No. 2019-12

AN ACT

HB 33

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," in public assistance, further providing for definitions, for general assistance-related categorically needy and medically needy only medical assistance programs, for the medically needy and determination of eligibility and for medical assistance payments for institutional care; in hospital assessments, further providing for definitions, for authorization, for administration, for no hold harmless, for tax exemption and for time period; and, in Statewide quality care assessment, further providing for definitions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 402 introductory paragraph and the definition of "general assistance" of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, amended June 30, 2012 (P.L.668, No.80), amendment declared unconstitutional, 188 A.3d 1135, (Pa. 2018), are amended and the section is amended by adding a definition to read:

Section 402. Definitions.—As used in this article, unless the **[content]** ***context*** clearly indicates otherwise:

* * *

**["General assistance" means assistance granted under the provisions of section 432(3) of this act.]**

***"General assistance-related categorically needy medical assistance" means medical assistance for persons who meet the requirements under section 432(3).***

* * *

Section 2. Section 403.2 of the act, added June 30, 2012 (P.L.668, No.80), addition declared unconstitutional, 188 A.3d 1135, (Pa. 2018), is reenacted and amended to read:

Section 403.2. General Assistance-Related Categorically Needy and Medically Needy Only Medical Assistance Programs.—(a) Subject to subsection (b) and notwithstanding any other provision of law, the general assistance cash assistance program shall cease **[August 1, 2012]** ***August 1, 2019.***

(b) The general assistance-related categorically needy medical assistance program shall continue, including, but not limited to, the eligibility and work and work-related requirements under this article. The general assistance-related medical assistance program for the medically needy only shall continue.

Section 3. Section 442.1(a)(3) introductory paragraph and (i) of the act, amended June 30, 2012 (P.L.668, No.80), amendment declared unconstitutional, 188 A.3d 1135, (Pa. 2018), are amended to read:

Section 442.1. The Medically Needy; Determination of Eligibility.—(a) A person shall be considered medically needy if that person meets the requirements of clauses (1), (2) and (3):

* * *

(3) Complies with **[either]** subclause **[(i) or]** (ii):

**[(i) Receives general assistance in the form of cash.]**

* * *

Section 4. Section 443.1(1.1)(i) and (7)(vi) of the act, amended June 22, 2018 (P.L.258, No.40), are amended to read:

Section 443.1. Medical Assistance Payments for Institutional Care.—The following medical assistance payments shall be made on behalf of eligible persons whose institutional care is prescribed by physicians:

* * *

(1.1) Subject to section 813-G, for inpatient hospital services provided during a fiscal year in which an assessment is imposed under Article VIII-G, payments under the medical assistance fee-for-service program shall be determined in accordance with the department's regulations, except as follows:

(i) If the Commonwealth's approved Title XIX State Plan for inpatient hospital services in effect for the period of July 1, 2010, through June 30, **[2018]** ***2023***, specifies a methodology for calculating payments that is different from the department's regulations or authorizes additional payments not specified in the department's regulations, such as inpatient disproportionate share payments and direct medical education payments, the department shall follow the methodology or make the additional payments as specified in the approved Title XIX State Plan.

* * *

(7) After June 30, 2007, payments to county and nonpublic nursing facilities enrolled in the medical assistance program as providers of nursing facility services shall be determined in accordance with the methodologies for establishing payment rates for county and nonpublic nursing facilities specified in the department's regulations and the Commonwealth's approved Title XIX State Plan for nursing facility services in effect after June 30, 2007. The following shall apply:

* * *

(vi) Subject to Federal approval of such amendments as may be necessary to the Commonwealth's approved Title XIX State Plan, for fiscal years 2015-2016, 2016-2017 **[and]**, 2018-2019 ***and 2019-2020***, the department shall make up to four medical assistance day-one incentive payments to qualified nonpublic nursing facilities. The department shall determine the nonpublic nursing facilities that qualify for the medical assistance day-one incentive payments and calculate the payments using the total Pennsylvania medical assistance (PA MA) days and total resident days as reported by nonpublic nursing facilities under Article VIII-A. The department's determination and calculations under this subparagraph shall be based on the nursing facility assessment quarterly resident day reporting forms, as determined by the department. The department shall not retroactively revise a medical assistance day-one incentive payment amount

based on a nursing facility's late submission or revision of the department's report after the dates designated by the department. The department, however, may recoup payments based on an audit of a nursing facility's report. The following shall apply:

(A) A nonpublic nursing facility shall meet all of the following criteria to qualify for a medical assistance day-one incentive payment:

(I) The nursing facility shall have an overall occupancy rate of at least eighty-five percent during the resident day quarter. For purposes of determining a nursing facility's overall occupancy rate, a nursing facility's total resident days, as reported by the facility under Article VIII-A, shall be divided by the product of the facility's licensed bed capacity, at the end of the quarter, multiplied by the number of calendar days in the quarter.

(II) The nursing facility shall have a medical assistance occupancy rate of at least sixty-five percent during the resident day quarter. For purposes of determining a nursing facility's medical assistance occupancy rate, the nursing facility's total PA MA days shall be divided by the nursing facility's total resident days, as reported by the facility under Article VIII-A.

(III) The nursing facility shall be a nonpublic nursing facility for a full resident day quarter prior to the applicable quarterly reporting due dates, as determined by the department.

(B) The department shall calculate a qualified nonpublic nursing facility's medical assistance day-one incentive payment as follows:

(I) The total funds appropriated for payments under this subparagraph shall be divided by the number of payments, as determined by the department.

(II) To establish the per diem rate for a payment, the amount under subclause (I) shall be divided by the total PA MA days, as reported by all qualifying nonpublic nursing facilities under Article VIII-A for that payment.

(III) To determine a qualifying nonpublic nursing facility's medical assistance day-one incentive payment, the per diem rate calculated for the payment shall be multiplied by a nonpublic nursing facility's total PA MA days, as reported by the facility under Article VIII-A for the payment.

(C) ***The following shall apply:***

***(I)*** For fiscal years 2015-2016, 2016-2017 and 2018-2019, the State funds available for the nonpublic nursing facility medical assistance day-one incentive payments shall equal eight million dollars ($8,000,000).

***(II) For fiscal years 2019-2020, the State funds available for the nonpublic nursing facility medical assistance day-one incentive payments shall equal sixteen million dollars ($16,000,000).***

* * *

Section 5. The definitions of "assessment," "general acute care hospital," "high volume Medicaid hospital," "hospital" and "net operating revenue" in section 801-E of the act are amended to read:

Section 801-E. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assessment." The fee authorized to be implemented under this article **[on every general acute care hospital within a municipality]**.

* * *

"General acute care hospital." A hospital other than a hospital that the **[Secretary of Human Services]** *secretary* has determined meets one of the following:

(1) Is excluded under 42 CFR 412.23(a), (b), (d), (e) and (f) (relating to Excluded hospitals: Classifications) as of March 20, 2008, from reimbursement of certain Federal funds under the prospective payment system described by 42 CFR 412 (relating to prospective payment systems for inpatient hospital services).

(2) Is a Federal veterans' affairs hospital.

(3) Is a high volume Medicaid hospital.

(4) Provides care, including inpatient hospital services, to all patients free of charge.

(5) Is a free-standing acute care hospital organized primarily for the treatment of and research on cancer and which is an exempt hospital under section 801-G.

"High volume Medicaid hospital." A hospital that the **[Secretary of Human Services]** *secretary* has determined meets all of the following:

(1) is a nonprofit hospital subsidiary of a State-related institution as that term is defined in 62 Pa.C.S. § 103 (relating to definitions); and

(2) **[provides]** ***has provided*** more than **[90,000]** ***60,000 inpatient acute care*** days of care to ***Pennsylvania*** medical assistance patients **[annually]** ***as reported by the hospital's State fiscal year 2014-2015 medical assistance hospital cost report on file with the department as of June 6, 2018.***

"Hospital." A facility ***or the site of a facility that is*** licensed as a hospital under 28 Pa. Code Pt. IV Subpt. B (relating to general and special hospitals) and located within a municipality.

