

APPENDIX 8

16LS00259- Upper payment limit program-private hospitals

PROPOSED AMENDMENTS

Department of Health & Wyoming Hospital Association
Amendments:

Page 1-line 12 Delete "7" replace with "8".
Page 1-line 13 Delete "7" replace with "8".
Page 3-lines 13 through 14 Delete "form CMS -2553 96,"
Page 3-line 14 After "means the" insert "annual"
Page 3-lines 14 through 15 Delete "it existed on January 1, 2015".
Page 3-lines 15 through 17 After "hospital cost report, as" insert "determined by the Centers for Medicare and Medicaid Services and as reported to the Healthcare Cost Report Information System;"

Page 4-lines 3 through 4 Strike "Worksheet G-2 (Columns 1 and 2, Lines 1, 2, 2.01, 15, 17 and 18) of"
Page 4-line 5 Delete "recent" insert "recently filed".
Page 4-line 5 Delete "settled".
Page 4-lines 6 through 7 Strike "as reported on worksheet D-4".
Page 4 lines 8 through 9 Delete ", as reported on worksheet G-3 (column 1, Line 3) and worksheet G-2 (Part I, Column 3, Line 25)".
Page 4 lines 10 through 16 After "revenue" insert:
"The department shall establish a procedure to reconcile filed cost report information with information from the settled costs report means the amount calculated annually by the department constituting the difference between the applicable upper payment limit and Medicaid payments made subject that limit in a fiscal year, excluding any quarterly adjustment payments authorized by this chapter."

Page 4-lines 17 through 22 Delete "If a hospital does not have a settled Medicare cost report, a hospital's net hospital patient revenue shall be determined based on current data, which may be extrapolated and then reconciled against the hospital's most recent settled Medicare cost report, when available, with the hospital repaying to the department any excess payments"

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Upper payment limit program-private hospitals.

Sponsored by: Joint Labor, Health & Social Services Interim Committee

A BILL

for

1 AN ACT relating public welfare; establishing a private
2 hospital assessment as specified; providing for the use of
3 assessments to obtain federal matching funds; providing for
4 payments to private hospitals as specified; establishing an
5 account; providing definitions; providing regulatory
6 authority; providing penalties; and providing for an
7 effective date.

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9 *****

10 **STAFF COMMENT**

11 Wyoming law currently contains the Nursing Care
12 Facility Assessment Act, W.S. 42-87-101 through
13 42-87-109, which collects an assessment from
14 nursing homes and uses the collected monies to
15 provide higher reimbursement rates to those
16 nursing homes that pay the assessment. The

1 system is very similar to that proposed for
2 private hospitals. For that reason, the following
3 legislation adopts the structure used in the
4 Nursing Care Facility Assessment Act for private
5 hospitals. The assessment for private hospitals
6 is placed in a new article, immediately after the
7 article applicable to the nursing home
8 assessment.

9 *****
10

11 **Section 1.** W.S. 42-9-101 through 42-9-109 are created
12 to read:

13

14 CHAPTER 9. PRIVATE HOSPITAL ASSESSMENT ACT
15

16 **42-9-101. Short title.**

17

18 This chapter shall be known and may be cited as the
19 "Wyoming Private Hospital Assessment Act."

20

21 **42-9-102. Definitions.**

22

23 (a) As used in this chapter:

24

25 (i) "Account" means the private hospital
26 assessment account created by W.S. 42-9-103;

27

1 (ii) "Department" means the department of
2 health;

3

6

7 (iv) "Medicaid" means the medical assistance
8 program established by title XIX of the federal Social
9 Security Act and administered in this state by the
10 department pursuant to the Wyoming Medical Assistance and
11 Services Act;

12

13 (v) "Medicare cost report" means form CMS-2552-
14 ~~96, the annual hospital cost report, as it existed on~~
15 ~~January 1, 2015~~ determined by the Centers for Medicare and
16 Medicaid Services and as reported to the Healthcare Cost
17 Report Information System;

18

STAFF COMMENT

20 The report number and worksheet page numbers
21 identified in paragraphs (v) and (vi) may need to
22 be updated to reflect current references. The
23 Department has indicated that the proper Medicaid
24 cost report, referenced in paragraph (v), likely
25 is form CMS-2552-10. The Committee may want to
26 consider whether identifying specific pages and
27 report numbers is advisable since they can be
28 amended only through legislative action.

