

By Mr. Moore, a petition (accompanied by bill, Senate, No. 728) of Richard T. Moore, Edward G. Connolly, Robert L. Hedlund and Bruce E. Tarr for legislation to reform MassHealth hospital payments. Health Care Financing.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO REFORM MASSHEALTH HOSPITAL PAYMENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 9 of Chapter 118E of the General Laws,
2 as appearing in the 2002 official edition, is hereby amended in the
3 third sentence of said section after the words "Social Security Act
4 (42 U.S.C. Sec. 1396u-3)" the following new language:
5 " , including MassHealth hospital inpatient benefits in effect on
6 January 1, 2003 for all MassHealth enrollees provided that the
7 program of medical assistance shall reimburse hospitals a per
8 diem rate for inpatient stays beyond 20 days."

1 SECTION 2. Section 12 of chapter 118E of the General Laws,
2 as so appearing, is further amended in the second paragraph by
3 striking "The division may" and inserting the following new
4 words:
5 "Except in the case of an acute or non-acute hospital licensed
6 under section 19 of chapter 19 and section 51 of chapter 111, the
7 executive office of health and human services may"

1 SECTION 3. Section 12 of chapter 118E of the General Laws,
2 as so appearing, is amended in the fourth paragraph by inserting
3 the following at the end thereof:
4 "For the purposes of this section, the executive office of health
5 and human services and its agents shall provide for a public com-
6 ment process, pursuant to the provisions of Chapter 30A, prior to

7 adopting, promulgating, amending, or rescinding said rules and
8 regulations. The executive office of health and human services
9 and its agents shall publish said rules and regulations 60 days
10 prior to the effective date.

1 SECTION 4. Said chapter 118E of the General Laws, as so
2 appearing, is amended by inserting after section 12 the following
3 new section:

4 Section 12A. Payments to acute care hospitals.

5 (1) Subject to subsections (2) through (9) of this section, the
6 executive office and its agents shall reimburse acute care hospi-
7 tals, as defined under Section 25B of Chapter 111 and licensed
8 under Section 51 of Chapter 111, for inpatient and outpatient serv-
9 ices under a payment methodology applicable to acute care hospi-
10 tals under title XVIII of the federal Social Security Act. Said
11 payment system shall:—

12 (A) establish rates of payment that reflect the reasonable costs
13 of providing care, with an annual inflationary rate adjustment
14 equal to the full market basket percentage increase established by
15 the federal Centers for Medicare and Medicaid Services for acute
16 hospitals pursuant to 42 C.F.R. §413.40(a)(3) (or any successor
17 provision);

18 (B) cover the cost of providing care to Medicaid recipients
19 without cross-subsidization from other hospital revenues or assets;

20 (C) provide hospitals with a fair and predictable source of rev-
21 enue, through the provision of timely information on the method-
22 ology by which rates were computed, including all data and
23 assumptions related to the proposed changes or updates to rates
24 under the system;

25 (D) provide for a public process as outlined under chapter thirty
26 A for consultation and public comment by providers and other
27 interested parties regarding the methodology for establishing said
28 rates; and

29 (E) maintain consistency with updates to industry standard
30 patient classifications and diagnostic and procedural medical
31 coding, and update said classifications and coding procedures in
32 the same manner and frequency as for purposes of said title
33 XVIII.

34 (2) Payments for inpatient services provided by acute hospitals
35 shall be prospectively determined. Inpatient rates of payment
36 shall be made in accordance with the methodology applicable to
37 acute hospitals under title XVIII of the federal social security act,
38 as amended from time to time, to reflect the population of patients
39 entitled to health coverage under this chapter.

40 (3) Payments for outpatient services provided by acute hospi-
41 tals shall be based on a standardized payment system, consistent
42 with the payment system applicable to acute hospitals under said
43 title XVIII as updated from time to time, and designed to fairly
44 reimburse hospitals for the cost of providing covered services.

