

CHAPTER 310 (SB 339)

AN ACT relating to hospitals and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

As used in this section and Sections 2 and 3 of this Act, unless the context otherwise requires:

- (1) *"Acute care hospital" means an acute care hospital, critical access hospital, or comprehensive physical rehabilitation hospital licensed under KRS Chapter 216B;*
- (2) *"Private psychiatric hospital" means a psychiatric hospital licensed under KRS Chapter 216B that is not a state mental hospital;*
- (3) *"State mental hospital" means a psychiatric hospital licensed under KRS Chapter 216B that is owned and operated by the Commonwealth; and*
- (4) *"University hospital" means a state university teaching hospital, owned and operated by either the University of Kentucky School of Medicine or the University of Louisville School of Medicine.*

Section 2. KRS 205.640 is amended to read as follows:

- (1) ~~For purposes of this section, "hospital" includes all hospitals licensed in this state to provide acute care, psychiatric care, and rehabilitative services.~~
- ~~(2)~~ The commissioner of Medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.
- ~~(2)~~~~(3)~~ The "Medical Assistance Revolving Trust Fund" (MART) shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.301 to 142.359 shall be deposited in the State Treasury ***and transferred on a quarterly basis to the Department for Medicaid Services for use as specified in this section***~~[to the credit of the fund]. All investment earnings of the fund shall be credited to the fund. Provider tax revenues collected in accordance with KRS 142.301 to 142.359 shall be used to fund the provisions of KRS 216.2920 to 216.2929 and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years. Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.~~
- (3) (a) ***Beginning in state fiscal year 2000-2001 and continuing annually thereafter,***~~(4)~~ ~~The "Medical Assistance Indigent Trust Fund" (MAIT) shall be established in the State Treasury for the purpose of receiving any funds transferred from the MART fund or from federal funds for the operation of the disproportionate share program established by the commissioner of Medicaid services in accordance with the provisions of subsection (2) of this section. All investment earnings of the fund shall be credited to the fund. Notwithstanding the provisions of KRS 48.500 and 48.600, the MAIT fund shall be exempt from any state budget reduction acts.~~
- ~~(5)~~ ~~An amount, necessary to result in a total fund of ninety three million dollars (\$93,000,000) for fiscal year 1998-99, and ninety four million dollars (\$94,000,000)~~

~~for fiscal year 1999-2000 including~~ provider tax revenues and *state and* federal matching funds~~, to the extent possible without exceeding Kentucky's federal disproportionate share hospital cap,~~ shall be *used to fund*~~[transferred from the MART fund or from federal funds to the MAIT fund for the purpose of funding]~~ the disproportionate share program established by the commissioner of Medicaid services. *Disproportionate share funds shall be divided into three (3) pools for distribution as follows:*

1. *Forty-three and ninety-two hundredths percent (43.92%) of the total disproportionate share funds shall be allocated to acute care hospitals;*
2. *Thirty-seven percent (37%) of the total disproportionate share funds shall be allocated to university hospitals; and*
3. *Nineteen and eight hundredths percent (19.08%) of the total disproportionate share funds shall be allocated to private psychiatric hospitals and state mental hospitals, with the allocation to each respective group of hospitals established by the biennial budget.*

If, in any year, one (1) or both university hospitals fail to provide state matching funds necessary to secure federal financial participation for the funds allocated to university hospitals under this subsection, the portion of the funding allocation applicable to the hospital or hospitals that fail to provide state matching funds shall be made available to acute care hospitals.

(b)~~(a)~~ ~~The MART~~~~[MAIT]~~ fund shall be used to compensate *acute care hospitals, private psychiatric hospitals, and university* hospitals qualifying for the disproportionate share program for *uncompensated* service provided by the hospitals to~~[Medicaid recipients beyond the covered days and]~~ individuals and families with total annual incomes and resources up to one hundred~~[fifty]~~ percent (*100%*)~~[(150%)]~~ of the federal poverty level, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for Health Services in accordance with this section.

