I

118TH CONGRESS
1ST SESSION

H. R. 990

To amend title XIX of the Social Security Act to establish a methodology for determining State allotments for Medicaid disproportionate share hospital payments that is based on State poverty levels, to require States to prioritize disproportionate share hospital payments on the basis of Medicaid inpatient utilization and low-income utilization rates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2023

Mr. BILIRAKIS introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend title XIX of the Social Security Act to establish a methodology for determining State allotments for Medicaid disproportionate share hospital payments that is based on State poverty levels, to require States to prioritize disproportionate share hospital payments on the basis of Medicaid inpatient utilization and low-income utilization rates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State Accountability, Flexibility, and Equity for Hospitals Act of 2023'', or the ''SAFE Hospitals Act of 2023''.

SEC. 2. DETERMINATION OF STATE DSH ALLOTMENTS BASED ON STATE POVERTY LEVELS.

Section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)) is amended—

(1) in paragraph (3)—

(A) in the paragraph heading, by striking ''YEAR 2003 AND THEREAFTER'' and inserting ''YEARS 2003 THROUGH 2025'';

(B) in subparagraph (A)—

(i) by striking '', (7), and (8)'' and inserting ''and (7)''; and

(ii) by inserting ''through fiscal year 2025'' after ''each succeeding fiscal year'';

(C) in subparagraph (C)(ii), by inserting ''through fiscal year 2025'' after ''each succeeding fiscal year''; and

(D) in subparagraph (E)(i)(III), by inserting ''or paragraph (7), as applicable,'' after ''this paragraph''; and

(2) in paragraph (4)(C), by inserting ''or paragraph (7), as applicable,'' after ''paragraph (3)'';

(3) in paragraph (5)(B)—

(A) in the subparagraph heading, by striking ''AND SUBSEQUENT FISCAL YEARS'' and inserting ''THROUGH FISCAL YEAR 2025''; and

(B) in clause (iii), by inserting ''through fiscal year 2025'' after ''any subsequent fiscal year'';

(4) in clause (iii) of paragraph (6)(B)—

(A) in the clause heading, by inserting ''THROUGH FISCAL YEAR 2025'' after ''SUCCEEDING FISCAL YEARS''; and

(B) in subclause (II)—

(i) in the subclause heading, by inserting ''THROUGH FISCAL YEAR 2025'' after ''SUCCEEDING FISCAL YEARS''; and

(ii) by inserting ''through fiscal year 2025'' after ''each fiscal year thereafter'';

(5) by striking paragraphs (7) and (8) and inserting the following:

''(7) STATE DSH ALLOTMENTS FOR FISCAL YEARS AFTER FISCAL YEAR 2025.—

''(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), beginning with fiscal year 2026, the DSH allotment for a State and fiscal year shall be the amount equal to the product of—

''(i) the State poverty ratio (as determined under subparagraph (E)(ii)) for the State and fiscal year; and

''(ii) the DSH allotment cap (as determined under subparagraph (E)(i)) for the fiscal year.

''(B) PHASE-IN OF POVERTY-BASED FORMULA.—

''(i) IN GENERAL.—During the period of fiscal years described in clause (ii), the Secretary shall phase in the application of the determination of DSH allotments under subparagraph (A) in a manner that ensures that—

''(I) in no case is the DSH allotment for a State for a fiscal year during such period less than 90 percent of the DSH allotment for the State for the previous fiscal year (without regard to whether the State used the full amount of the DSH allotment for the previous fiscal year); and

''(II) the total amount of DSH allotments made to all States for any fiscal year during such period does

not exceed the DSH allotment cap determined for the fiscal year under subparagraph (E)(i).

''(ii) PHASE-IN PERIOD.—The period of fiscal years described in this clause is the period that begins with fiscal year 2026 and ends with—

''(I) fiscal year 2035; or

''(II) at the Secretary's discretion, any of fiscal years 2036 through 2040.

''(iii) DEVELOPMENT OF METHODOLOGY.—The Secretary shall promulgate final regulations that establish the methodology for determining State DSH allotments under clause (i) not later than January 1, 2025.

''(C) STATE ALLOTMENT FLEXIBILITY OPTION.—

''(i) IN GENERAL.—A State may elect to increase or reduce the amount of the DSH allotment for the State and a fiscal year (as otherwise determined under this paragraph) for the purpose of providing certainty or more consistent DSH funding

in subsequent fiscal years in accordance with this subparagraph.