45 (4) In implementing the payment system for inpatient services
46 required under subsection (2) and outpatient services under sub-
47 section (3), the executive office of health and human services
48 shall ensure that total payments to acute care hospitals for the pro-
49 vision of said services in the initial year of operation of said
50 system shall be no less than payments to acute care hospitals for
51 those services in the preceding year, increased by the full market
52 basket percentage increase pursuant to said 42 C.F.R. §
53 413.40(a)(3) (or any successor provision) applicable for said ini-
54 tial year period.

55 (5) In developing the payment systems required under this
56 section, the executive office of health and human services and its
57 agents shall take into account:—

58 (A) differences in hospitals' wages;

59 (B) special needs of disproportionate share hospitals, as defined
60 by the executive office of health and human services of health
61 care finance and policy under chapter 118G;

62 (C) direct and indirect medical education expenses incurred by
63 teaching hospitals;

64 (D) costs of capital to update and maintain the hospital's phys-
65 ical plant and medical technology;

66 (E) outlier payment system that appropriate reimburses hospi-
67 tals for costs incurred in such cases;

68 (F) costs of organ acquisition for transplantation;

69 (G) case mix and complexity of Medicaid patients treated by
70 the hospital that is consistent with the requirements of subsec-
71 tions (2) and (3) of this section; and

72 (H) the unique circumstances and requirements of pediatric
73 hospitals, cancer hospitals, sole community hospitals, and critical
74 access hospitals.

75 (6) With regard to participation by and payment to hospital
76 based satellite units and provider based facilities, the executive
77 office of health and human services and its agents shall follow the
78 same procedures for coverage and payment of covered services
79 provided in said facilities that meet the criteria established by the
80 federal Centers for Medicare and Medicaid Services pursuant to
81 42 C.F.R. §413.65 as amended from time to time.

82 (7) The executive office and its agents shall promulgate regula-
83 tions, rules, fee schedules, billing instructions, provider bulletins,
84 and other written statements of policy setting forth adjustments to
85 the payment mechanism and changes to the billing codes on the
86 same schedule as provided for under title XVIII, as established
87 under this section for the following payment year, provided that:

88 (A) Not less than 180 days prior to the promulgation of regula-
89 tions, rules, fee schedules, billing instructions, provider bulletins,
90 and other written statements of policy setting forth adjustments to
91 the payment mechanism and changes to the billing codes, the
92 executive office of health and human services shall convene a
93 consultative session with representatives of the Massachusetts
94 hospital association, as well as individual acute hospitals, to dis-
95 cuss the methodology intended to be used in establishing the pay-
96 ment rates to acute hospitals for the succeeding payment year. In
97 promulgating said regulation, the executive office of health and
98 human services shall take into account all comments communi-
99 cated by said association in said consultative session; and

100 (B) Not less than 60 days prior to the beginning of a payment
101 year, the executive office of health and human services shall pub-
102 lish in final form regulations, rules, fee schedules, billing instruc-
103 tions, provider bulletins, and other written statements of policy
104 setting forth adjustments to the payment mechanism and changes
105 to the billing codes that will describe the payment rate and
106 methodologies for the coming rate year. In publishing said mate-
107 rials, the executive office of health and human services shall
108 specifically respond to each comment of the Massachusetts hos-
109 pital association in the consultative process described in para-

110 graph (A) and to any comments said association files prior to final
111 promulgation of the materials.

112 (8) The executive office of health and human services shall fur-
113 ther:

114 (A) maximize available federal financial participation under
115 title XIX of the federal social security act in establishing the pay-
116 ment system under this section; and

117 (B) maximize the designation of hospitals as disproportionate
118 share consistent with and as defined by section 1923(a)(1)(A) of
119 said act.

120 (9) The executive office of health and human services shall
121 establish exceptions to the payment system under this chapter for
122 any unique circumstance hospital. For purposes of this subsec-
123 tion, the term “unique circumstance hospital” shall reflect those
124 hospitals described in section 1886(d)(1)(B)(iii) or section
125 1886(d)(1)(B)(v)(I) of the federal social security act. For said
126 hospitals, the executive office of health and human services may
127 establish such exceptions to any diagnosis-related grouping
128 system required under subsection (2) of this section as may be
129 necessary to reflect the unique patient mix of said hospitals. Pro-
130 vided further, that this subsection shall not, absent an election by
131 said hospital, apply for three years after the implementation of this
132 section.

