundation on an annual basis:

(A) the clinical patient data that the hospital submits to the National Trauma Database regarding Pennsylvania residents who receive trauma services from the hospital; and

(B) the information necessary to calculate the supplemental payment referenced in section 805-H as provided in the State plan for medical assistance.

"Travel distance." The distance traveled by a motor vehicle on paved public roads having at least two driving lanes of width and on which a motor vehicle would reasonably travel in the transport of patients.

Section 803-H. Accreditation of Level III trauma centers.

(a) Standards.--The foundation shall accredit Level III trauma centers in accordance with established standards, which shall be based upon the current guidelines for trauma centers as defined by the American College of Surgeons for Level III trauma centers. The accreditation process shall be conducted in compliance with 35 Pa.C.S. § 8107 (relating to Pennsylvania Trauma Systems Foundation).

(b) Additional requirements.--In addition to the Level III standards established by the foundation under subsection (a), a hospital must meet all of the following criteria to qualify for Level III accreditation:

(1) Provide comprehensive emergency services.

(2) Total on an annual basis at least 4,000 inpatient admissions from its emergency department.

(3) Be located in a third to eighth class county.

(4) Be located more than 25 miles of travel distance established by roadways from a Level I, Level II or Level III trauma center.

The requirements of paragraphs (3) and (4) shall not apply to Level III trauma centers accredited or seeking accreditation as of the effective date of this subsection.

(c) Submission of application required.--To be eligible for accreditation as a Level III trauma center and to qualify for funds under this article, a hospital must submit an application to the foundation for the purpose of determining compliance with the criteria under subsection (b).

(d) Review of application.--Within 120 days of the receipt of an application, the foundation shall complete its review of the application to determine compliance with the criteria under subsection (b). No later than 240 days from the completion of a site survey, the foundation shall grant or deny a certificate to those hospitals seeking to be accredited as Level III trauma centers.

(e) Other trauma center references.--A Level III trauma center accredited under this article shall not be considered an accredited trauma center for purposes of any other act.

Section 804-H. Submission of list.

(a) Level I and Level II trauma centers.--The foundation shall annually submit to the department its list of accredited Level I and Level II trauma centers with updates as necessary. The list shall include all Level I and Level II trauma centers as defined under this article.

(b) Level III trauma centers.--Within 15 days of the initial approval of an accredited Level III trauma center under section 803-H(d), the foundation shall submit that information to the department. The foundation shall maintain a complete list of all accredited Level III trauma centers and provide the list to the department on an annual basis with updates as necessary.

Section 805-H. Funding.

(a) Distribution.--Effective for fiscal year 2008-2009 and each year thereafter, the department shall distribute annually, from available funds appropriated for this purpose, a supplemental payment to each accredited Level I or Level II trauma center or each Level III trauma center or hospital seeking Level III accreditation as provided in section 803-H(b) for the purpose of improving access to readily available and coordinated trauma care for the citizens of this Commonwealth.

(b) Funding.--The department shall seek to maximize any Federal funds, including funds obtained pursuant to Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.) available for trauma care stabilization.

(c) Payment calculation.--

(1) Payment shall be allocated as follows:

(i) Ninety percent of available funds shall be allocated to accredited Level I and Level II trauma centers.

(ii) The remaining 10% shall be allocated to hospitals accredited as Level III trauma centers and hospitals seeking Level III accreditation for up to four years with documented evidence of progression toward accreditation and achievement of benchmarks as verified and established by the foundation in collaboration with the department.

(2) Payment to each qualifying Level I or Level II trauma center shall be calculated using data provided by the foundation as follows:

(i) Fifty percent of the total amount available for Level I and Level II trauma centers shall be allocated equally among Level I and Level II trauma centers.

(ii) Fifty percent of the total amount available for Level I and Level II trauma centers shall be allocated on the basis of each trauma center's percentage of medical assistance and uninsured trauma cases and patient days compared to the Statewide total number of medical assistance and uninsured trauma cases and patient days for all Level I and Level II trauma centers.