* * *

"Net **[operating]** ***patient*** revenue." Gross **[charges for facilities]** ***revenues received or earned by a hospital for inpatient and outpatient hospital services, including medical assistance supplemental revenues received by the hospital for inpatient and outpatient hospital services,*** less any deducted amounts for bad debt expense, charity care expense and contractual allowances ***as identified in the hospital's records or on forms as specified by the department.***

* * *

Section 6. Section 802-E(a), (a.1) and (b) of the act are amended and the section is amended by adding a subsection to read:

Section 802-E. Authorization.

(a) General rule.—In order to generate additional revenues for the purpose of assuring that medical assistance recipients have access to hospital ***and other health care*** services **[and that all citizens have access to emergency department services]**, and subject to the conditions and requirements specified under this article, a municipality may, by ordinance, **[do]** ***impose an assessment on*** the following:

(1) **[Impose a monetary assessment on the net operating revenue reduced by all revenues received from Medicare of each general acute**

**care hospital located in the municipality.]** ***Each general acute care hospital.***

(2) **[Beginning on or after July 1, 2009, and subject to the advance written approval by the secretary, impose a monetary assessment on the net operating revenues reduced by all revenues received from Medicare of each high volume Medicaid hospital located in the municipality.]** ***Each high volume Medicaid hospital.***

(a.1) ***Assessment imposed by ordinance.—A municipality shall, by ordinance, establish the assessment imposed under subsection (a)(1) and (2) as a percentage of each hospital's net patient revenue reduced by all revenues received from Medicare for the year as the municipality shall specify, and may establish different assessment percentages under subsection (a)(1) or (2).***

***(a.2)*** Adjustments to assessment percentage.—

(1) For State fiscal years beginning after June 30, 2013, and subject to the advance written approval of the secretary as prescribed by the department, the municipality may make a uniform adjustment to an assessment percentage established by ordinance under subsection (a).

(2) After receiving written approval under paragraph (1) and before implementing an adjustment, the municipality shall provide advance public notice. The notice shall specify the proposed adjusted assessment percentage and identify the aggregate impact on hospitals **[located in the municipality]** subject to an assessment. An interested party shall have 30 days in which to submit comments to the municipality. Upon expiration of the 30-day comment period, the municipality, after consideration of the comments, shall publish a subsequent notice announcing the adjusted assessment percentage.

(b) Administrative provisions.—The ordinances adopted pursuant to **[subsection]** ***subsections*** (a), ***(a.1) and (a.2)*** may include appropriate administrative provisions including, without limitation, provisions for the collection of interest and penalties**[.]** ***and provisions for the calculation and imposition of the assessment on a hospital subject to an assessment which, during a fiscal year in which an assessment is imposed under this article, changes ownership or control, begins operations, closes or experiences any other change that affects its status as a general acute care hospital or high volume Medicaid hospital.***

* * *

Section 7. Sections 804-E, 805-E, 807-E and 808-E of the act are amended to read:

Section 804-E. Administration.

(a) Remittance.—Upon collection of the funds generated by the assessment authorized under this article, the municipality shall remit a portion of the funds to the Commonwealth for the purposes set forth under section 802-E, except that the municipality may retain funds in an amount necessary to reimburse it for its reasonable costs in the administration and collection of the assessment and to fund a portion of its costs of operating public health clinics ***and public health programs*** as set forth in an agreement to be entered into between the municipality and the Commonwealth acting through the secretary.

(b) Establishment.—There is established a restricted account in the General Fund for the receipt and deposit of funds under subsection (a). Funds in the account **[are hereby appropriated to]** ***shall be used by*** the department for ***either or both of the following*** purposes **[of making]*****:***

***(1) Making*** supplemental or increased medical assistance payments for **[emergency department]** ***hospital*** services to **[general acute care]** hospitals **[within the municipality]** and to maintain or increase other medical assistance payments to hospitals **[within the municipality]**, as specified in the Commonwealth's approved Title XIX State Plan.

