



SPONSOR: Rep. Longhurst & Sen. Townsend

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 350

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO HOSPITAL COSTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter I, Chapter 99, Title 16 of the Delaware Code by making deletions as shown by
2 strike through and insertions as shown by underline as follows:

3 § 9903. Duties and authority of the Commission.

4 (l) The Commission is responsible for the administration of the Diamond State Hospital Cost Review Board. The
5 Commission shall have such other duties and authorities with respect to the Diamond State Hospital Cost Review Board as
6 are necessary to carry out the intent of the General Assembly as expressed in this chapter.

7 Section 2. Amend Chapter 99, Title 16 of the Delaware Code by making deletions as shown by strike through and
8 insertions as shown by underline as follows:

9 Subchapter VI. Hospital Budget Review

10 § 9951. Definitions.

11 As used in this subchapter:

12 (1) "Board" means the Diamond State Hospital Cost Review Board established by § 9952 of this title.

13 (2) "Hospital" means as defined in § 1001 of this title, except that hospitals that exclusively provide
14 psychiatric services are excluded from the application of this subchapter.

15 (3) "Insurers" means as defined in § 9903 of this title.

16 (4) "Payer" means as defined in § 9903 of this title.

17 (5) "Public programs" means as defined in § 9903 of this title.

18 (6) "Spending benchmark" means as defined in § 9903 of this title.

19 § 9952. Diamond State Hospital Cost Review Board.

20 (a) There is established the Diamond State Hospital Cost Review Board for the purpose of carrying out hospital
21 budget reviews under this chapter.

(b) (1) The Board consists of 5 members as follows:

a. Three members appointed by the Governor.

b. One member appointed by the Speaker of the House of Representatives.

c. One member appointed by the President Pro Tempore of the Senate.

(2) Of the initial members, 2 must be appointed for a 2-year term and 3 must be appointed for a 4-year term.

Thereafter, all members shall serve 4-year terms. Any vacancy shall be filled by the appointing authority for the balance of the unexpired term. A member of the Board is eligible for reappointment.

(3) At its first meeting, the Board shall elect a Chair from among its members. Whenever the office of Chair becomes vacant, the Board shall elect a new Chair at its next meeting.

(c) All members of the Board must possess the following qualifications:

(1) Knowledge of health care policy, health care delivery, or business, finance, or accounting.

(2) Knowledge, experience, and characteristics that complement those of the remaining members of the Board.

(3) Impartiality and the ability to remain free from undue influence by a personal, business, or professional relationship with any person subject to supervision or regulation by the Board.

(d) The Chair of the Delaware Health Care Commission shall set the date for the initial meeting of the Board and shall set the date of the next meeting if the Chair is vacant.

(e) (1) Three members constitutes a quorum of the Board and, except as set forth in paragraph (e)(2) of this section, the Board may take action by affirmative vote of a majority of members present and voting.

(2) The following actions require the affirmative vote of a majority of the Board:

a. Approval of a hospital budget.

b. Revision of a hospital budget.

c. An enforcement action under § 9956 of this title.

(f) The Board shall promulgate rules and regulations necessary for the implementation of this subchapter including a schedule for submission of information required from hospitals under § 9953 of this title.

§ 9953. Budget Review.

(a) Hospitals shall submit a proposed budget to the Board at the time and place and in the manner established by the Board. A proposed budget shall include all of the following supporting materials:

(1) A budget for the forthcoming year, including expenditures and revenues.

(2) Spending and revenue data from the previous year.

(3) Financial information, including costs of operations, revenues, assets, liabilities, fund balances, rates, charges, units of service, and wage and salary data.

(4) Scope of services and volume of service information, including inpatient services, outpatient services, and ancillary services by type of service provided.

(5) Utilization information.

(6) New hospital services and programs proposed for the forthcoming year.

(7) Projected 3-year capital budget.

(8) Contract information with public and private payers.

(9) A comparison of the hospital's cost of service to other comparable hospitals in the MidAtlantic region.

(10) Other information the Board determines to be relevant to the budget review process.

(b) Hospitals shall submit audited financial statements to the Board, within 30 days of such audited financial statements becoming finalized. This requirement begins with audited financial statements for 2023.

(c) The Board shall conduct reviews of each hospital's proposed budget based on the information provided pursuant to subsection (a) of this section.

(d) In connection with budget reviews, the Board shall do all of the following:

(1) Review utilization information.

(2) Consider the expenditure and revenue analysis for the previous year and the proposed expenditure and revenue analysis for the forthcoming year.

(3) Meet with hospitals to review and discuss their budget proposals for the forthcoming year.

(4) Review the hospital's investments in workforce development initiatives.

(5) Consider the salaries for the hospital's executive and clinical leadership and the hospital's salary spread, including a comparison to salaries in other states in the region.

(6) Offer the opportunity for the public to provide comment on hospital budgets and other aspects of hospital costs.

(e) A hospital's violation of the Board's standards and procedures shall be subject to enforcement under § 9954 of this title.

§ 9954. Approval or modification of hospital budget.

(a) The Board shall approve a hospital's budget as submitted or engage with the hospital in establishing and approving a modified budget for each hospital. A budget for a hospital must be approved as submitted or as modified by 90

81 days before the start of the hospital's fiscal year. Each hospital shall operate under the original or modified budget as
82 approved.

