THE FINAL NEW YORK STATE BUDGET IS APPROVED: HERE ARE THE MAJOR IMPACTS FOR HOSPITALS, NURSING FACILITIES, AND OTHER HEALTH CARE PROVIDERS

Hodgson Russ Healthcare Alert
May 14, 2024

On April 20, 2024, Governor Kathy Hochul approved the $237 billion New York State Budget for fiscal year 2025 ("Budget"). The Budget includes new legislation to increase Medicaid payments for certain facilities, creates a new Healthcare Safety Net Transformation Program for hospitals, imposes new requirements for patient consent forms, and implements protections for patients regarding medical debt. The Budget's major healthcare provisions are described below.

1. Skilled Nursing Facility Rates
    1. Under the Budget, and on and after April 1, 2024, the case mix adjustment from the operating component of the skilled nursing rates will freeze at the July 2023 rates during the development and until the full implementation of a case mix methodology using the CMS Patient Driven Payment Model.
    2. Commencing April 1, 2024, the capital cost component of patient rates for patients who are eligible for payments made by state government entities will be reduced by an additional 10% for facilities, other than patients in pediatric residential facilities.
2. Increase in Medicaid Payment Rates for Nursing Facilities, Hospitals, and Assisted Living Providers
    1. For the period April 1, 2024, through March 31, 2025, Medicaid payments shall be increased by an aggregate amount of up to: (i) $285 million for nursing facilities; (ii) $525 million for hospitals; and (iii) $15 million for assisted living programs.
    2. The increases are subject to further approvals by the commissioner of health and the director of the budget and federal financial participation from the Centers for Medicare and Medicaid Services.
3. Healthcare Safety Net Transformation Program for Safety Net Hospitals
    1. Under the Budget, the program is designed to provide safety net hospitals with grants for new or existing capital funding, or operating subsidies or both to support improvements to access, equity, quality, and outcomes while

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increasing the financial sustainability of safety net hospitals.

2. In order to apply for grants from the program, safety net hospitals must jointly file a Healthcare Safety Net Transformation Program application with at least one partner organization.
3. The legislation tasks the commissioner with developing such an application for organizations use, which will, among other things, analyze how the resources would help them achieve the program goals of improving the safety net hospitals financial outlook and improving health outcomes for the communities it serves.
    1. To qualify as a safety net hospital, the hospital must: (1) be either a public hospital, a rural emergency hospital, critical access hospital, or sole community hospital; (2) have at least 30% of its inpatient discharges made-up of Medicaid eligible individuals, insured individuals, or those individuals dually enrolled in both Medicaid and Medicare, ("Medicaid dually eligible individuals") and at least 35% of its outpatient visits made up of Medicaid eligible individuals, uninsured individuals, or Medicaid dually eligible individuals; (3) serve at least 30% of the residents of a county or a multi county area who are Medicaid eligible individuals, uninsured individuals, or Medicaid dually eligible individuals; or (4) within the discretion of the commissioner, otherwise serve a "significant population" of Medicaid eligible individuals, uninsured individuals, or Medicaid dually eligible individuals.
    2. Partner organizations include but are not limited to:
        1. Health systems
        2. Hospitals
        3. Health plans
        4. Residential healthcare facilities
        5. Physician groups
        6. Community based organizations
        7. Other healthcare entities who can serve as partners in the transformation of the safety net hospital
4. Continued funding will depend on the hospital's implementation of the transformation plan and any associated progress. Failure to meet the plan's key milestones and/or goals can result in redirection of the funding.

4. <u>General Hospitals and Indigent Care Policies</u>
    1. The Indigent Care Pool ("ICP") is a program that provides funding to hospitals to assist in paying for the cost of care for low-income individuals. The pool is part of the larger Disproportionate Share Hospital ("DSH") Program run by the New York State Department of Health ("NYSDOH").
    2. In order for a general hospital to participate in the distribution of funds from the ICP, it must implement collection policies and procedures ("indigent care policies") utilizing a uniform financial assistance form developed by the NYSDOH.