''(ii) STATE OPTION TO RESERVE ALLOTMENT AMOUNTS.—For any fiscal year after fiscal year 2025, a State may request that the DSH allotment for the State and fiscal year (as otherwise determined under this paragraph) be reduced by an amount that shall not exceed 10 percent of the amount of the allotment as so determined.

''(iii) STATE OPTION TO INCREASE DSH ALLOTMENT FROM ALLOTMENT RESERVE.—For any fiscal year after fiscal year 2026, a State may request that the DSH allotment for the State and fiscal year (as otherwise determined under this paragraph) be increased by an amount that shall not exceed the DSH reserve amount for the State and fiscal year.

''(iv) DSH RESERVE AMOUNT.—

''(I) IN GENERAL.—Subject to subclause (II), the DSH reserve amount for a State and fiscal year shall be equal to the sum of the amounts, if any, of any reductions to

the State's DSH allotment (as otherwise determined under this paragraph) made in each of the preceding 5 fiscal years pursuant to a request under clause (ii).

"(II) SUBTRACTION OF INCREASES FROM DSH RESERVE AMOUNT.—The amount of any increase to a State's DSH allotment for a fiscal year made pursuant to a request under clause (iii) shall be subtracted from the State's DSH reserve amount for such year and shall not be available to the State in subsequent fiscal years.

"(III) RULE OF APPLICATION.—In the case of an increase to a State's DSH allotment for a fiscal year that is less than the State's DSH reserve amount for such year, the Secretary shall apply subclause (II) in a manner that maximizes the DSH reserve amount that will remain available to the State in subsequent fiscal years.

''(v) DISREGARD OF ADJUSTMENTS.—Any increase or reduction under this subparagraph to the DSH allotment of a State for a fiscal year shall be disregarded when otherwise determining State DSH allotments under this paragraph.

''(D) TREATMENT OF WAIVERS.—

''(i) IN GENERAL.—Subject to clause (ii), with respect to a State and a fiscal year, if the State has in effect on the date of enactment of the SAFE Hospitals Act of 2023 a statewide waiver of requirements of this title under section 1115 or other law and any part of the fiscal year occurs during the period of the waiver (as approved as of such date), the DSH allotment determined under this paragraph for such State and fiscal year shall not be less than the DSH allotment that would have been determined for such State and fiscal year under this section as in effect on the day before the date of enactment of the SAFE Hospitals Act of 2023, reduced, in the case of each of fiscal years 2026 through 2029, by the amount of the

State's share of the reductions which would have been applicable for the fiscal year under paragraph (7) of this subsection (as so in effect), as estimated by the Secretary.

''(ii) TOTAL ALLOTMENTS NOT TO EXCEED DSH ALLOTMENT CAP.—The Secretary shall apply this subparagraph in such a manner that the total amount of DSH allotments determined for all States for a fiscal year under this paragraph does not exceed DSH allotment cap determined for the fiscal year under subparagraph (E)(i).

''(iii) NONAPPLICATION.—Clause (i) shall not apply—

''(I) with respect to a State that has in effect a waiver described in such clause if the State elects, through a revision of such waiver, that such clause will not apply; or

''(II) with respect to any part of a fiscal year that occurs after the expiration (determined without regard to any extension approved after the

date of the enactment of the State Accountability, Flexibility, and Equity for Hospitals Act of 2023) of such a waiver.

"(iv) NO EFFECT ON WAIVER AUTHORITY.—Nothing in this subsection shall be construed as preventing the Secretary from approving a waiver under section 1115 or other law with respect to requirements under this title related to a State's use of its DSH allotment for a fiscal year.

"(E) DEFINITIONS.—In this paragraph:

"(i) DSH ALLOTMENT CAP.—The term 'DSH allotment cap' means, with respect to a fiscal year, the amount equal to the total amount of the DSH allotments that would have been determined for all States for the fiscal year under this section as in effect on the day before the date of enactment of the SAFE Hospitals Act of 2023, reduced, in the case of fiscal years 2026 through 2029, by the aggregate amount of the reductions which would have been applicable for the fiscal year under

paragraph (7) of this subsection (as so in effect).