83 (b) Individual hospital budgets approved under this section shall:

84 (1) Adhere as closely to the spending benchmark as is reasonable given the hospital's financial position and
85 associated economic factors.

86 (2) Promote efficient and economic operations of the hospital.

87 (3) Maintain the hospital's ability to meet its financial obligations and provide quality care.

88 (c) The Board may not require a hospital budget to be modified if the budget submitted reflects growth equal to or
89 less than the spending benchmark.

90 (d) If the Board and a hospital cannot agree on a modified budget, the Board may impose a modified budget and
91 shall issue a written decision enumerating the reasons why the Board's modified budget will satisfy the factors under
92 subsection (b) of this section.

93 (e) The Board may, upon application, adjust a budget established under this section during the fiscal year upon
94 demonstration of need based on exceptional or unforeseen circumstances.

95 (f) The Board may request, and a hospital shall provide, information determined by the Board to be necessary to
96 determine whether the hospital is operating within a budget established under this section.

97 § 9955. Appeal from a final decision of the Board.

98 (a) A hospital affected by any final order made by the Board may appeal from such order to the Superior Court
99 within 30 days from the date upon which such order is served. The appeal shall be filed with the Prothonotary of the
100 Superior Court and the summons in the appeal shall be served upon the Chair of the Board and the Secretary of the
101 Department of Health and Social Services, either personally or by certified mail.

102 (b) The appeal shall be based upon the record created before the Board.

103 (c) The scope of review before the Court shall be that the Board's findings shall be upheld if they are supported by
104 sufficient evidence, free of error of law, and not arbitrary or capricious. When factual issues are reviewed the Court shall
105 take due account of the presumption of official regularity and the specialized competence of the Board.

106 § 9956. Enforcement.

107 (a) A hospital that knowingly fails to provide information or adhere to standards, procedures, and deadlines related
108 to the budget review process as required by this subchapter or a rule or regulation promulgated thereunder may be assessed
109 a civil penalty of up to \$500,000.

(b) In the event that a hospital fails to maintain its budget in the preceding year, the Board may do any of the following:

(1) Factor the amount of net revenues exceeding the budgeted amount of net revenues into the hospital's budget for the forthcoming year.

(2) Allow the hospital to retain surplus funds if the surplus was achieved while the hospital stayed within its budget.

(3) Allow the hospital to retain surplus funds generated primarily by volume in excess of what was projected for the year in question.

(4) Impose a penalty on the hospital in an amount up to the net revenues exceeding the budgeted amount of net revenues. The penalty shall be paid into a Community Health Fund, hereby created, and held in the Office of the Treasurer. The State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board and credit interest to the Fund monthly consistent with the rate established by the Cash Management Policy Board.

(c) An order under subsection (a) or paragraph (b)(4) of this section may be issued only after a hospital has received notice and an opportunity to be heard by the Board.

§ 9957. Open meetings; records subject to disclosure.

(a) The Board is a public body, subject to the open meetings requirement of § 10004 of Title 29; provided, however, that the Board may schedule and conduct private meetings with hospitals when the content of the discussion will include information that is commercial or financial information of a privileged or confidential nature.

(b) (1) Except as provided under paragraph (b)(2) of this section, records submitted by hospitals to the Board are not public records for purposes of the Freedom of Information Act.

(2) The following are public records and shall be posted on the Board's or the Commission's website:

a. Original and modified budgets.

b. Spending and revenue data.

c. Utilization information.

Section 3. Amend Chapter 99, Title 16 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9958. Temporary pricing measures for calendar year 2025.

For the calendar year 2025, a hospital may not charge any payer, insurer, or public program more than 250% of the cost of care charged to the Medicare program for any service.

140 Section 4. Sections 1 and 2 of this Act are effective upon enactment, and hospital budget reviews under § 9953 of
141 Title 16 shall commence in 2025 for calendar year 2026 hospital budgets.
142 Section 5. Section 3 of this Act is effective upon enactment and sunsets on January 1, 2026, unless otherwise
143 provided by a subsequent act of the General Assembly.

SYNOPSIS

This Act creates the Diamond State Hospital Cost Review Board, which will be responsible for review and approval of annual hospital budgets beginning with budgets for calendar year 2026. Hospital budgets established under this process are required to adhere as closely to the spending benchmark as is reasonable given the hospital's financial position and associated economic factors, promote efficient and economic operations of the hospital, and maintain the hospital's ability to meet its financial obligations.

As a temporary measure until the Board begins operations, hospitals are required to charge no more than 250% of Medicare costs to any payer for hospital services in calendar year 2025.

This Substitute Bill differs from the original House Bill No. 350 as follows:

It provides additional detail regarding the operation of the Board, budget modifications, and provides an appeal right to the Superior Court.

It changes the application of the definition of hospital to exclude psychiatric facilities.

Because hospitals may have different fiscal years, the deadline for the Board to issue a final decision on a budget is changed to 90 days before the start of a hospital's fiscal year rather than a fixed date.

The confidentiality provisions for hospital records have been updated.

Technical corrections have been made.