CHAPTER 90

(SB 280)

AN ACT relating to health facilities.

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

➔Section 1. KRS 205.6405 is amended to read as follows:

As used in KRS 205.6405 to 205.6408:

(1) "Assessment" means the hospital assessment authorized by KRS 205.6406;

(2) "Commissioner" means the commissioner of the Department for Medicaid Services;

(3) "Department" means the Department for Medicaid Services;

(4) "Excess disproportionate share taxes" means any excess provider tax revenues collected under KRS 142.303 that are not needed to fund the state share of hospital disproportionate share payments under KRS 205.640 due to federal disproportionate share allotments being reduced and limited to the portion of provider tax revenues collected under KRS 142.303 necessary to fund the state share of the difference between the unreduced disproportionate share allotment and the reduced disproportionate share allotment;

(5) "Intergovernmental transfer" means any transfer of money by or on behalf of a public agency for purposes of qualifying funds for federal financial participation in accordance with 42 C.F.R. sec. 433.51;

(6) "Long-term acute hospital" means an in-state hospital that is certified as a long-term care hospital under 42 U.S.C. sec. 1395ww(d)(1)(B)(iv);

(7) "Managed care" means the provision of Medicaid benefits through managed care organizations under contract with the department pursuant to 42 C.F.R. sec. 438;

(8) "Managed care gap" means:

(a) For hospital inpatient services, the difference between the maximum actuarially sound amount that can be included in managed care rates for hospital inpatient services provided by qualifying hospitals and the amount of total payments for hospital inpatient services provided by qualifying hospitals paid by managed care organizations. For purposes of the managed care gap, total payments shall exclude payments established under KRS 205.6405 to 205.6408; and

(b) For hospital outpatient services, the difference between the maximum actuarially sound amount that can be included in managed care rates for hospital outpatient services provided by qualifying hospitals and the amount of total payments for hospital outpatient services provided by qualifying hospitals paid by managed care organizations. For purposes of the managed care gap, total payments shall exclude payments established under KRS 205.6405 to 205.6408;

(9) "Managed care organization" means an entity contracted with the department to provide Medicaid benefits pursuant to 42 C.F.R. sec. 438;

(10) "Non-state government-owned hospital" means the same as non-state government-owned or operated facilities in 42 C.F.R. sec. 447.272 and represents one (1) group of hospitals for purposes of estimating the upper payment limit;

(11) "Pediatric teaching hospital" means the same as in KRS 205.565;

(12) "Private hospitals" means the same as privately owned and operated facilities in 42 C.F.R. sec. 447.272 and represents one (1) group of hospitals for purposes of estimating the upper payment limit;

(13) "Program year" means the state fiscal year during which an assessment is assessed and rate improvement payments are made;

(14) "Psychiatric access hospital" means an in-state psychiatric hospital licensed under KRS Chapter 216B that:

(a) Is not located in a Metropolitan Statistical Area;

(b) Provides at least sixty-five thousand (65,000) days of inpatient care as reflected in the department's hospital rate data for state fiscal year 1998-1999;

(c) Provides at least twenty percent (20%) of inpatient care to Medicaid-eligible recipients as reflected in the department's hospital rate data for state fiscal year 1998-1999; and

(d) Provides at least five thousand (5,000) days of inpatient psychiatric care to Medicaid recipients in a state fiscal year;

(15) "Qualifying hospital"***:***

(a) Means a Medicaid-participating, in-state hospital licensed under KRS Chapter 216B, including a long-term acute hospital, but excluding a university hospital and a state mental hospital ***as*** defined in KRS 205.639. The department may, but is not required to, exclude critical access hospitals and rural emergency hospitals from the definition of "qualifying hospital" for purposes of calculating the quarterly assessments. Notwithstanding the permission referenced in this subsection, or any other provision of the law to the contrary, the department may include critical access hospitals and rural emergency hospitals for purposes of calculating and paying the quarterly supplemental payments authorized in KRS 205.6406; ***and***

(b) Notwithstanding paragraph (a) of this subsection, a university hospital that is not located on the affiliated university's primary campus may be deemed to be a qualifying hospital if the university hospital does not participate in a separate directed payment program for university hospitals;

(16) "Qualifying hospital disproportionate share percentage" means a percentage equal to the amount of hospital provider taxes paid pursuant to KRS 142.303 by qualifying hospitals in state fiscal year 2016-2017 divided by the amount of hospital provider taxes paid pursuant to KRS 142.303 by all hospitals in state fiscal year 2016-2017;

(17) "University hospital" means a state university teaching hospital, owned or operated by either the University of Kentucky College of Medicine or the University of Louisville School of Medicine, including a hospital owned or operated by a related organization pursuant to 42 C.F.R. sec. 413.17;

(18) "University hospital disproportionate share percentage" means a percentage equal to the amount of hospital provider taxes paid pursuant to KRS 142.303 by university hospitals and state mental hospitals, as defined in KRS 205.639, in state fiscal year 2016-2017 divided by the amount of hospital provider taxes paid pursuant to KRS 142.303 by all hospitals in fiscal year 2016-2017;

(19) "Upper payment limit" or "UPL" means the methodology permitted by federal regulation to achieve the maximum allowable amount on aggregate hospital Medicaid payments to non-state government-owned hospitals and private hospitals under 42 C.F.R. sec. 447.272. A separate UPL shall be estimated for non-state government-owned hospitals and private hospitals; and

(20) "UPL gap" means the difference between the UPL and amount of total fee-for-service payments paid by the department for hospital inpatient services provided by non-state government-owned hospitals and private hospitals to Medicaid beneficiaries and excluding payments established under KRS 205.6405 to 205.6408. A separate UPL gap shall be estimated for the non-state government-owned hospitals and private hospitals.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