''(ii) STATE POVERTY RATIO.—The term 'State poverty ratio' means, with respect to a State and fiscal year, the ratio of—

''(I) the number of individuals in the State in the most recent fiscal year for which census data are available whose income (as determined under section 1902(e)(14) (relating to modified adjusted gross income) and without regard to whether an individual's income eligibility for medical assistance is determined under such section) was less than 100 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved; to

''(II) the number of individuals in all States in the most recent fiscal year for which census data are available whose income (as so determined) was less than 100 percent of the pov-

erty line (as so defined) applicable to the family of the size involved.''; and

(6) by redesignating paragraph (9) as paragraph (8).

SEC. 3. PRIORITIZING DISPROPORTIONATE SHARE HOSPITAL PAYMENTS BASED ON MEDICAID INPATIENT UTILIZATION AND LOW-INCOME UTILIZATION RATES.

(a) IN GENERAL.—Section 1923 of the Social Security Act (42 U.S.C. 1396r–4) is amended—

(1) in subsection (a)(2)(D), by inserting ''(which, as of October 1, 2025, shall meet the requirements of subsection (k))'' after ''methodology'';

(2) in subsection (c), by striking ''and (g)'' and inserting '', (g), and, beginning on October 1, 2025, (k)'';

(3) in subsection (d)(2)(A)—

(A) in clause (i), by striking ''; or'' and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following new clause:

''(iii) that is an institution for mental diseases.''; and

(4) by adding at the end the following new subsection:

''(k) STATE METHODOLOGY REQUIREMENTS.—

''(1) IN GENERAL.—Subject to paragraph (4), a State methodology for identifying and making payments to disproportionate share hospitals meets the requirements of this subsection if—

''(A) the methodology is uniformly applied statewide;

''(B) the methodology identifies each hospital in the State that is described in a disproportionate share hospital tier (as defined in paragraph (2)); and

''(C) in making payments to disproportionate share hospitals, the methodology meets the requirements of paragraph (3).

''(2) DISPROPORTIONATE SHARE HOSPITAL TIERS.—The term 'disproportionate share hospital tier' means each of the following:

''(A) TIER 1 HOSPITALS.—A category of hospitals (referred to in this section as 'tier 1 hospitals') in which each hospital satisfies—

''(i) each of the criteria described in clause (ii) of subparagraph (B); and

"(ii) one or more of the following criteria:

"(I) The hospital has a Medicaid inpatient utilization rate (as defined in subsection (b)(2)) that is not less than 2 standard deviations above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the State.

"(II) The hospital has a low-income utilization rate (as defined in subsection (b)(3)) of not less than 40 percent.

"(III) More than 70 percent of the inpatient days for which payments are received by the hospital are paid for under the Medicare program under title XVIII, the Medicaid program under this title, or the Children's Health Insurance Program under title XXI.

"(B) TIER 2 HOSPITALS.—A category of hospitals (referred to in this section as 'tier 2 hospitals') in which each hospital—

"(i) is not described in the previous subparagraph; and

"(ii) satisfies one or more of the following criteria:

"(I) The hospital has a Medicaid inpatient utilization rate (as defined in subsection (b)(2)) that is not less than 1.5 standard deviations above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the State.

"(II) The hospital has a low-income utilization rate (as defined in subsection (b)(3)) of not less than 35 percent.

"(III) The hospital has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

"(C) TIER 3 HOSPITALS.—A category of hospitals (referred to in this section as 'tier 3 hospitals') in which each hospital—

"(i) is not described in a previous subparagraph; and

"(ii) satisfies one or more of the following criteria:

"(I) The hospital has a Medicaid inpatient utilization rate (as defined in subsection (b)(2)) that is not less than the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the State.

"(II) The hospital has a low-income utilization rate (as defined in subsection (b)(3)) of not less than 25 percent.

"(D) TIER 4 HOSPITALS.—A category of hospitals (referred to in this section as 'tier 4 hospitals') in which each hospital—

"(i) is not described in a previous subparagraph; and

"(ii) satisfies the requirement described in subsection (d)(3).

"(3) PAYMENT METHODOLOGY REQUIREMENTS.—

"(A) PRIORITIZATION OF HOSPITALS.—In making disproportionate share hospital pay-

ments, a State methodology shall prioritize hospitals in the following order:

"(i) Tier 1 hospitals shall receive the highest priority.

"(ii) Tier 2 hospitals shall receive the second-highest priority.

