



**Governor Ned Lamont
State of Connecticut**



FACT SHEET
2019 Legislative Session
December Special Session

***AN ACT CONCERNING IMPLEMENTATION OF THE APPROVED SETTLEMENT
AGREEMENT IN THE CONNECTICUT HOSPITAL ASSOCIATION ET AL. V.
CONNECTICUT DEPARTMENT OF SOCIAL SERVICES ET AL.
AND MAKING APPROPRIATIONS THEREFOR***

Summary of Proposal:

This bill makes the following changes:

Section 1. Revise User Fee on Net Patient Revenue. Public Act 19-117 maintained the user fee at the FY 2019 level of \$900 million and updated the base year used to determine the amount of the user fee due from each hospital. Consistent with the settlement agreement, this bill uses 2016 as the base year for the purposes of the user fee calculation and reduces the amount of the user fee to \$890 million in FY 2020, \$882 million in FY 2021, \$850 million for FYs 2022 through FY 2025, and \$820 million beginning in FY 2026. Provisions are also added to address the manner in which the user fee will be collected in the event a hospital dissolves or ceases to operate.

In addition, this section codifies: (1) the effective rates (with the inpatient rate remaining at 6.0% through FY 2026 and the outpatient rate being phased-down from approximately 12.1% in FY 2020 to approximately 10.5% in FY 2026); (2) continuation of these rates (i.e., 6.0% inpatient and approximately 10.5% outpatient) in FY 2027 and future years unless modified by statute; and (3) the total audited net revenue amounts for fiscal year 2016.

Section 2. Limit Taxation of Hospitals. This section prohibits, over the term of the agreement (i.e., through June 30, 2026): (1) implementation of any new or amended hospital provider taxes or user fees beyond those described in section 1; (2) implementation of any new or amended taxes or fees in which more than 15% of the total tax or fee is due from the hospitals; and (3) changes to existing hospital tax exemptions.

Section 3. Superior Court Jurisdiction and Waiver of Sovereign Immunity for the State. This section provides that the New Britain Superior Court will have jurisdiction over the settlement agreement. It allows the parties to the hospital settlement agreement – once the settlement agreement is fully in effect – to enforce the agreement by filing an action with the New Britain Superior Court, which will have continuing jurisdiction over the settlement agreement for its seven-year term. Finally, this section provides that sovereign immunity will not be a defense to any action or motion brought before the court related to the settlement agreement.

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Section 4. Clarify Status of User Fee in Absence of Federal Approvals. This section clarifies that in the event that the Centers for Medicare and Medicaid Services (CMS) determines that the user fee is impermissible or does not approve both the proposed rate increases and the supplemental payments, then the user fee shall not be further imposed and the General Assembly shall reconvene to make the necessary legislative changes to ensure the user fee is in compliance with federal law.

Section 5. This section of the bill includes the following provisions:

1. **Updates Underlying Rate Methodology.** The Medicare wage index is a federally determined metric used to adjust for geographical differences in wages. DSS uses the Medicare wage index values when setting most inpatient and outpatient hospital rates. This section requires that the underlying hospital rate methodology be in accordance with the relevant requirements of the settlement agreement. The agreement: (a) modifies and holds constant for the term of the agreement the Medicare wage index values that are used when setting most inpatient and outpatient rates and (b) adjusts the inpatient hospital all-patient refined diagnosis-related group (APR-DRG) base rate and the outpatient hospital ambulatory payment classification (APC) conversion factor in order to offset the impact of these wage index values. These adjustments remove the variation in payments that might otherwise have occurred due to the annual fluctuations in the Medicare wage index.
2. **Implements Annual Rate Increases over Settlement Period.** Subject to federal approval, this section requires DSS to annually increase inpatient rates by 2.0% and specified outpatient rates by 2.2% effective January 1, 2020, through January 1, 2026. In total, the state cost of these increases is projected to exceed \$250 million (\$770 million including the federal share) over the seven-year period, with the increase in FY 2026 projected to exceed \$70 million (\$210 million including the federal share). These rate increases are not subject to rescissions or holdbacks.
3. **Removes Readmission Payment Adjustment.** Public Act 19-117 had instituted a readmission payment adjustment of 15% for readmissions within 30 days after discharge for a related diagnosis; the enacted budget had assumed savings of \$2.0 million in FY 2020 and \$2.4 million in FY 2021 (\$6.1 million in FY 2020 and \$7.3 million in FY 2021 including the federal share). This section removes these provisions.