1 SECTION 5. Chapter 118E of the General Laws, as so
2 appearing, is further amended by:

3 (a) Section 13A of chapter 118E of the General Laws is
4 amended by adding after the first sentence thereof the following
5 new sentence:

6 “The executive office of health and human services and its
7 agent shall be required to recognize any hospital or hospital unit
8 as specifically defined under section 1886(d)(1)(B)(i), section
9 1886(d)(1)(B)(ii) or section 1886(d)(1)(B)(iv)(I) of the social
10 security act as a MassHealth provider, and develop a process for
11 reimbursing said hospital or hospital unit if it provides otherwise
12 covered services to MassHealth eligible members.”

13 (b) Said section 13A is further amended by deleting the second
14 paragraph and replacing it with the following paragraphs:

15 Any contract after rate year 2006 between the executive office
16 of health and human services and its agents and the hospital or a
17 hospital unit as further defined under section 1886(d)(1)(B)(i) of
18 the social security act shall provide for a rate of payment for inpa-
19 tient and outpatient services that is not less than said hospital's
20 payments in effect on April 1, 2004, increased by the full market
21 basket percentage established during the applicable rate year by
22 the federal Centers for Medicare and Medicaid Services for hospi-
23 tals that are not subsection (d) hospitals (as defined in section
24 1886(d)(1)(B) of the social security act) under 42 C.F.R. §
25 413.40(a) (or any successor provision) for a hospital described in
26 section 1886(d)(1)(B)(i) of said act. Said contract shall include
27 payments for administratively necessary days at an all-inclusive
28 daily rate for each administratively necessary day as provided
29 under Section 13B.

30 Any contract after rate year 2006 between the executive office
31 of health and human services and its agents and the hospital or a
32 hospital unit as further defined under section 1886(d)(1)(B)(ii) of
33 said act shall provide for a rate of payment for inpatient and out-
34 patient services that reflects aid hospital's costs in fiscal year 2006
35 as reported to the division of health care finance and policy,
36 increased by the full market basket percentage established during
37 the applicable rate year by the by the federal Centers for Medicare
38 and Medicaid Services for hospitals that are not subsection (d)
39 hospitals (as defined in section 1886(d)(1)(B) of the social secu-
40 rity act) under 42 C.F.R. § 413.40(a) (or any successor provision)
41 for a hospital described in section 1886(d)(1)(B)(ii) of said act.
42 Said contract shall include payments for administratively neces-
43 sary days at an all-inclusive daily rate for each administratively
44 necessary day as provided under Section 13B.

45 Any contract after rate year 2006 between the executive office
46 of health and human services and its agents and the hospital
47 described in section 1886(d)(1)(B)(iv)(I) of the federal social
48 security act shall provide for a rate of payment for inpatient and
49 outpatient services that reflects said hospital's costs in fiscal year
50 2006 as reported to the division of health care finance and policy,
51 increased by the full market basket percentage established during
52 the applicable rate year by the federal Centers for Medicare and
53 Medicaid Services for hospitals that are not subsection (d) hospi-

54 tals (as defined in section 1886(d)(1)(B) of the social security act)
55 pursuant to 42 C.F.R. § 413.40(a) (or any successor provision) for
56 each subsequent rate year. Said contract shall include payments
57 for administratively necessary days at an all-inclusive daily rate
58 for each administratively necessary day as provided under
59 Section 13B.

60 Any contract in a subsequent rate year for a non-acute hospital
61 however contracted under this section for days of care provided
62 before the implementation of the payment system described in
63 section 13B of this chapter shall provide for the rate of payment in
64 effect in the prior year (including administrative necessary days),
65 increased by the full market basket percentage established by the
66 federal Centers for Medicare and Medicaid Services for hospitals
67 that are not subsection (d) hospitals (as defined in section
68 1886(d)(1)(B) of the social security act) pursuant to 42 C.F.R. §
69 413.40(a) (or any successor provision) for the subsequent rate
70 year.

