

1 AN ACT relating to medical residency programs at Level II verified trauma centers.

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

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

4 As used in KRS 205.6405 to 205.6408:

- 5 (1) "Assessment" means the hospital assessment authorized by KRS 205.6406;
- 6 (2) "Commissioner" means the commissioner of the Department for Medicaid Services;
- 7 (3) "Department" means the Department for Medicaid Services;
- 8 (4) "Excess disproportionate share taxes" means any excess provider tax revenues
- 9 collected under KRS 142.303 that are not needed to fund the state share of hospital
- 10 disproportionate share payments under KRS 205.640 due to federal
- 11 disproportionate share allotments being reduced and limited to the portion of
- 12 provider tax revenues collected under KRS 142.303 necessary to fund the state
- 13 share of the difference between the unreduced disproportionate share allotment and
- 14 the reduced disproportionate share allotment;
- 15 (5) "Intergovernmental transfer" means any transfer of money by or on behalf of a
- 16 public agency for purposes of qualifying funds for federal financial participation in
- 17 accordance with 42 C.F.R. sec. 433.51;
- 18 (6) "Long-term acute hospital" means an in-state hospital that is certified as a long-term
- 19 care hospital under 42 U.S.C. sec. 1395ww(d)(1)(B)(iv);
- 20 (7) "Managed care" means the provision of Medicaid benefits through managed care
- 21 organizations under contract with the department pursuant to 42 C.F.R. sec. 438;
- 22 (8) "Managed care gap" means:
- 23 (a) For hospital inpatient services, the difference between the maximum
- 24 actuarially sound amount that can be included in managed care rates for
- 25 hospital inpatient services provided by qualifying hospitals and the amount of
- 26 total payments for hospital inpatient services provided by qualifying hospitals
- 27 paid by managed care organizations. For purposes of the managed care gap,

1 total payments shall exclude payments established under KRS 205.6405 to  
2 205.6408; and

3 (b) For hospital outpatient services, the difference between the maximum  
4 actuarially sound amount that can be included in managed care rates for  
5 hospital outpatient services provided by qualifying hospitals and the amount  
6 of total payments for hospital outpatient services provided by qualifying  
7 hospitals paid by managed care organizations. For purposes of the managed  
8 care gap, total payments shall exclude payments established under KRS  
9 205.6405 to 205.6408;

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

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

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

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

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

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

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

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

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

1 year 1998-1999; and

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

4 (15) "Qualifying hospital":

5 **(a)** Means a Medicaid-participating, in-state hospital licensed under KRS Chapter  
6 216B, including a long-term acute hospital, but excluding ~~fa university~~  
7 ~~hospital and~~ a state mental hospital **as** defined in KRS 205.639. The  
8 department may, but is not required to, exclude critical access hospitals and  
9 rural emergency hospitals from the definition of "qualifying hospital" for  
10 purposes of calculating the quarterly assessments. Notwithstanding the  
11 permission referenced in this subsection, or any other provision of the law to  
12 the contrary, the department may include critical access hospitals and rural  
13 emergency hospitals for purposes of calculating and paying the quarterly  
14 supplemental payments authorized in KRS 205.6406; **and**

15 **(b) For the purposes of Section 2 of this Act, a university hospital shall only be**  
16 **considered a qualifying hospital if the university hospital has elected to**  
17 **participate in the hospital rate improvement program developed pursuant to**  
18 **KRS 205.6406 in lieu of participation in a separate directed payment**  
19 **program for university hospitals;**

20 (16) "Qualifying hospital disproportionate share percentage" means a percentage equal  
21 to the amount of hospital provider taxes paid pursuant to KRS 142.303 by  
22 qualifying hospitals in state fiscal year 2016-2017 divided by the amount of hospital  
23 provider taxes paid pursuant to KRS 142.303 by all hospitals in state fiscal year  
24 2016-2017;

25 (17) "University hospital" means a state university teaching hospital, owned or operated  
26 by either the University of Kentucky College of Medicine or the University of  
27 Louisville School of Medicine, including a hospital owned or operated by a related

1 organization pursuant to 42 C.F.R. sec. 413.17;