Section 6. Update Hospital Supplemental Payment Language. In FY 2019, expenditures of \$453.3 million supported four inpatient supplemental pools (i.e., two general pools – one capped and one uncapped, a small hospital pool and a mid-sized hospital pool), and a general outpatient supplemental pool. Subject to federal approval, this section requires DSS to make hospital supplemental payments in the amount of \$548.3 million in FY 2020 and FY 2021 and \$568.3 million beginning in FY 2022 through FY 2026 (including the federal share) to support hospital supplemental pools, including general, small hospital, mid-sized hospital and large hospital pools. These payments are not subject to rescissions or holdbacks. This section outlines the timing of payments, as well as the handling of payments in the event of a hospital merger, acquisition or dissolution. Unless modified by the legislature, the total amount of hospital supplemental payments is to continue at the level in effect for FY 2026 (i.e., \$568.3 million) for FY 2027 and beyond.

Sections 7 and 8. Update Appropriation and Revenue Schedules. This section updates the appropriations under DSS' Medicaid and Hospital Supplemental Payments accounts to accommodate anticipated expenditures under the settlement agreement for the biennium. It also updates the revenue schedule to reflect additional revenue under Federal Grants associated with the increase in hospital supplemental payments, revisions to the Health Provider Tax due to reductions in the hospital user fee, adjustments to Refunds of Taxes to support refunds of the first hospital user fee, and changes necessary to effectuate the transfer of funds to cover the costs of the agreement for the current biennium.

Reason for Proposal:

Legislation is required to implement the settlement agreement in The Connecticut Hospital Association et al. v. Connecticut Department of Social Services et al., which is a global settlement agreement that resolves the foregoing litigation and pending administrative claims filed by hospitals against the state regarding the first hospital user fee and Medicaid payments, in which the hospitals were seeking, in total, approximately \$4 billion in potential payments from the state.

Significant Impacts:

State Impact. In total, when compared to the enacted budget, the proposed changes are expected to result in additional state costs of approximately \$121.3 million in FY 2020, \$59.4 million in FY 2021, \$109.1 million in FY 2022, \$120.4 million in FY 2023, \$131.9 million in FY 2024, \$143.7 million in FY 2025, and \$185.7 million in FY 2026, for a projected total cost of \$871.5 million over the seven year term of the agreement.

When compared to FY 2019, the proposed changes are expected to result in additional state costs of approximately \$107.9 million in FY 2020, \$46.0 million in FY 2021, \$95.7 million in FY 2022, \$107.0 million in FY 2023, \$118.5 million in FY 2024, \$130.3 million in FY 2025, and \$172.3 million in FY 2026, for a projected total cost of approximately \$777.7 million over the seven year term of the agreement.

Pursuant to section 50 of Public Act 19-117, \$160.0 million of General Fund resources from FY 2019 is available for transfer to FY 2020 and FY 2021, as well as \$30.0 million from the resources of the General Fund in FY 2020, to cover the costs of the settlement agreement over the biennium. Thus, of the \$190.0 million available, \$180.7 million will be required to cover the settlement costs in FY 2020 and FY 2021.

Hospital Impact. For the hospitals, when compared to the enacted budget, the proposed changes are expected to result in additional revenue of approximately \$189.9 million in FY 2020, \$140.6 million in FY 2021, \$225.8 million in FY 2022, \$259.6 million in FY 2023, \$294.2 million in FY 2024, \$329.4 million in FY 2025, and \$395.3 million in FY 2026, for a total gain of \$1.835 billion over the seven year term of the agreement.

When compared to FY 2019, the proposed changes are expected to result in additional revenue to the hospitals of approximately \$149.9 million in FY 2020, \$100.6 million in FY 2021, \$185.8 million in FY 2022, \$219.6 million in FY 2023, \$254.2 million in FY 2024, \$289.4 million in FY 2025, and \$355.3 million in FY 2026, for a total gain of \$1.555 billion over the seven year term of the agreement.

Note: The differences between the two sets of figures is because the enacted budget reduced hospital supplemental payments by \$40.0 million due to concerns at the time the budget was being developed that funding levels could exceed the federal upper payment limit (UPL). The UPL is the maximum fee-for-service reimbursement a state Medicaid program may pay a given provider type in the aggregate and can vary each year as it is based on what Medicare would have paid for the same services; payments in excess of the UPL are not eligible for federal reimbursement. Further analysis was done and it was determined that based on the current federal guidance, available data, and anticipated trends, the expenditure levels set forth in the settlement agreement are not expected to exceed UPL.

It should also be noted that the figures above do not include the fiscal impact associated with the removal of the readmission payment adjustment described in section 5 above. The enacted budget had assumed this initiative would result in savings of \$2.0 million in FY 2020 and \$2.4 million in FY 2021 (\$6.1 million in FY 2020 and \$7.3 million in FY 2021 including the federal share).