71 (c) Chapter 118E of the General Laws, as so appearing, is
72 amended by adding after section 13A the following new section:

73 Section 13B. Payments to non-acute hospitals.

74 (1) The executive office of health and human services and its
75 agent shall reimburse a hospital described in clauses (i), (ii) and
76 (iv)(I) of section 1886(d)(1)(B) of the federal social security act
77 for:

78 (A) inpatient services in accordance with subsection (2) of this
79 section; and

80 (B) outpatient services in accordance with subsection (3) of this
81 section.

82 (2) (A) For payments after rate year 2006, the executive office
83 of health and human services and its agents shall use a non-acute
84 hospital's fiscal year 2006 cost report as reported to the division
85 of health care finance and policy to establish the reimbursement
86 (expressed as a per diem) for services provided to MassHealth
87 members by a hospital or a hospital unit defined under section
88 1886(d)(1)(B)(ii) and 1886(d)(1)(B)(iv)(I) of the social security
89 act, increased by the full market basket percentage established
90 during that rate year by the federal Centers for Medicare and Med-
91 icaid Services for hospitals that are not subsection (d) hospitals
92 (as defined in section 1886(d)(1)(B) of the social security act)

93 pursuant to 42 C.F.R. § 413.40(a) (or any successor provision).
94 Provided that for the hospital or a hospital unit defined under
95 section 1886(d)(1)(B)(i) of the social security act, the rate of pay-
96 ment shall not be less than that the hospital received on April 1,
97 2004, increased by the full market basket percentage established
98 during that rate year by the federal Centers for Medicare and
99 Medicaid Services.

100 (B) (i) The executive office of health and human services and
101 its agents shall adjust the per diem amount calculated pursuant to
102 Subsection (2)(A) for a non-acute hospital by taking into account
103 said hospital's showing that it has, relative to the preceding year:

104 (a) added a new service;

105 (b) experienced a change in its case mix intensity and com-
106 plexity of patients eligible for Medicaid as well as both Medicare
107 and Medicaid dually eligible, so called, treated by said hospital;

108 (c) differences in hospital wages and costs;

109 (d) has special needs as a disproportionate share hospital, as
110 defined by the division of health care finance and policy under
111 chapter 118G; and

112 (e) incurred substantial costs of capital to update and maintain
113 the hospital's physical plant and medical technology.

114 (ii) For purposes of subsection (2)(B)(i)(b), a hospital shall be
115 able to establish that it has experienced a change in its case mix
116 intensity by showing that it has:

117 (f) experienced a net increase in full-time equivalent clinical
118 positions at the hospital; or

119 (g) experienced a net increase in the cost of ancillary services
120 per patient day.

121 (C) Any payment calculated pursuant to this section shall
122 include payments for administratively necessary day rates. Such
123 rates shall be related to services that are not medically necessary
124 inpatient level services as determined by the treating physician,
125 and which cannot be provided at alternative sites of care in a non-
126 hospital facility due to the lack of a clinically appropriate, geo-
127 graphically proximate non-hospital facility. Any such
128 administratively necessary day rates shall be composed of:

129 (i) a statewide per diem amount for the routine costs of admin-
130 istratively necessary patients which shall reflect the most recent

131 available data of the weighted average Medicaid payment rate for
132 the highest case mix category patients in nursing facilities;

133 (ii) a statewide per diem amount for the ancillary costs of
134 administratively necessary patients which shall reflect the most
135 recent available data of the statewide weighted average Medicaid
136 ancillary payment for administratively necessary patients in
137 chronic and rehabilitation hospitals; and

138 (iii) the a hospital specific supplementary per diem amount
139 which shall be the difference between each hospital's applicable
140 inpatient per diem rate for such year pursuant to section (2)(A)
141 and the and the sum of the statewide routine and ancillary per
142 diem amounts pursuant to subsections (i) and (ii).

143 For the purposes of a hospital described in section
144 1886(d)(1)(B)(i) of the federal social security act only, the admin-
145 istratively necessary day rate shall be comprised of the rates then
146 in effect on October 1, 2003, with appropriate updates to reflect
147 changes in the cost of care.