***(2) Making adjusted capitation payments to medical assistance managed care organizations for additional payments for health care services within the municipality.***

Section 805-E. No hold harmless.

No **[general acute care hospital or high volume Medicaid]** hospital ***subject to the assessment*** shall be directly guaranteed a repayment of its assessment in derogation of 42 CFR 433.68(f) (relating to permissible health care-related taxes), except that, in each fiscal year in which an assessment is implemented, the department shall use a portion of the funds received under section 804-E(a) for the purposes outlined under section 804-E(b) to the extent permissible under Federal and State law or regulation and without creating an indirect guarantee to hold harmless, as those terms are used under 42 CFR 433.68(f)(i). The secretary shall submit any **[State Medicaid plan]** ***Title XIX State Plan*** amendments to the United States Department of Health and Human Services that are necessary to make the payments authorized under section 804-E(b).

Section 807-E. Tax exemption.

Notwithstanding any exemptions granted by any other Federal, State or local tax or other law, including section 204(a)(3) of the act of May 22, 1933 (P.L.853, No.155), known as The General County Assessment Law, no **[general acute care hospital or high volume Medicaid]** hospital **[in the municipality]** ***subject to the assessment*** shall be exempt from the assessment.

Section 808-E. Time period.

(a) Cessation.—The assessment authorized under this article shall cease June 30, **[2019]** ***2024***.

(b) Assessment.—

(1) A municipality shall have the power to enact the assessment authorized in section 802-E(a)(2) either prior to or during its fiscal year ending June 30, 2010.

(2) A municipality may adjust an assessment percentage as specified under section **[802-E(a.1)]** ***802-E(a.2)*** either prior to or during the fiscal year in which the adjusted assessment percentage takes effect.

Section 8. The definitions of "net inpatient revenue" and "net outpatient revenue" in section 801-G of the act, amended or added June 22, 2018 (P.L.258, No.40), are amended to read:

Section 801-G. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Net inpatient revenue." Gross **[charges for facilities for inpatient services less any deducted amounts for bad debt expense, charity care expense and contractual allowances as reported on forms specified by the department and:]** ***revenues received or earned by a hospital for inpatient services, including medical assistance supplemental revenues received by the hospital for inpatient hospital services, less any deducted amounts for bad debt expense, charity care expense and contractual allowances as identified in the hospital's records and reported on forms specified by the department for:***

(1) **[as identified in the hospital's records for]** the State fiscal year commencing July 1, 2014, or such later State fiscal year, as may be specified by the department for use in determining an annual assessment amount owed on or after July 1, 2018; or

(2) **[as identified in the hospital's records for]** the most recent State fiscal year, or part thereof, if amounts are not available under paragraph (1).

"Net outpatient revenue." Gross **[charges for facilities for outpatient services less any deducted amounts for bad debt expense, charity care expense and contractual allowances as reported on forms specified by the department and:]** ***revenues received or earned by a hospital for outpatient services, including medical assistance supplemental revenues received by the hospital for outpatient hospital services, less any deducted amounts for bad debt expense, charity care expense and contractual allowances as identified in the hospital's records and reported on forms specified by the department for:***

(1) **[as identified in the hospital's records for]** the State fiscal year commencing July 1, 2014, or a later State fiscal year, as may be specified by the department for use in determining an annual assessment amount owed on or after July 1, 2018; or

(2) **[as identified in the hospital's records for]** the most recent State fiscal year, or part thereof, if amounts are not available under paragraph (1).

* * *

Section 9. This act shall take effect as follows:

(1) The amendment of section 442.1(a)(3) introductory paragraph and (i) of the act shall take effect August 1, 2019.

(2) The remainder of this act shall take effect July 1, 2019, or immediately, whichever is later.

APPROVED—The 28th day of June, A.D. 2019

TOM WOLF