CHAPTER 46

AN ACT concerning performance-based incentive payments for physicians, amending P.L.1989, c.19, and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1989, c.19 (C.45:9-22.4) is amended to read as follows:

C.45:9-22.4 Definitions.

1. For the purposes of this act:

"Health care service" means a business entity which provides on an inpatient or outpatient basis: testing for or diagnosis or treatment of human disease or dysfunction; or dispensing of drugs or medical devices for the treatment of human disease or dysfunction. Health care service includes, but is not limited to, a bioanalytical laboratory, pharmacy, home health care agency, rehabilitation facility, nursing home, hospital, or a facility which provides radiological or other diagnostic imagery services, physical therapy, ambulatory surgery, or ophthalmic services.

“Hospital and physician incentive plan” means a compensation arrangement established pursuant to sections 2 through 4 of P.L.2017, c.46 (C.26:2H-12.80 et seq.) between a general acute care hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) and a physician or physician group.

"Immediate family" means the practitioner's spouse and children, the practitioner's siblings and parents, the practitioner's spouse's siblings and parents, and the spouses of the practitioner's children.

"Practitioner" means a physician, chiropractor, or podiatrist licensed pursuant to Title 45 of the Revised Statutes.

"Significant beneficial interest" means any financial interest; but does not include ownership of a building wherein the space is leased to a person at the prevailing rate under a straight lease agreement, payments made by a hospital to a physician pursuant to a hospital and physician incentive plan, or any interest held in publicly traded securities.

C.26:2H-12.80 Hospital and physician incentive plan.

2. a. A hospital may establish a hospital and physician incentive plan, which shall meet the requirements set forth in sections 2, 3, and 4 of this act.

b. A hospital that establishes a hospital and physician incentive plan shall contract, directly or indirectly, with an independent third party to administer the plan, including applying the plan’s incentive methodology and calculating direct payments of incentives from the hospital to physicians, which shall be based on the physician’s performance in meeting the hospital’s institutional and specialty-specific goals as determined using an incentive payment methodology that meets the requirements set forth in section 4 of this act.

c. A hospital that establishes a hospital and physician incentive plan shall establish a hospital steering committee, which shall meet the requirements set forth in section 4 of this act.

d. If a hospital and physician incentive plan includes multiple hospital participants, the plan shall utilize a facilitator-convener to provide for efficient implementation and operation of the plan. For each hospital, the facilitator-convener shall coordinate with the independent third party administering the plan and with the hospital steering committee to facilitate plan administration, disseminate information concerning best practices, and serve as the point of contact for the Department of Health.

C.26:2H-12.81 Applicability of plan.

3. a. Except for plans limited to specific clinical specialties or diagnosis related groups, a hospital and physician incentive plan shall apply to all admissions and all inpatient costs related to those admissions in a given program. Plans shall be open to all surgeons and attending physicians of record and may, at the discretion of a participating hospital, include other physicians involved in the provision of inpatient care. A physician shall not be eligible to participate in a plan unless the physician has been on the medical staff of the hospital for at least one year, except that these restrictions shall not apply to hospitalists and physicians who are new to the participating hospital's geographic area. Each plan shall include a mechanism to limit incentives attributable to year-to-year increases in patient volume for physicians on staff with multiple admitting privileges.

b. (1) A hospital and physician incentive plan shall be filed with the Department of Health by the hospital or facilitator-convener prior to the anticipated start date of the plan. The plan shall set forth the physician incentive methodology, institutional and specialty-specific goals, quality and cost performance standards, and any standards, programs, or protocols designed to ensure the plan meets the requirements of this act. Hospitals that have implemented a hospital and physician incentive plan shall submit an annual report to the department setting forth the distributions made to physicians, quality and cost performance standards, proposed revisions to the plan, if any, and such other information as the department may require.

(2) The department shall review plans submitted pursuant to paragraph (1) of this subsection, and shall notify the hospital if its plan does not meet the requirements of this act. The department shall provide the hospital with a reasonable opportunity to remedy any deficiencies in the plan, and may terminate a plan that continues to fail to meet the requirements of this act.

c. (1) A participating physician may withdraw from a plan upon reasonable notice to the hospital.

(2) A hospital may terminate a plan upon reasonable notice to the department and to physicians participating in the plan.

d. Patients shall be notified of the hospital and physician incentive plan in advance of admission to the hospital.

C.26:2H-12.82 Institutional and specialty specific goals.

4. a. A hospital steering committee shall establish institutional and specialty-specific goals related to patient safety, quality of care, and operational performance, which may incorporate specific patient management tasks, care redesign initiatives, and patient safety and quality of care objectives. In establishing these goals, the committee shall prioritize institution-specific quality commitments and shall condition incentive payments, as well as physician participation, upon the successful response to these goals. In addition, the committee shall ensure that:

(1) no payments may be made for reducing or limiting medically necessary care;

(2) the appropriate course of treatment for each patient is determined, in consultation with the patient or the patient's representative, by the attending physician or surgeon of record;

(3) adequate safeguards are in place to ensure that there are no incentives to avoid difficult or complex medical cases, or to withhold, reduce, or limit quality care;

(4) no incentive payment may be made in any individual case for exceeding best practice standards established under the plan; and

(5) overall payments to individual physicians under a plan shall not exceed 50 percent of the total professional payments for services related to the cases for which that physician receives incentive payments under the plan.

b. The steering committee shall establish an incentive payment methodology, which shall be internally consistent and shall ensure that:

(1) individual physician performance is objectively measured, taking into account the severity of the medical issues presented by an individual patient;

(2) incentive payments objectively correlate with physician performance and are applied in a consistent manner to all physicians participating in the plan;

(3) participating physicians are treated uniformly relative to their respective individual contributions to institutional efficiency and quality of patient care;

(4) performance and best practice standards established under the plan are based primarily on local and regional data;

(5) the methodology recognizes both individual physician performance, including a physician's utilization of inpatient resources compared to the physician's peers, and improvements in individual physician performance, including a physician's utilization of inpatient resources compared with the physician's own performance over time; and

(6) the elements of the methodology are properly balanced to meet the needs of physicians, hospitals, and patients.

c. The steering committee shall adopt a mechanism to protect the financial health of the hospital.

d. At least half of the members of the steering committee shall be physicians.

C.26:2H-12.83 Review of plans, authority of department.

5. a. The Department of Health shall review each hospital and physician incentive plan filed with the department at least once every six years to determine whether the plan is operated in compliance with this act and other relevant State and federal laws and regulations, and whether the hospital and physician incentive plan has resulted in a degradation of quality of health care provided to patients attributable to the hospital and physician incentive plan.

b. The department shall have authority to terminate a hospital and physician incentive plan if the department's review finds that the hospital and physician incentive plan fails to comply with State or federal law, or if it results in a degradation of quality of patient care.

c. A hospital and physician incentive plan shall not expire or otherwise be terminated solely as a result of the department's failure to conduct a review required pursuant to subsection a. of this section.

6. This act shall take effect immediately.

Approved May 1, 2017.