(3) Subject to paragraph (4), payment to each qualifying hospital accredited or seeking accreditation as a Level III trauma center shall be

calculated using the information and data provided by the foundation as follows:

(i) Fifty percent of the total amount available for Level III trauma centers shall be allocated equally among all Level III trauma centers.

(ii) Fifty percent of the total amount available for Level III trauma centers shall be allocated on the basis of each trauma center's percentage of medical assistance and uninsured trauma cases and patient days compared to the Statewide total number of medical assistance and uninsured trauma cases and patient days for all Level III trauma centers.

(4) Payment to each qualifying hospital accredited as a Level III may not be greater than 50% of the average Statewide annual payment to a Level II trauma center as determined in the methodology described in paragraph (2).

(d) Out-of-State trauma centers.--Any hospital with a Level I or Level II trauma center not licensed in this Commonwealth shall be eligible for payment under this article if it meets the definition of "trauma center" in section 802-H.

Section 806-H. Notification of trauma center closure.

A hospital that receives funds pursuant to this article shall notify the department, the foundation and the Department of Health of its intent to cease operation of its trauma center no later than 60 days prior to closure of that trauma center.

Section 807-H. Reporting.

(a) General rule.--On March 1, 2011, and annually thereafter, the department shall report to the Public Health and Welfare Committee of the Senate and the Health and Human Services Committee of the House of Representatives on the trauma centers funded under this article.

(b) Contents of report.--The report shall do all of the following:

(1) Identify the trauma centers receiving funds.

(2) State the amount received and the number of individuals served.

(3) Make any recommendations for improvements in this article which further promote the availability of trauma care services to the citizens of this Commonwealth.

Section 808-H. Certification and financial report.

(a) Certification.--Before funds are provided, a trauma center qualifying for funds under this article shall certify that the funds are intended to be used for developing and providing for the availability of and access to trauma care for Pennsylvania residents.

(b) Report.--Each trauma center which receives funds under this article shall report to the department the following:

(1) An expenditure report six months after the end of the fiscal year accounting for how the funds were spent.

(2) The amount received and the number of individuals served.

(3) How funds received through this article improved access to trauma care for Pennsylvania residents.

Section 6. The addition of Article VIII-H of the act is a continuation of the act of March 24, 2004 (P.L.148, No.15), known as the Pennsylvania Trauma Systems Stabilization Act. The following apply:

(1) Except as otherwise provided in Article VIII-H of the act, all activities initiated under the Pennsylvania Trauma Systems Stabilization Act shall continue and remain in full force and effect and may be completed under Article VIII-H of the act. Resolutions, orders, regulations, rules and decisions which were made under the Pennsylvania

Trauma Systems Stabilization Act and which are in effect on the effective date of this section shall remain in full force and effect until revoked, vacated or modified under Article VIII-H of the act. Contracts, obligations and agreements entered into under the Pennsylvania Trauma Systems Stabilization Act are not affected nor impaired by the repeal of the Pennsylvania Trauma Systems Stabilization Act.

(2) Except as set forth in paragraph (3), any difference in language between Article VIII-H of the act and the Pennsylvania Trauma Systems Stabilization Act is intended only to conform to the style of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, and is not intended to change or affect the legislative intent, judicial construction or administrative interpretation and implementation of the Pennsylvania Trauma Systems Stabilization Act.

(3) Paragraph (2) does not apply to the following:

(i) The addition of the definitions of "comprehensive emergency services," "hospital," "trauma center" and "travel distance" in section 802-H of the act.

(ii) The addition of sections 803-H(b), (c) and (d), 804-H(a), 805-H(a), (c) and (d) and 808-H of the act.

Section 7. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of Article VIII-H of the act.

(2) The act of March 24, 2004 (P.L.148, No.15), known as the Pennsylvania Trauma Systems Stabilization Act, is repealed.

Section 8. This act shall take effect immediately.

APPROVED--The 22nd day of October, A.D. 2010.

EDWARD G. RENDELL