(c)~~(b)~~ An individual hospital shall receive distributions~~[from the MAIT fund]~~ for indigent care provided by that hospital *that*~~[if the care]~~ meets the guidelines established in *paragraph*~~[paragraphs]~~ (a)~~[and (b)]~~ of this subsection~~[and is documented to the Department for Medicaid Services, as reimbursed at the hospital's Medicaid rate; provided, however, that the Medicaid rate shall not exceed the Medicare upper limit].~~

(d)~~(c)~~ *Distributions to acute care and private psychiatric hospitals shall be made as follows:*

1. *The department shall calculate an indigent care factor for each hospital annually. The indigent care factor shall be determined by calculating the percentage of each hospital's annual indigent care costs toward the sum of the total annual indigent care costs for all hospitals within each respective pool. For purposes of this paragraph, "indigent care costs" means the hospital's inpatient and outpatient care as reported to the department multiplied by the hospital's Medicaid rate, or at a rate determined by the department in administrative regulation that, when multiplied by the hospital's reported indigent care, is equivalent to the amount that would be payable by the department under the fee-for-service Medicaid program for the hospital's total reported indigent care.*

2. *Each hospital's annual distribution shall be calculated by multiplying the hospital's indigent care factor by the total fund allocated to all hospitals within the respective pool under paragraph (a) of this subsection.* ~~[to hospitals from the MAIT fund shall be made on a quarterly basis. One fourth (1/4) of each share established pursuant to paragraphs (a) and (b) of this subsection shall be the maximum amount available for distribution at the close of each quarter. The amount of distributions to each hospital shall be determined as follows:]~~
- a. ~~[1.]~~ Hospitals shall report *uncompensated* care provided to *qualified* ~~[Medicaid recipients beyond the covered days and to]~~ individuals and families with total annual incomes and resources up to one hundred ~~[fifty]~~ percent ~~(100%)~~ ~~(150%)~~ of the federal poverty level, including care rendered to indigent persons age twenty-two (22) to sixty-four (64) in a psychiatric hospital to the Cabinet for Health Services on a quarterly basis. **However, all data for care provided during the state fiscal year shall be submitted no later than August 15 of each year.** ~~[The first report shall be due on or before October 20, 1994, and shall document care provided for the quarter beginning July 1, and ending September 30. Subsequent reports shall be due on or before January 20, April 20, July 20, and October 20, of each year thereafter.]~~
- b. *The department shall use indigent care data for services delivered from October 1, 1998, through September 30, 1999, as reported by hospitals to calculate each hospital's indigent care factor for state fiscal year 20002001. For state fiscal year 2001-2002 and each year thereafter, the department shall use data reported by the hospitals for indigent care services rendered for the twelve (12) month period ending June 30 of each year as reported by the hospital to the department by August 15 in calculating each hospital's indigent care factor. The hospital shall, upon request by the Cabinet for Health Services, submit any supporting documentation to verify the indigent care data submitted for the calculation of an indigent care factor and annual payment* ~~[2. — Within sixty (60) days of the due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Health Services, Department for Medicaid Services shall review all reports filed and shall determine the maximum compensation authorized for each hospital filing reports, with payment for documented qualifying services provided at the hospital's Medicaid rate as established annually by the Department of Medicaid Services].~~
- c. *By September 1 of each year, the department shall calculate a preliminary indigent care factor and preliminary annual payment amount for each hospital, and shall notify each hospital of their calculation. The notice shall contain a listing of each hospital's indigent care costs, their indigent care factor, and the estimated annual payment amount. Hospitals shall notify the department by September 15 of any adjustments in the department's preliminary calculations. The department shall make adjustments identified by hospitals and shall*
make a final determination of each hospital's indigent care factor and annual payment amount by October 1 ~~[3. — Within ninety (90) days of the~~

