SPONSOR: Rep. Longhurst & Rep. Harris & Sen. Townsend

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 2
FOR
HOUSE BILL NO. 350
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 1

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:

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

§ 9903. Duties and authority of the Commission.

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

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

Subchapter VI. Hospital Budget Review

§ 9951. Definitions.

As used in this subchapter:

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

(2) "Core CPI" means as defined in § 2503 of Title 18.

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

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

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

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

(7) "Purchaser" means any governmental entity or unit, which offers coverage on a self-insured basis, or any employer that is self-insured within the definitions of the Employee Retirement Income Security Act (ERISA).

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Released: 05/21/2024 04:55 PM

(8) “Spending benchmark” means as defined in § 9903 of this title.

§ 9952. Diamond State Hospital Cost Review Board.

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

(b) (1) The Board consists of 8 members as follows:

a. Seven voting members, including at least 1 member from each county, appointed by the Governor and confirmed by the Senate.

b. The President and CEO of the Delaware Healthcare Association, who shall serve as a non-voting member.

(2) The members appointed by the Governor shall serve a 4-year term, except that the initial members may be appointed for a term less than 4 years to create staggered terms. A member shall continue to serve on the Board until the member’s successor has been appointed and qualified. A member may serve more than 1 term.

(3) The Governor shall designate a member appointed by the Governor to serve as Chair of the Board, who shall serve as Chair at the pleasure of the Governor.

(c) All members of the Board appointed by the Governor 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) The members of the Board appointed by the Governor shall each receive a salary as appropriated in the Budget Appropriation Bill, to be paid in equal monthly payments by the Treasurer of the State.

(f) (1) Four voting members constitutes a quorum of the Board and, except as set forth in paragraph (f)(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 voting members of the Board:

a. Approval of a hospital budget.

b. Revision of a hospital budget.

c. An enforcement action under § 9957 of this title.

d. Approval of a performance improvement plan under § 9954 of this title.

(g) 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. Submission and analysis of hospital financial information.

(a) Hospitals shall annually submit to the Board any of the following information required by the Board under rules, regulations, and guidance promulgated under this subchapter:

(1) The hospital's operating budget for the forthcoming year, including expenditures and revenues, redlined to reflect increases and changes from the previous year.

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

(3) Financial information, including costs of operations, revenues, assets, liabilities, rates, charges, units of service, and wage, salary, and other labor costs for each service line and budget category.

(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 and purchasers.

(9) 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 and determine whether the hospital has satisfied the State's health care spending policy directives, including the health care spending benchmark and the annual rate filing cost containment requirements under § 2503 of Title 18.

(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 is subject to enforcement under § 9957 of this title.

§ 9954. Performance improvement plans.

(a) Beginning in 2026, if the Board determines that a hospital's actual annual cost growth has exceeded the spending benchmark, the Board shall send the hospital notice of that finding and may require the hospital to submit a performance improvement plan within 45 days.

(b) The Board shall promulgate additional regulations and written guidance about the performance improvement plan process, including discretionary factors that the Board may consider in deciding whether or not a performance improvement plan is required, taking into account a hospital's financial condition, any ongoing strategies or investments that the healthcare entity is implementing to improve patient access and quality, future long-term efficiency, population growth in the hospital service area, and such other factors as the Board may determine to be relevant.

(c) A proposed performance improvement plan submitted by a hospital must identify the causes of the hospital's cost growth and must include specific strategies, adjustments, and action steps the hospital proposes to implement to improve cost performance. The proposed performance improvement plan must include specific identifiable and measurable expected outcomes and a timetable for implementation. The timetable for a performance improvement plan may not exceed 12 months.

(d) If the Board determines that the performance improvement plan is unacceptable or incomplete, the Board shall provide written guidance explaining the criteria that have not been met and may provide an additional time period, up to 30 calendar days, for resubmission. If the hospital and the Board are unable to agree to a performance improvement plan, the Board may require the hospital to submit to the budget approval process under § 9955 of this title.

