

## LEGISLATIVE BILL 1087

Approved by the Governor March 27, 2024

Introduced by Jacobson, 42; Armendariz, 18; Ballard, 21; Blood, 3; Bosn, 25; Brewer, 43; Cavanaugh, J., 9; Clements, 2; Conrad, 46; DeKay, 40; Dorn, 30; Dover, 19; Fredrickson, 20; Holdcroft, 36; Ibach, 44; Lippincott, 34; McDonnell, 5; Meyer, 41; Walz, 15; Wishart, 27; Day, 49; Vargas, 7; Brandt, 32; Murman, 38; Raybould, 28; Cavanaugh, M., 6; Dungan, 26; Bostar, 29; Hughes, 24; Lowe, 37; Moser, 22; Kauth, 31; Hardin, 48.

A BILL FOR AN ACT relating to public health and welfare; to amend section 71-1798, Revised Statutes Supplement, 2023; to adopt the Hospital Quality Assurance and Access Assessment Act; to provide duties for the Nebraska Center for Nursing; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Hospital Quality Assurance and Access Assessment Act.

Sec. 2. For purposes of the Hospital Quality Assurance and Access Assessment Act:

(1) Assessment means a quality assurance and access assessment imposed on hospitals pursuant to section 3 of this act;

(2) Department means the Division of Medicaid and Long-Term Care of the Department of Health and Human Services;

(3) Hospital means a hospital as defined in section 71-419 or a rural emergency hospital as described in section 71-477;

(4) Medical assistance program means the medical assistance program established pursuant to the Medical Assistance Act; and

(5) Net patient revenue means the revenue paid to a hospital for patient care, room, board, and services less contractual adjustments, bad debt, and revenue from sources other than operations, including, but not limited to, interest, guest meals, gifts, and grants.

Sec. 3. (1) The department shall amend the medicaid state plan or file other federal authorizing documents to establish assessments and directed-payment programs for hospital inpatient and outpatient services.

(2) Upon approval by the federal Centers for Medicare and Medicaid Services of a hospital assessment and a directed-payment program, the department shall impose an assessment on hospitals to assure quality and access in the medical assistance program.

(3) The department may establish different assessment rates based on categories of hospital or hospital services as allowed by federal law.

(4) The department shall consult with a statewide association representing a majority of hospitals and health systems in Nebraska regarding the development, implementation, and annual renewal of the assessments and the directed-payment programs.

(5) The department shall partner with a statewide association representing a majority of hospitals and health systems in Nebraska to:

(a) Aggregate inpatient, outpatient, and clinic claims data in order to establish quality improvement metrics and track progress on identified metrics; and

(b) Design and implement quality initiatives to improve children's mental health, adult mental health, maternity care, and senior care.

(6) The department shall adopt and promulgate rules and regulations that are necessary to implement the Hospital Quality Assurance and Access Assessment Act.

Sec. 4. (1) Except as provided in section 6 of this act, the department shall collect assessments from hospitals and remit the assessments to the State Treasurer for credit to the Hospital Quality Assurance and Access Assessment Fund. It is the intent of the Legislature that no proceeds from the fund, including the federal match, shall be credited directly to the General Fund except as provided in subdivision (3)(a) of section 6 of this act.

(2) The first quarterly payment of each fiscal year made by the department shall be transferred from the General Fund. All remaining quarterly payments shall be paid as provided in section 6 of this act.

Sec. 5. (1) Each hospital shall pay an assessment based on net patient revenue for the purpose of improving the quality of, and access to, hospital care in the state. The statewide aggregate assessment shall equal (a) the state share of the payments authorized by the federal Centers for Medicare and Medicaid Services and (b) funds for expenditures as provided in subsection (3) of section 6 of this act. The statewide aggregate assessment total shall not exceed six percent of the net patient revenue of all assessed hospitals.

(2)(a) A hospital shall pay its quarterly assessment within thirty days after receipt of its quarterly directed payments. Failure of a hospital to remit the assessments may result in penalties, interest, or legal action.

(b) A new hospital shall begin paying an assessment and receiving directed payments at the start of the first full fiscal year after the hospital is

eligible for medicaid reimbursement for inpatient or outpatient services. A hospital that has merged with another hospital shall have its assessment and directed payments revised at the start of the first full fiscal year after the merger is recognized by the department. A closed hospital shall be retroactively responsible for assessments owed and shall receive directed payments for services provided.

(3) If the department determines that a hospital has underpaid or overpaid assessments, the department shall notify the hospital of the unpaid assessments or of any refund due. Such payment or refund shall be due or refunded within thirty days after the date of the notice.

Sec. 6. (1) The Hospital Quality Assurance and Access Assessment Fund is created. Interest earned on the fund shall be credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall use the Hospital Quality Assurance and Access Assessment Fund, including the matching federal financial participation, for the purpose of enhancing rates paid to hospitals under the medical assistance program except as allowed by subsection (3) of this section. Money in the fund shall not be used to replace or offset existing state funds paid to hospitals for providing services under the medical assistance program.