2 (18) "University hospital disproportionate share percentage" means a percentage equal to  
3 the amount of hospital provider taxes paid pursuant to KRS 142.303 by university  
4 hospitals and state mental hospitals, as defined in KRS 205.639, in state fiscal year  
5 2016-2017 divided by the amount of hospital provider taxes paid pursuant to KRS  
6 142.303 by all hospitals in fiscal year 2016-2017;

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

12 (20) "UPL gap" means the difference between the UPL and amount of total fee-for-  
13 service payments paid by the department for hospital inpatient services provided by  
14 non-state government-owned hospitals and private hospitals to Medicaid  
15 beneficiaries and excluding payments established under KRS 205.6405 to  
16 205.6408. A separate UPL gap shall be estimated for the non-state government-  
17 owned hospitals and private hospitals.

18 ➔SECTION 2. A NEW SECTION OF KRS 205.6405 TO 205.6408 IS  
19 CREATED TO READ AS FOLLOWS:

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

25 *(1) (a) A qualifying hospital shall be eligible to earn enhanced add-on payments*  
26 *from managed care organizations based on the qualifying hospital's*  
27 *average commercial rate for services provided, including but not limited to*

1 inpatient hospital services, outpatient hospital services, and professional  
 2 services, if the qualifying hospital:

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

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

6 3. Is located in a county in which more than thirty-five percent (35%) of  
 7 the population is enrolled the state's Medicaid program as posted by  
 8 the Cabinet for Health and Family Services in the Monthly Medicaid  
 9 Counts by County report for the previous calendar year; and

10 4. Has an agreement with a university-affiliated graduate medical  
 11 education program;

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

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

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

20 (2) The department shall only implement the program described in this section if  
 21 Medicaid documentation required for federal financial participation is approved  
 22 by the United States Centers for Medicare and Medicaid Services.

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

25 ➔Section 3. KRS 216B.065 is amended to read as follows:

26 (1) Before any person enters into a contractual agreement to acquire a licensed health  
 27 facility, the person shall notify the cabinet of the intent to acquire the facility or

1 major medical equipment and of the services to be offered in the facility and its bed  
2 capacity or the use of the medical equipment. The notice shall be in writing and  
3 shall be filed at least thirty (30) days prior to entry into a contract to acquire the  
4 health facility or major medical equipment with respect to which the notice is given.

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

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

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

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

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

22 **(5) (a) Before acquiring a health facility as defined in KRS 216B.015 that is**  
23 **required to be licensed under KRS 216B.042, the University of Kentucky or**  
24 **the University of Louisville, or a medical system or college or school of**  
25 **medicine affiliate thereof, shall first obtain the approval of the General**  
26 **Assembly by means of an act or joint resolution explicitly identifying and**  
27 **authorizing the acquisition of the specific health facility.**

1 (b) Before constructing or opening a new health facility as defined in KRS  
2 216B.015 that is required to be licensed under KRS 216B.042, the  
3 University of Kentucky or the University of Louisville, or a medical system  
4 or college or school of medicine affiliate thereof, shall first obtain the  
5 approval of the General Assembly by means of an act or joint resolution  
6 explicitly identifying and authorizing the construction or opening of the  
7 specific health facility or expansion of specific services at an existing health  
8 facility.

9 (c) The approvals required under this subsection shall be in addition to any  
10 certificate of need required to acquire a health facility under this section.

11 (d) 1. After May 31, 2026, a health facility acquisition valued at less than ten  
12 million dollars (\$10,000,000) shall be exempt from the provisions of  
13 paragraph (a) of this subsection.

14 2. Paragraph (b) of this subsection shall:

15 a. Not apply to the construction or opening of a new health facility  
16 within thirty (30) miles of the affiliated university's primary  
17 academic campus; and

18 b. Expire on and have no force or effect after May 31, 2026, unless  
19 extended by an act of the General Assembly.

20 (e) Nothing in this subsection shall be interpreted or construed to prohibit or  
21 otherwise restrict any staffing, personnel, or employment decisions,  
22 transfers, or relocations made by the University of Kentucky or the  
23 University of Louisville, or a medical system or college or school of  
24 medicine affiliate thereof, including but not limited to the staffing and  
25 operation of clinical programs.