1 *****

2 (vi) "Net hospital patient revenue" means gross

3 hospital revenue as reported on ~~Worksheet G-2 (Columns 1~~

4 and ~~2, Lines 1, 2, 2.01, 15, 17 and 18)~~ of the most

5 recently filed ~~settled~~ Medicare cost report, excluding

6 estimated nonhospital ancillary revenue as reported on

7 ~~worksheet D-4~~, multiplied by the hospital's ratio of total

8 net to gross revenue, as reported on ~~worksheet G-3 (Column~~

9 ~~1, Line 3)~~ and ~~worksheet G-2 (Part I, Column 3, Line 25)~~.

10 The department shall establish a procedure to reconcile

11 ~~filed cost report information with information from the~~

12 ~~settled costs report~~ means the amount calculated annually by

13 the department constituting the difference between the

14 applicable upper payment limit and medicaid payments made

15 subject that limit in a fiscal year, excluding any

16 quarterly adjustment payments authorized by this chapter.

17 If a hospital does not have a ~~settled Medicare cost report~~,

18 a ~~hospital's net hospital patient revenue shall be~~

19 ~~determine based on current data, which may be extrapolated~~

20 ~~and then reconciled against the hospital's most recent~~

21 ~~settled Medicare cost report, when available, with the~~

22 ~~hospital repaying to the department any excess payments;~~

23

1 (vii) "Private hospital" means those
2 institutions licensed by the department as hospitals which
3 are not owned or operated by the state or any city, town,
4 county, special district or other political subdivision of
5 the state or local government;

6

7 (viii) "Quarterly adjustment payment" means the
8 payment made to private hospitals pursuant to W.S. 42-9-
9 106;

10

11 (ix) For purposes of this chapter, "Upper
12 payment limit" means the applicable limitation established
13 pursuant to 42 C.F.R. 447.272, and 42 C.F.R. 447.321, or as
14 otherwise established by the Centers for Medicare and
15 Medicaid Services. on aggregate private hospital medicaid
16 reimbursement for inpatient and outpatient services;

17

18 (x) "Upper payment limit gap" means the amount
19 calculated annually by the department constituting the
20 difference between the applicable upper payment limit and
21 medicaid payments made ~~to private hospitalssubject~~ that
22 limit in a fiscal year, excluding any quarterly adjustment
23 payments authorized by this chapter.

1

2 **42-9-103. Private hospital assessment account.**

3

4 (a) The private hospital assessment account is
5 created.

6

7 (b) The state treasurer shall invest amounts
8 deposited within the account in accordance with law and all
9 investment earnings shall be credited back to the account.
10 Funds in the account are continuously appropriated to the
11 department for the purposes specified in this section.

12

13 (c) The account shall consist of:

14

15 (i) Amounts collected or received by the
16 department from private hospital assessments under this
17 chapter;

18

19 (ii) All federal matching funds received by the
20 department as a result of expenditures made by the
21 department pursuant to this chapter.

22

1 (d) The account shall be used exclusively for the
2 following purposes:

3

4 (i) To pay administrative expenses incurred by
5 the department or its agent in performing the activities
6 authorized by this chapter, provided that such expenses
7 shall not exceed a total of one percent (1%) of the
8 aggregate assessment funds collected in the fiscal year;

9

10 (ii) To secure federal matching funds available
11 through the state medicaid plan as approved pursuant to
12 W.S. 42-9-108, which shall be used to make quarterly
13 adjustment payments as provided by this chapter;

14

15 (iii) To repay to the federal government any
16 excess payments received or made to private hospitals if
17 the state plan, after approval by the federal Centers for
18 Medicare and Medicaid Services, is subsequently
19 disapproved for any reason and after the state has
20 exhausted all appeals. Private hospitals shall refund any
21 excess payments to the assessment account. If a private
22 hospital is unable to refund payments as provided in this
23 paragraph, the department shall develop a payment plan to

1 recoup deficient payments and accordingly deduct amounts
2 from future medicaid payments. The department shall refund
3 the federal government for the federal portion of those
4 overpayments;

5

6 (iv) To refund assessments paid by private
7 hospitals for quarterly adjustment payments which were
8 earned but not paid by the department, but only after the
9 payments authorized by paragraphs (i) and (iii) of this
10 section have been made.

