SPONSOR: Sen. Townsend & Sen. Sokola & Sen. Lockman &
Rep. Harris & Rep. Minor-Brown & Rep. Osienski

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 213
AS AMENDED BY
SENATE AMENDMENT NO. 1

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

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

Section 1. Amend § 9951, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9951. Definitions.

As used in this subchapter:

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

(5) "Manual" means the Uniform Reporting Manual for Budget Submissions to be adopted by regulation by the Board to ensure the consistency of information provided by hospitals under this subchapter.

(6) "Meaningful Cost Containment Arrangement" means, with respect to the applicable benchmark compliance plan year, any of the following:

a. A Medicare or Medicaid Global Budget Arrangement.

b. A Substantial Financial Downside Risk Arrangement.

c. Any other qualifying written agreement approved by the Board on application of a hospital under § 9953(d)(7)c. of this title.

(7) "Medicare or Medicaid Global Budget Arrangement" means a written agreement among Medicare, Medicaid, or other applicable federal or state governmental payer authorities or public programs; a hospital, health system or affiliate; and, as applicable, any necessary third-party payers that is designed to cover the projected costs of hospital-based care for a defined patient population covering at least 50% of the hospital's historical patient volumes and representing at least 3% of the hospital's net patient revenue at risk for the applicable benchmark compliance plan

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year, reflecting a historical baseline calculation adjusted for inflation, demographic shifts, risk adjustment, and other factors for a defined performance period.

(12)a. "Substantial Financial Downside Risk Arrangement" means, for the applicable benchmark compliance year, 1 or more written agreements between a payer, purchaser, or insurer and a hospital, health system, or affiliate for providing health care services to a defined patient population that provide all of the following:

1. That total annual costs are not less than 3% of the hospital's net patient revenue.

2. That a minimum of 10% of the total annual costs for the defined patient population are at risk to the hospital.

3. That, for any hospital having an annual operating budget greater than $1,000,000,000, a minimum of 5,000 covered patient lives are subject to the agreement.

b. The Board may, by regulation, increase the amounts or percentages set forth in paragraphs (12)a.1., a.2., or a.3. of this section.

(13) "Total annual costs" means the aggregate yearly healthcare costs of a defined patient population in a Meaningful Cost Containment Arrangement in the applicable benchmark compliance year.

Section 2. Amend § 9952, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9952. Diamond State Hospital Cost Review Board.

(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.~~a. An enforcement action under § 9957 of this title.

b. Adoption of a regulation under this subchapter.

c. Adoption of written findings of fact and determinations under § 9953(d)(7) of this title.

d. Approval of a ~~performance improvement plan~~ benchmark compliance 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.~~ title and a Manual providing uniform definitions and submission criteria for the budget reporting categories listed in § 9953 of this title.

Section 3. Amend § 9953, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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, including the Manual:

(1) The hospital's ~~operating budget for the forthcoming year, including~~ expenditures and ~~revenues,~~ revenues for the most recently completed fiscal year, including the financial information described in paragraph (a)(2) of this section, redlined to reflect increases and changes from the ~~previous year.~~ fiscal year immediately preceding such fiscal year.

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

(2)~~(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.~~ all of the following:

a. Costs of operations.

b. Revenues.

c. Assets.

d. Liabilities.

e. Rates and charges in accordance with paragraph (a)(5) of this section.

f. Labor costs by units of service and budget category.

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

(4)~~(5)~~ Utilization information.

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

~~(7) Projected 3-year capital budget.~~

~~(8)~~(5) ~~Contract information with public and private payers and purchasers.~~ Information about payments by payers and purchasers consistent with information subject to public disclosure required by 45 C.F.R. Part 180.

(6) A narrative regarding the budget reporting categories of this subsection, outlining the changes in the year-over-year results and the actions the hospital has taken and will take in the coming year to adhere to the health care spending benchmark.

(7)~~(9)~~ Other information the Board determines to be relevant to the ~~budget review process.~~ Board's obligations under this section, including information relevant to any determination by the Board under paragraph (d)(7)c. of this section.

(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.~~ [Repealed.]