(e) If the Board determines that the performance improvement plan is acceptable, the Board shall notify the hospital of the approval of the plan. A hospital implementing an approved performance improvement plan may be subject to additional reporting requirements and compliance monitoring, at the discretion of the Board.

(f) At the conclusion of the timetable established in the performance improvement plan, or at an earlier time determined by the Board, the hospital shall report to the Board regarding the progress or outcome of the performance

improvement plan. If the Board finds that the performance improvement plan has not been successful, the Board may do one of the following:

(1) Extend the implementation timetable of the existing performance improvement plan.

(2) Require the hospital to submit a new performance improvement plan.

(3) Require the hospital to participate in the budget approval process under § 9955 of this title.

(g) When determining whether to approve a performance improvement plan or an amendment thereto under this section the Board shall consider whether the proposal will be effective in achieving the factors set forth under § 9955(c) of this title.

§ 9955. Approval or modification of hospital budget.

(a) If a hospital has undertaken a performance improvement plan under § 9954 of this title and failed to show sufficient progress or has failed to submit an acceptable performance improvement plan under § 9954 of this title, the hospital may be required to submit the next fiscal year's budget to the Board for review and approval.

(b) When a hospital budget is submitted for approval under this section, the Board shall approve a hospital's budget as submitted or engage with the hospital in establishing and approving a modified budget. A budget must be approved as submitted or as modified by 90 days before the start of the hospital's fiscal year. Each hospital shall operate under the original or modified budget as approved.

(c) Individual hospital budgets approved under this section shall:

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

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

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

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

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

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

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

(h) When a hospital has successfully met its budget goals for 3 consecutive years, the hospital may no longer be required to participate in the budget approval process under this section.

§ 9956. Appeal from a final decision of the Board.

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

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

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

§ 9957. Enforcement.

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

(b) In the event that a hospital subject to budget approval under § 9955 of this title fails to maintain its approved budget, 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.

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

§ 9958. 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.

(c) (1) The Board shall annually convene at least 1 public hearing per hospital subject to this subchapter to allow the hospital to present its annual budget, and performance improvement plan where applicable, to the Board and engage in dialogue with the Board regarding questions, concerns, or additional information necessary to determine whether the hospital's actual and projected annual spend growth is in line with the spending benchmark, other health care spending directives, and other discretionary factors that the Board may consider as promulgated in regulation.

(2) The Board may schedule more than 1 hospital for the same public hearing required under paragraph (c)(1) of this section, but each hospital must be allowed at least 1 hour for its presentation.

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

§ 9959. Temporary pricing measures for calendar year 2025 and 2026.

(a) Except as provided in subsection (c) of this section, for calendar years 2025 and 2026, a hospital may not charge any payer, purchaser, insurer, or public program an amount that exceeds the greater of 2% or Core CPI plus 1% over rates from the previous year.

(b) A hospital may not charge or collect from a patient or any other individual or entity any amount that exceeds the amount permitted to be billed under subsection (a) of this section for any service.

(c) This section does not apply to a hospital that serves less than 5% Medicare eligible patients per year or a hospital that derives 45% or more of its revenue from Medicaid or uninsured patients.

Section 4. Sections 1 and 2 of this Act are effective upon enactment, and hospitals, in accordance with regulations and guidance promulgated by the Board, are required to begin submission of budget information under § 9953 of Title 16 in 2025 for the 2026 budget year. The Board may require the submission of more than 1 year of historical financial information in its initial year of operation. The Board may not require the submission of a performance improvement plan under § 9954 of Title 16 until 2026.

Section 5. Section 3 of this Act is effective upon enactment and sunsets on January 1, 2027, unless otherwise provided by a subsequent act of the General Assembly.

Section 6. The Delaware Economic and Financial Advisory Council (DEFAC) Health Care Spending Benchmark Subcommittee (Subcommittee) shall review the spending benchmark methodology, as authorized by § 9903(k) of Title 16, and consider incorporating healthcare and macroeconomic trends into the benchmark methodology. The Subcommittee shall submit any recommendations to DEFAC by December 31, 2024.