11

12 42-9-104. Assessments.

13

21

22 (b) The assessment due under this section shall be
23 imposed each fiscal year in an amount calculated as a

1 uniform percentage of each hospital's net patient revenue.
2 The assessment rate shall be determined by the department
3 on a prospective basis and shall be based on the percentage
4 of net hospital patient revenue needed to generate an
5 amount not to exceed the nonfederal portion of the upper
6 payment limit gap plus the fee authorized by W.S. 42-9-
7 103(d)(i). In no event shall the assessment rate exceed
8 the indirect guarantee threshold amount established by 42
9 C.F.R. 433.68(f)(3)(i) or other federal law.

10

11 (c) Unless otherwise determined by the department,
12 the department shall collect and each private hospital
13 shall pay the assessment required by this section on a
14 quarterly basis, each payment constituting twenty-five
15 percent (25%) of the annual assessment determined by the
16 department. The initial payment shall be due not later
17 than forty-five (45) days after the state plan has been
18 approved by the federal Centers for Medicare and
19 Medicaid Services unless a later date is set by the
20 department. Subsequent payments are due not later than
21 forty-five (45) days after the end of each calendar quarter
22 unless a later date is set by the department.

23

1 (d) If a private hospital ceases to operate as a
2 hospital or for any reason ceases to be subject to the
3 assessment imposed under this chapter, the assessment for
4 the fiscal year in which the cessation occurs shall be
5 adjusted by multiplying the annual assessment by a
6 fraction, the numerator of which is the number of days in
7 the year during which the hospital is subject to the
8 assessment and the denominator of which is three hundred
9 sixty-five (365). Immediately upon ceasing to operate as a
10 hospital, or otherwise ceasing to be subject to this
11 chapter, the hospital shall pay the assessment for each
12 quarter as adjusted, to the extent not previously paid.

13

14 **42-9-105. Penalties for failure to pay assessment.**

15

16 (a) If a private hospital fails to pay an assessment
17 due under this chapter, there shall be added to the
18 assessment a penalty equal to five percent (5%) of the
19 amount of the assessment that was not paid when due. The
20 penalty under this section may be waived by the department
21 for good cause. Any payments made after a penalty is
22 assessed under this section shall be credited first to

1 unpaid assessment amounts rather than to penalty amounts,
2 beginning with the most delinquent installment.

3

4 (b) In addition to the penalty under subsection (a)
5 of this section, the department may implement any of the
6 following remedies for failure of a private hospital to pay
7 its assessment when due under this chapter:

8

9 (i) Withhold any medicaid payments, including
10 any quarterly adjustment payments, until the assessment is
11 paid;

12

13 (ii) Suspend or revoke the private hospital's
14 license; or

15

16 (iii) Develop a plan that requires the private
17 hospital to pay any delinquent assessment in installments.

18

19 **42-9-106. Quarterly adjustment payments.**

20

21 (a) To preserve the quality and improve access to
22 hospital services for private hospital inpatient and
23 outpatient services rendered on or after July 1, 2016, the

1 department shall make quarterly adjustment payments as set
2 forth in this section.

3 ****

4 **STAFF COMMENT**

5 Although it is permissible to include subsection
6 (a), above, in statute, standard statutory
7 convention disfavors including statements of
8 purpose within codified language.

9 ****

10

11 (b) Each private hospital that pays assessments under
12 this chapter and is eligible to receive medicaid payments
13 shall be eligible to receive quarterly adjustment payments
14 as provided in this section. The department shall
15 distribute quarterly adjustment payments in an amount up to
16 but not to exceed the applicable upper payment limit gap
17 ~~for private hospital inpatient and outpatient services. The~~
18 ~~deparment shall establish a uniform methodology by which~~
19 ~~to distribute quarterly adjustment payments in compliance~~
20 ~~with applicable federal or state mMedicaid laws or~~
21 regulations.

22

23 (c) A portion of the total quarterly adjustment
24 ~~payments, not to exceed the upper payment limit gap for~~
25 ~~private hospital inpatient services, shall be designated as~~

1 the private hospital inpatient quarterly adjustment pool.