~~due date of the reports established in subparagraph 1. of this paragraph, the Cabinet for Health Services, Department for Medicaid Services shall remit to each hospital the amount determined to be due pursuant to the provisions of subparagraph 2. of this paragraph. If the total amount due all hospitals entitled to compensation in any quarter exceeds the funds available in any quarter, the distribution received by each hospital shall be proportionately reduced. If the total amount due all hospitals entitled to compensation in any quarter is less than the funds available for distribution in that quarter, the excess funds may be carried forward to satisfy future claims}.~~

- (e) For fiscal year 2000-2001 and continuing annually thereafter, the department shall issue to each hospital one (1) lump sum payment on October 15, or later as soon as federal financial participation becomes available, for the disproportionate share funds available during the corresponding federal fiscal year*~~{(d) — For purposes of this section, the Medicaid rate for hospitals with less than two hundred (200) licensed acute care beds means the cost of providing indigent care services as calculated by the department by applying each hospital's cost to charge ratio to allowable indigent charges. By July 1 of each year, the Department for Medicaid Services shall calculate the cost to charge ratio for each hospital by dividing the hospital's total allowable operating expenses by the hospital's total gross patient charges}.~~
- (4) Notwithstanding any other provision to contrary, total annual disproportionate share payments made to state mental hospitals, university hospitals, acute care hospitals, and private psychiatric hospitals in each state fiscal year shall be equal to the maximum amount of disproportionate share payments established under the Federal Balanced Budget Act of 1997 and any amendments thereto. Disproportionate share payments shall be subject to the availability of adequate state matching funds and shall not exceed total uncompensated costs.*
- (5)~~{(6)}~~ Hospitals receiving reimbursement~~{ from the MAIT fund}~~ shall not bill patients for services submitted for reimbursement under this section and Section 3 of this Act. Services provided to individuals who are eligible for medical assistance or the Kentucky Children's Health Insurance Program do not qualify for reimbursement under this section and Section 3 of this Act. Hospitals shall make a reasonable determination that an individual does not qualify for these programs and shall request the individual to apply, if appropriate, for medical assistance or Kentucky Children's Health Insurance on forms supplied by and in accordance with procedures established by the Department for Medicaid Services. The hospital shall document any refusal to apply and shall inform the patient that the refusal may result in the patient being billed for any services performed. The hospital shall not be eligible for reimbursement if the patient was eligible for medical assistance or Kentucky Children's Health Insurance and did not apply. Hospitals receiving reimbursement under this section and Section 3 of this Act shall not bill patients for services provided to patients not eligible for medical assistance with family incomes up to one hundred~~{ fifty}~~ percent *(100%)*~~{(150%)}~~ of the federal poverty level.*
- (6)~~{(7)}~~ The secretary of the Cabinet for Health Services shall promulgate administrative regulations necessary, pursuant to KRS Chapter 13A, for the administration and implementation of this section.*

~~(7)(8)~~ All hospitals receiving reimbursement *under this section and Section 3 of this Act* ~~from the MAIT fund~~ shall:

- (a) Display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay."; *and*
- (b) Accept benefits of state health insurance coverage described in KRS 18A.229 and KRS 42.800 to 42.825~~;~~
- (c) ~~Provide to Medicaid recipients any additional days of coverage per hospital stay, based on medical necessity determined in the usual manner, without responsibility for payment for such days of care accruing to the patient or the Medicaid program; and~~
- (d) ~~Collect and report to the department data on the number of indigent patient days provided pursuant to this section, including additional days of coverage for Medicaid recipients. The cabinet shall annually, no later than July 1, compile a report for the Governor and the Legislative Research Commission on the implementation of this section.~~

SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *Disproportionate share funds paid to acute care hospitals and private psychiatric hospitals for state fiscal year 1999-2000 shall not exceed one hundred thirty-one million fourteen thousand nine hundred fifty dollars and thirty-one cents (\$131,014,950.31). Within forty-five (45) days following the effective date of this Act, acute care hospitals shall be paid the remaining balance of disproportionate share funds available under the federal fiscal year 2000 disproportionate share cap. Payments shall be calculated as follows:*
 - (a) *Forty-six percent (46%) of the available disproportionate share funds shall be allocated to acute care hospitals having one hundred (100) or more inpatient days attributable to Medicaid patients who were hospitalized over fourteen (14) days during the period October 1, 1998, through September 30, 1999, as reported to the department. Each hospital shall receive a lump sum payment to be distributed as follows:*
 - 1. *The department shall calculate the percentage that each acute care hospital's indigent care costs constitutes of the sum of total indigent care costs for all acute care hospitals in this category. For purposes of this subsection, "indigent care costs" means the hospital's inpatient and outpatient care delivered from October 1, 1998, through September 30, 1999, to persons not eligible for medical assistance with family incomes up to one hundred fifty percent (150%) of the federal poverty level, as reported to the department, multiplied by the hospital's inpatient Medicaid rate.*
 - 2. *Each acute care hospital's distribution shall be calculated by multiplying the acute care hospital's indigent care percentage by the total disproportionate share funds allocated to all hospitals within this group less the minimum payment adjustment required under paragraph (c) of this subsection.*
 - (b) *Fifty-four percent (54%) of the available disproportionate share funds shall be allocated to acute care hospitals having less than one hundred (100) inpatient days attributable to Medicaid patients who were hospitalized over fourteen (14) days during*

the period October 1, 1998, through September 30, 1999, as reported to the department.

1. *The department shall calculate the percentage that each acute care hospital's indigent care costs constitutes of the sum of total indigent care costs for all acute care hospitals in this category. For purposes of this subsection, "indigent care costs" means a hospital's inpatient and outpatient care delivered from October 1, 1998, through September 30, 1999, to persons not eligible for medical assistance with family incomes up to one hundred fifty percent (150%) of the federal poverty level, as reported to the department, multiplied by the hospital's inpatient Medicaid rate.*
 2. *Each hospital's distribution shall be calculated by multiplying the hospital's indigent care percentage by the total disproportionate share funds allocated to all hospitals within this group less the minimum payment adjustment required under paragraph (c) of this subsection.*
- (c) *The payment made to each hospital under paragraphs (a) and (b) of this subsection shall be at least equal to one hundred fifty thousand dollars (\$150,000) but no greater than the hospital's actual indigent care costs reported to the department for services rendered to persons who met the program requirements for eligibility from July, 1999, through March, 2000, that were not reimbursed under the disproportionate share program.*
- (2) *If federal law governing disproportionate share hospital payments changes, the Department for Medicaid Services shall have authority to promulgate administrative regulations in accordance with KRS Chapter 13A to comply with the changes.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of law to the contrary, if the Federal Health Care Financing Administration issues a final regulation establishing an outpatient Medicare prospective payment system for hospitals that requires that an outpatient health facility operated by the hospital be under the same license as the hospital to achieve providerbased status, the cabinet shall, at the hospital's request, issue a new license to a hospital that owns and operates an existing or newly established outpatient health facility that lists each location operated by the hospital.*
- (2) *Any outpatient health facility listed on the hospital's license under subsection (1) of this section shall:*
 - (a) *Comply with the applicable licensure regulations that pertain to the type of health services provided; and*
 - (b) *Prior to the establishment of a health facility, the operation of a health facility, or the provision of health services or the addition of a health service at a location other than the hospital's main campus, obtain a certificate of need if a certificate of need would otherwise be required in the absence of subsection (1) of this section. Licensure of the outpatient health facility or service under the same license as the hospital pursuant to subsection (1) of this section shall not eliminate the requirement for a certificate of need.*

Section 5. Whereas the burden of uncompensated and undercompensated care is increasing on a daily basis upon hospitals in the Commonwealth and the financial viability of hospitals is at stake, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 4, 2000