"(iii) Tier 3 hospitals shall receive the third-highest priority.

"(iv) Tier 4 hospitals shall receive the fourth-highest priority.

"(B) FACTORS.—The methodology specifies the factors that will be considered in determining the amount of a disproportionate share hospital payment to be made to a hospital, which may include—

"(i) the hospital's net operating margins (including past net operating margins);

"(ii) past disproportionate share hospital payments to the hospital;

"(iii) whether the hospital was affected by a major disaster (as declared by the President under section 401 of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act) in the 12 months prior to the payment; and

''(iv) other relevant factors, as determined by the State (subject to the approval of the Secretary).

''(C) CONSIDERATION OF FINANCIAL CIRCUMSTANCES OF HIGH TIER HOSPITALS.—

''(i) IN GENERAL.—The State shall certify that the State methodology adequately considers the unique financial circumstances of tier 1 hospitals and tier 2 hospitals, and takes necessary steps to mitigate net operating losses by such hospitals.

''(ii) GUIDANCE.—

''(I) IN GENERAL.—Not later than 18 months after the date of enactment of the SAFE Hospitals Act of 2023, the Secretary shall issue guidance to States outlining methods that States may use to satisfy the requirement of this subparagraph.

''(II) STATE ALTERNATIVES.—Subject to the approval of the Secretary, a State may develop an alter-

native method for satisfying the requirement of this subparagraph.

"(D) TREATMENT OF IMDS AND CAHS.—The State shall specify how the methodology prioritizes institutions for mental diseases and critical access hospitals (as defined in section 1861(mm)(1)), but in no case shall institutions for mental diseases or critical access hospitals receive a higher priority than tier 1 hospitals.

"(E) STATE AUTHORITY TO RECLASSIFY HOSPITALS.—Subject to the approval of the Secretary, for purposes of prioritizing disproportionate share payments under a State methodology under this subsection, a State may treat up to 15 percent of all disproportionate share hospitals in the State, excluding institutions for mental diseases, as belonging to a different disproportionate share hospital tier than the tier in which the hospitals are described under paragraph (2).

"(F) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a State to apply a uniform payment methodology to all hospitals within a disproportionate share hospital tier.

''(4) METHODOLOGY FOR STATES WITH FEWER THAN 15 DISPROPORTIONATE SHARE HOSPITALS.—

''(A) IN GENERAL.—In the case of a State that has fewer than 15 disproportionate share hospitals, the State shall use the methodology for identifying and making payments to disproportionate share hospitals that is developed by the Secretary under subparagraph (B).

''(B) DEVELOPMENT OF METHODOLOGY.—Not later than 18 months after the date of enactment of the SAFE Hospitals Act of 2023, the Secretary shall develop a methodology for identifying and making payments to disproportionate share hospitals for States that have fewer than 15 disproportionate share hospitals that prioritizes DSH payments to hospitals with disproportionately high volumes of Medicaid patients and low-income patients.

''(5) NO EFFECT ON WAIVER AUTHORITY.—Nothing in this subsection shall be construed as preventing the Secretary from approving a waiver under section 1115 or other law with respect to requirements under this subsection related to the methodology used by States to identify and make payments to disproportionate share hospitals.''.

(b) MODIFICATION OF CAP ON INDIVIDUAL DSH PAYMENTS.—Section 1923(g)(1)(A)(i) of the Social Security Act (42 U.S.C. 1396r–4(g)(1)(A)(i)) is amended by inserting ''(including any costs incurred by the hospital during the year that are associated with subsidizing a physician or a clinic or other health center that is owned and operated by, controlled by, or in common control with the hospital for the purpose of providing care to such individuals)'' after ''individuals described in subparagraph (B)''.

(c) MODIFICATION OF DSH QUALIFICATION REQUIREMENTS.—

(1) IN GENERAL.—Section 1923(d)(3) of the Social Security Act (42 U.S.C. 1396r–4(d)(3)) is amended by striking ''unless the hospital'' and all that follows through the period and inserting the following: ''unless the hospital—

''(A) has a Medicaid inpatient utilization rate (as defined in subsection (b)(2)) that is not more than 1 standard deviation below the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the State;

''(B) has a low-income utilization rate (as defined in subsection (b)(3)) that is not less than 10 percent; or

"(C) is a critical access hospital (as defined in section 1861(mm)(1)).".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 1, 2025.

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