2 The following shall apply:

3

4 (i) In addition to any other funds paid to
5 private hospitals for inpatient hospital services to
6 medicaid patients, each eligible private hospital shall
7 receive inpatient quarterly adjustment payments each fiscal
8 year equal to the hospital's pro rata share of the private
9 hospital inpatient quarterly adjustment pool based upon the
10 hospital's medicaid payments for inpatient services divided
11 by the total medicaid payments for inpatient services of
12 all eligible hospitals;

13

14 (ii) Private hospital inpatient quarterly
15 adjustment payments shall be made on a quarterly basis.

16

17 (d) A portion of the total hospital quarterly
18 adjustment payments, not to exceed the upper payment limit
19 gap for private hospital outpatient services, shall be
20 designated as the private hospital outpatient quarterly
21 adjustment pool. The following shall apply:

22

10
11 (ii) Private hospital outpatient quarterly
12 adjustment payments shall be made on a quarterly basis.

14 | (ce) Quarterly adjustment payments shall not be used
15 to offset any other payment by medicaid for hospital
16 inpatient or outpatient services to medicaid beneficiaries,
17 including without limitation any fee-for-service, per diem,
18 private hospital inpatient adjustment or cost-settlement
19 payment.

21 | (d£) No private hospital shall be guaranteed,
22 | expressly or otherwise, that any quarterly adjustment

1 payment will equal or exceed the amount of the private
2 hospital assessments due under this chapter.

3

4 *****

5 **STAFF COMMENT**

6 To the extent the language in subsection (g),
7 below, limits the Legislature's ability to adjust
8 funding levels in the future, it may constitute
9 an impermissible effort to bind future
10 legislatures. The Legislature likely is not
11 allowed to limit the budgetary authority of
12 future legislatures by broadly prohibiting
13 adjustments to future funding levels which are
14 meant to "support medicaid."

15 *****

16 | (e.g) Monies made available by this chapter shall not
17 be used to replace other general revenues appropriated and
18 funded by the legislature or other revenues used to support
19 medicaid.

20

21 **42-9-107. Discontinuation of the assessment and**
22 **quarterly adjustment payments.**

23

24 (a) The assessment imposed by this chapter shall be
25 discontinued if:

26

27 (i) The state plan amendment reflecting the
28 quarterly adjustment payments authorized by this chapter is

1 not approved by the federal Centers for Medicare and
2 Medicaid Services. The department may modify the
3 quarterly adjustment payment provisions as necessary to
4 obtain the federal Centers for Medicare and Medicaid
5 Services approval if such changes do not exceed the
6 authority and purposes of this chapter;

7

8 (ii) If federal financial participation to match
9 assessments under this chapter becomes unavailable under
10 federal law. In such case, the department shall terminate
11 the imposition of assessments beginning on the date the
12 federal statutory, regulatory or interpretive change takes
13 effect.

14

15 (b) If collection of the assessment is discontinued
16 as provided in this section, quarterly adjustment payments
17 shall be discontinued and, after payment of all amounts
18 under W.S. 42-9-103(d)(i) and (iii), any assessments
19 remaining in the account shall be returned to the private
20 hospitals from which the assessments were collected on the
21 same basis as they were collected.

22

23 **42-9-108. Approval of state plan; rulemaking.**

1

2 (a) The department shall seek necessary federal
3 approval in the form of state plan amendments in order to
4 | continue to implement the provisions of this chapter.

5

6 (b) The department shall adopt rules and regulations
7 necessary to implement the provisions of this chapter and
8 to obtain approval of the state plan amendments.

9

10 *****
11 **STAFF COMMENT**

12 The section, below, is included in the Nursing
13 Care Facility Assessment Act and, so, is included
14 here. However, the Wyoming Hospital Association
15 notes that this section may be unnecessary given
16 that a definition of hospital exists which may
17 address this situation. The Association also
18 believes there is no incentive to game the system
19 because a hospital which operates multiple
20 facilities but considers itself one hospital will
21 simply have a larger net patient revenue and
22 will, therefore, pay the same, higher assessment.

23 *****
24 **42-9-109. Multiple facilities.**

25

26 If a person conducts, operates or maintains more than one
27 (1) private hospital licensed by the department, the person
28 shall pay the assessment for each private hospital
29 separately.

30

1 **Section 2.** This act is effective July 1, 2016.

2

3 (END)