3. Under the Budget, all general hospitals that do not participate in the indigent care pool must also utilize the NYSDOH uniform financial assistance form for determination of the hospital's provision of financial assistance. And a patient's immigration status cannot be an eligibility criterion for the purpose of determining financial assistance under the hospital's indigent care policies.
4. The Budget also prohibits a hospital from commencing a legal action related to the recovery of medical debt or unpaid bills against patients with incomes below 400% of the Federal Poverty Level ("FPL"), which is less than $60,240 per year for 2024.
5. Any legal action related to the recovery of medical debt or unpaid bills must be accompanied by an affidavit by the hospital's chief financial officer stating that the patient whom they are taking legal action against does not have an income below 400% of the FPL.

5. Separate Patient Consents for Treatment and Payment

1. The Budget amends the Public Health Law to require separate patient consents for treatment and payment for health care services. The Law now requires that "informed consent from a patient to provide any treatment, procedure, examination or other direct health care services shall be obtained separately from such patient's consent to pay for the services." Also, "consent to pay for any health care services by a patient shall not be given prior to the patient receiving such services and discussing treatment costs."
2. Consent is defined as an action which: "(i) clearly and conspicuously communicates the individual's authorization of an act or practice; (ii) is made in the absence of any mechanism in the user interface that has the purpose or substantial effect of obscuring, subverting, or impairing decision-making or choice to obtain consent; and (iii) cannot be inferred from inaction."
3. This provision could significantly change a health care provider's intake process since many providers may obtain a patient's consent for treatment and payment simultaneously and may utilize user interfaces like tablets or other devices that could impact or impair decision-making.

6. Medical Credit Cards and Medical Financial Products

1. The Budget's changes to the General Business Law were made to prohibit any hospital or health care provider to complete any portion of an application for medical financial products such as "medical credit cards and third-party medical installment loans" for the patient or otherwise arrange for or establish an application that is incomplete.
2. Under the amendments, hospitals or health care providers cannot require credit card reauthorizations nor require the patient to have a credit card on file prior to providing emergency or medically necessary medical services to patients.
3. The Law also requires hospitals and other health care providers to notify patients about the risks of paying for medical services with a credit card versus a medical credit card "issued under an open-end or closed end plan offered specifically for the payment of health care services, products, or devices."

4. These risks may include that by using a credit card the patient is not entitled to certain state or federal protections, such as those under 49-a of the New York State Public Health Law ("Article 49-a"). Article 49-a prohibits health care providers and any contracted collection agencies from reporting a patient's medical debt to a consumer reporting agency when that debt was incurred from charging a medical credit card. Similar protections are not applicable when patients incur medical debt via the use of a credit card.
5. The commissioner of health shall have the authority and sole discretion to set requirements for the contents of such notice.

7. Community Doula Expansion Program
    1. The Public Health Law also added a new Community Doula Expansion Program for eligible providers to receive funding in the performance of "recruitment, training, certification, supporting and/or mentoring of community-based doulas," who are certified to provide culturally sensitive pregnancy and childbirth education, early linkages to health care, and aids birthing persons in navigating other services and support that they may need to be healthy.
    2. Eligible providers are defined as those "community-based organizations providing for the recruitment, training, certification, supporting, and/or mentoring of community-based doulas that meet professionally recognized training standards, comply with applicable state law and regulations and shall be capable of providing congruent care," which means understanding and accommodating a patient's cultural preferences such as religious beliefs and rituals. Funding may be used for, but not limited to, "the administration, faculty recruitment and development, start-up costs and other costs incurred for providing recruitment, training, certification, supporting, and/or mentoring of community-based doulas." The Budget language includes that there shall be an emphasis on grants to eligible providers that specifically train, recruit, and employ doulas from historically vulnerable communities, and bilingual doulas. Information about the community doula expansion grant program will be posted on the NYSDOH website.

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