(3) The Hospital Quality Assurance and Access Assessment Fund shall also be used to:

(a) Reimburse the General Fund the amount of the first quarterly payment on or before June 30 of each fiscal year;

(b) Reimburse the department an administrative fee of three percent of the assessment, not to exceed fifteen million dollars per year, to collect assessments and administer directed-payment programs established by the Hospital Quality Assurance and Access Assessment Act;

(c) Provide the Nebraska Center for Nursing Board one-half of one percent of the assessment, not to exceed two million five hundred thousand dollars per year, for the expansion of clinical nursing training sites as authorized in subsection (3) of section 71-1798; and

(d) Provide funding of three and one-half percent of the assessment, not to exceed seventeen million five hundred thousand dollars per year, for rates for nonhospital providers in the medical assistance program, continuous eligibility for children, or the designated health information exchange authorized in section 81-6,125.

(4) In calculating rates, the proceeds from assessments and federal match not utilized under subsection (3) of this section shall be used to enhance rates for hospital inpatient and outpatient services in addition to any funds appropriated by the Legislature.

(5) The department shall collect data for revenue, discharge, and inpatient days from a hospital that does not file an annual medicare cost report. At the request of the department, a hospital that does not file an annual medicare cost report shall submit such requested data to the department.

(6) The department shall prohibit a medicaid managed care organization from (a) setting, establishing, or negotiating reimbursement rates with a hospital in a manner that takes into account, directly or indirectly, a directed payment that a hospital receives under the Hospital Quality Assurance and Access Assessment Act, (b) unnecessarily delaying a directed payment to a hospital, or (c) recouping or offsetting a directed payment for any reason.

(7)(a) A hospital shall not:

(i) Set, establish, or negotiate reimbursement rates with a managed care organization in a manner that directly or indirectly takes into account a directed payment that a hospital receives under the Hospital Quality Assurance and Access Assessment Act; or

(ii) Directly pass on the cost of an assessment to patients or nonmedicaid payors, including as a fee or rate increase.

(b) A hospital that violates this subsection shall not receive a directed payment for the remainder of the rate year. This subsection shall not be construed to prohibit a hospital from negotiating with a payor for a rate increase.

Sec. 7. It is the intent of the Legislature that medicaid rates paid for hospital inpatient and outpatient services and the General Fund appropriations for hospital inpatient and outpatient services in the medical assistance program shall not be reduced to an amount below the rates paid and General Fund appropriations for these services in fiscal year 2023-24.

Sec. 8. Assessments and directed-payment programs shall be treated as a separate component in developing rates paid to hospitals and shall not be included with existing rate components. The assessments and directed-payment programs shall be retroactive to July 1, 2024, or the effective date approved by the federal Centers for Medicare and Medicaid Services.

Sec. 9. (1) The department shall discontinue the collection of assessments when federal matching funds are unavailable. In such case, the department shall terminate the collection of the assessments beginning on the date such federal matching funds become unavailable.

(2) If collection of assessments is discontinued as provided in this section, the money in the Hospital Quality Assurance and Access Assessment Fund shall be returned to the hospitals from which the assessments were collected on the same proportional basis as the assessments were assessed for the quarter in which the assessment was terminated.

Sec. 10. Section 71-1798, Revised Statutes Supplement, 2023, is amended to

read:

71-1798 (1) The Nebraska Center for Nursing is established. The center shall address issues of supply and demand for nurses, including issues of recruitment, retention, and utilization of nurses. The Legislature finds that the center will repay the state's investment by providing an ongoing strategy for the allocation of the state's resources directed towards nursing.

(2) The primary goals for the center are:

(a) To develop a strategic statewide plan to alleviate the nursing shortage in Nebraska by:

(i) Establishing and maintaining a database on nursing supply and demand in Nebraska, including current supply and demand and future projections; and

(ii) Selecting priorities from the plan to be addressed;

(b) To convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to:

(i) Review and comment on data analysis prepared for the center;

(ii) Recommend systemic changes, including strategies for implementation of recommended changes; and

(iii) Evaluate and report the results of these efforts to the Legislature and the public; and

(c) To enhance and promote recognition, reward, and renewal activities for nurses by:

(i) Proposing and creating recognition, reward, and renewal activities; and

(ii) Promoting media and positive image-building efforts for nursing.

(3) After consultation with a statewide association representing hospitals and health systems that provide clinical nursing opportunities, the Nebraska Center for Nursing Board shall provide for the expansion of clinical training sites for nurses throughout the state, giving preference to areas that have lower numbers of registered nurses per capita compared to the state average, and shall provide for the development of programs that:

(a) Incentivize clinical nurses to become clinical nurse faculty;

(b) Incentivize nurse faculty to partner with staff nurses in the development of clinical nurse faculty;

(c) Expand simulation training for nurse clinical education; and

(d) Incentivize hospital facilities to support the center in carrying out this subsection.

(4) The Nebraska Center for Nursing shall partner with a statewide association representing a majority of hospitals and health systems in Nebraska to increase the workforce development of nurses and other health professionals by providing at least fifty million dollars per year in private investments for statewide health care workforce development.

Sec. 11. Original section 71-1798, Revised Statutes Supplement, 2023, is repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.