(d) ~~In connection with budget reviews, the~~ 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.~~ Analyze and consider the other information submitted by the hospital under subsections (a) and (b) of this section.

(3) Meet with ~~hospitals~~ each hospital to review and discuss ~~their~~ each hospital's budget ~~proposals for the forthcoming year.~~ information.

(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.~~ whose compensation is publicly disclosed in the hospital's Internal Revenue Service Form 990 filings.

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

(7) Issue written findings of fact and determinations as to any of the following:

a. Whether a hospital has satisfied the State's health-care spending policy directives, including, as applicable, the health-care spending benchmark and the annual rate filing cost containment requirements under § 2503 of Title 18.

b. Whether a hospital has satisfied the elements of the hospital's benchmark compliance plan, if applicable.

c. On the application of a hospital, whether the hospital is participating in a Meaningful Cost Containment Arrangement and therefore is not subject to the benchmark compliance plan process under § 9954 of this title for the applicable benchmark compliance plan year.

1. The application must include a written attestation from the hospital's chief executive officer of all of the following:

A. That the hospital is not in breach of any material provision of the Meaningful Cost Containment Arrangement.

B. That the hospital has not received a waiver of any penalties during the term of the Meaningful Cost Containment Arrangement.

C. That the penalties and risk provisions of the Meaningful Cost Containment Arrangement have not been modified during the term of the Meaningful Cost Containment Arrangement.

2. If during the applicable benchmark compliance year the hospital breaches any material provision of, receives a waiver of any penalties under, or negotiates new terms of the Meaningful Cost Containment Arrangement, the hospital shall notify the Board.

(e) A hospital's violation of the Board's standards and procedures is subject to enforcement under § 9957 of this title.

(f)(1) The Board may, by a written report, make policy recommendations to the Delaware Health Care Commission, Senate Health & Social Services Committee, and the House Health & Human Development Committee regarding how to better align hospital budgets with the benchmark, while promoting efficient and economic operations and maintaining the ability of hospitals to meet hospitals' financial obligations and to provide quality care.

(2) If the Board submits a report under paragraph (f)(1) of this section, the Board shall provide a copy to the Director and Librarian of the Division of Legislative Services.

Section 4. Amend § 9954, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9954. ~~Performance improvement plans.~~ Benchmark compliance plans.

(a)(1) Beginning in ~~2026,~~ 2027, and except as provided in paragraph (a)(2) of this section, 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~~ benchmark compliance plan within 45 days.

(2) A hospital that the Board determines is participating in a Meaningful Cost Containment Arrangement, and for which the hospital's chief executive officer has provided a written attestation in compliance with § 9953(d)(7)c.1. of this title, is not subject to this section for the applicable benchmark compliance plan year.

(b) The Board shall promulgate additional regulations and written guidance about the ~~performance improvement plan~~benchmark compliance plan process, including discretionary factors that the Board may consider in deciding whether ~~or not a performance improvement plan~~ a benchmark compliance 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~~ benchmark compliance 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~~ benchmark compliance plan must include specific identifiable and measurable expected outcomes and a timetable for implementation. The timetable for a ~~performance improvement plan~~ benchmark compliance plan may not exceed 12 months.

(d) If the Board determines that the ~~performance improvement plan~~ benchmark compliance 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.~~ The hospital shall address each deficiency noted by the Board in the Board's written guidance, and resubmit the hospital's benchmark compliance plan to the Board, no later than 30 days from the date of the hospital's receipt of the Board's written guidance.

(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.~~ [Repealed.]

(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 1 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.~~ [Repealed.]

(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.~~ [Repealed.]

Section 5. Amend § 9955, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9955. Approval or modification of hospital budget. [Repealed.]

~~(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.~~

Section 6. Amend § 9957, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ under this subchapter, or a rule or regulation promulgated ~~thereunder~~ under this subchapter, 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.~~ [Repealed.]

(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.

Section 7. Amend § 9958, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9958. Open meetings; records subject to disclosure.

(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,~~ financial information required under § 9953 of this title and any benchmark compliance plan required under § 9954 of this title 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.

Section 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.