As used in this section and Section 3 of this Act:

(1) "Department" means the Department for Medicaid Services;

(2) "Managed care" means the provision of Medicaid benefits through Medicaid managed care organizations under contract with the department pursuant to 42 C.F.R. sec. 438;

(3) "Medicaid managed care organization" means an entity contracted with the department to provide Medicaid benefits pursuant to 42 C.F.R. sec. 438;

(4) "Qualifying hospital" means a Medicaid-participating, in-state hospital licensed under KRS Chapter 216B, including a long-term acute hospital as defined in KRS 205.639, but excluding a state mental hospital as defined in KRS 205.639; and

(5) "University hospital" means a state university teaching hospital, owned or operated by either the University of Kentucky College of Medicine or the University of Louisville School of Medicine, including a hospital owned or operated by a related organization pursuant to 42 C.F.R. sec. 413.17.

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

To the extent permitted under federal law and in addition to, and separate from, the programs developed pursuant to KRS 205.6406, the department shall develop a program to improve quality of and access to care for residents of the Commonwealth enrolled in the state's Medicaid program by increasing Medicaid reimbursement rates for qualifying hospitals in accordance with the following:

(1) (a) A qualifying hospital shall be eligible to earn enhanced add-on payments from Medicaid managed care organizations based on the qualifying hospital's average commercial rate for services provided, including but not limited to inpatient hospital services, outpatient hospital services, and professional services, if the qualifying hospital:

1. a. Is a participant in the hospital rate improvement program developed pursuant to KRS 205.6406;

b. Is a Level II, III, or IV trauma center;

c. Is located in a county in which the percentage of the county's population enrolled in the state's Medicaid program exceeds the statewide median Medicaid enrollment percentage for all counties as posted by the Cabinet for Health and Family Services in the December edition of the Monthly Medicaid Counts by County report for the calendar year preceding the year in which the preprint is submitted; and

d. Has an agreement for clinical rotations to train providers with a university-affiliated graduate medical education program; or

2. Is a pediatric teaching hospital as defined in KRS 205.565, except that a hospital qualifying for enhanced add-on payments under this subparagraph shall only be eligible to receive enhanced add-on payments for services delivered to a patient who is eighteen (18) years of age or younger;

(b) There shall be an identified source of funding, which shall be separate from the assessment authorized in KRS 205.6406 and shall not be from the general fund, for the nonfederal share that is in compliance with the requirements of the United States Centers for Medicare and Medicaid Services;

(c) A qualifying hospital shall be required to report the same quality measures as are applicable under the state university teaching hospital Medicaid directed payment plan; and

(d) Reimbursement for qualifying hospitals under this section shall only apply to patients covered by a Medicaid managed care organization.

(2) The state directed payment program authorized under this section shall be separate and distinct from any state directed payment program authorized under KRS 205.6406, and the department shall only implement the program described in this section if:

(a) Medicaid documentation required for federal financial participation is approved by the United States Centers for Medicare and Medicaid Services; and

(b) The United States Centers for Medicare and Medicaid Services agrees to consider the program through its own preprint and without affecting or altering any other state directed payment program.

(3) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the program described in this section.

➔Section 4. KRS 216B.065 is amended to read as follows:

(1) Before any person enters into a contractual agreement to acquire a licensed health facility, the person shall notify the cabinet of the intent to acquire the facility or major medical equipment and of the services to be offered in the facility and its bed capacity or the use of the medical equipment. The notice shall be in writing and shall be filed at least thirty (30) days prior to entry into a contract to acquire the health facility or major medical equipment with respect to which the notice is given.

(2) A certificate of need shall be required for the acquisition of a health facility or major medical equipment, only if:

(a) The notice required in this section is not filed and the arrangement will require the obligation of a capital expenditure which exceeds the capital expenditure minimum; or

(b) The cabinet finds within thirty (30) days after the date it received notice that the health services or bed capacity of the health facility will be substantially changed in being acquired.

(3) Donations, transfers, and leases of major medical equipment and health facilities shall be considered acquisitions of equipment and facilities, and an acquisition of medical equipment or a facility for less than fair market value shall be considered an acquisition if the fair market value exceeds the expenditure minimum.

(4) Before any health facility reduces or terminates a health service or reduces its bed capacity, the facility shall notify the cabinet of its intent. The notice shall be in writing and shall be filed at least thirty (30) days prior to the reduction or termination. A certificate of need shall be required for the reduction or termination only if the notice required in this section is not filed.

(5) (a) Before acquiring or constructing an acute care hospital as defined in KRS 216B.0425 that is required to be licensed under KRS 216B.042, the University of Kentucky or the University of Louisville, or a medical system or college or school of medicine affiliate thereof, shall first obtain the approval of the General Assembly by means of an act or joint resolution explicitly identifying and authorizing the acquisition or construction of the specific acute care hospital.

(b) The approval required under paragraph (a) of this subsection shall be in addition to any certificate of need required to acquire or construct an acute care hospital.

(c) 1. Nothing in this subsection shall be interpreted or construed to apply to a pediatric teaching hospital as defined in KRS 205.565;

2. Paragraph (a) of this subsection shall not apply to the acquisition or construction of an acute care hospital within thirty (30) miles of the affiliated university's primary academic campus; and

3. After May 31, 2026, the acquisition or construction of an acute care hospital valued at less than ten million dollars ($10,000,000) shall be exempt from the provisions of paragraph (a) of this subsection.

Signed by Governor April 5, 2024.