148 (3) Payments for outpatient services provided by hospitals
149 described in subsection (1) shall be based on a standardized pay-
150 ment system consistent with a payment system applicable to a
151 non-acute hospital described in subsection (1) as updated annually
152 by the full market basket percentage increase established by the
153 Centers for Medicare and Medicaid Services and designed to
154 fairly reimburse hospitals for the cost of providing said services.
155 If such payment system requires payment at a percentage of
156 charge, the percentage rate shall be applied to such non-acute hos-
157 pital's current charges as of the date of service to a recipient of
158 medical assistance.

159 (4) Notwithstanding the provisions of this section, the execu-
160 tive office of health and human services and its agent may adopt a
161 reimbursement system for hospitals described in subsection (1)
162 that is based upon the principles of reimbursement applicable to
163 such hospitals under title XVIII of the social security act, pro-
164 vided that:

165 (A) any such payment system shall yield a payment that is at
166 least equal to the title XVIII payment amount expressed as a per
167 diem;

168 (B) any hospital whose ability to deliver care is prevented by
169 the financial and operational burdens imposed by this subsection

170 4, may elect to receive the payment amount calculated under sub-
171 sections (2) and (3) upon a showing of such burden to the execu-
172 tive office which shall be sufficient to meet this provision; and

173 (C) prior to the implementation of any such payment system,
174 the executive office of health and human services shall form a
175 consultative process with the Massachusetts Hospital Association,
176 the Massachusetts Association of Behavioral Health Systems, and
177 its representatives to discuss the methodology intended to be used
178 in establishing such payment system. The executive office of
179 health and human services shall take into account all comments
180 communicated by said association in said consultative session in
181 developing said payment system.

1 SECTION 6. Chapter 118G of the General Laws, as so
2 appearing, is hereby amended as follows:

3 (a) Section 11 is hereby amended by striking the first two para-
4 graphs in their entirety and inserting in place there of the
5 following language:

6 “All rates of payment to acute hospitals, non-acute hospitals,
7 and non-acute hospital units under title XIX shall be subject to all
8 applicable title XIX statutory and regulatory requirements (or any
9 successor requirements) and shall include reimbursement for the
10 reasonable cost of providing competent interpreter services pur-
11 suant to section 25J of chapter 111 or section 23A of Chapter 123.
12 All rates of payment to acute hospitals in a year under title XIX
13 shall be determined in accordance with section 12A of chapter
14 118E. All rates of payment to non-acute hospitals and non-acute
15 hospital units in a year under title XIX shall be determined in
16 accordance with section 13B of chapter 118E. Notwithstanding
17 the provisions of Sections 12A and 13B of Chapter 118E, the pro-
18 visions of subsections (a), (b), and (c) of this section shall apply.”

19 (b) Subsection (a) of Section 11 is hereby stricken in its entirety
20 and substituting in lieu thereof the following:

21 “The division of health care finance and policy shall establish
22 rates of payment for acute and non-acute care hospitals,
23 so defined under section 1886(d)(1)(B)(ii) or section
24 1886(d)(1)(B)(iv)(I) of the social security act, that are reasonable
25 and adequate to meet the costs which must be incurred by effi-
26 ciently and economically operated facilities, in order to provide

27 care and services in conformity with applicable state and federal
28 laws, regulations, and quality and safety standards, and to assure
29 that individuals have reasonable access taking into account geo-
30 graphic location and reasonable travel time to inpatient and outpa-
31 tient hospital services of adequate quality.”

1 SECTION 7. The executive office of health and human services
2 shall report to the General Court, by filing a report with the clerk
3 of the House of Representatives and the clerk of the Senate, on the
4 status of the process for implementing the payment provisions of
5 Sections 4 and 5 of this Act. Said reports shall be due on January
6 1, 2006.

1 SECTION 8. Notwithstanding any other special or general law
2 to the contrary, changes to the payment system for acute-hospitals,
3 non-acute hospitals, and non-acute hospital units under this Act
4 shall not be counted in calculating budget neutrality as required
5 by section 9B of chapter 118E of the General Laws.

1 SECTION 9. Application of this Act.

2 (a) The provision of Sections 2 and 3 of this Act shall become
3 effective on April 1, 2005.

