A bill to be entitled

An act relating to Medicaid; amending s. 409.285, F.S.; providing procedures for appeals by applicants for public assistance based on the agency administering the Medicaid program; providing responsibilities of the Agency for Health Care Administration as the hearing authority for certain appeals; authorizing the agency to adopt rules; exempting the rules from certain time requirements under certain conditions; exempting certain agency hearings relating to the Medicaid program from uniform rules of procedure that require such hearings to be conducted by an administrative law judge; amending s. 409.905, F.S.; revising the methodology for establishing reimbursement rates for outpatient hospital services; amending s. 409.909, F.S.; revising the definition of the term "Medicaid payments" to include payments for certain outpatient services; amending chapter 2012-33, Laws of Florida; requiring a Program of All-Inclusive Care for the Elderly (PACE) organization in Broward County to serve frail elders in Miami-Dade County; repealing ss. 409.911, 409.9113, 409.9118, and 409.9119, F.S., relating to the disproportionate share program; amending ss. 409.908, 409.9115, 409.9116, 1009.66, and 1009.67, F.S.; conforming references and cross-references to changes

made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 409.285, Florida Statutes, is amended to read:

409.285 Opportunity for hearing and appeal.—

(1) If an application for public assistance is not acted upon within a reasonable time after the filing of the application, or is denied in whole or in part, or if an assistance payment is modified or canceled, the applicant or recipient may appeal the decision to the Department of Children and Families in the manner and form prescribed by the department.

(a) Appeals related to Medicaid programs directly administered by the Agency for Health Care Administration, including appeals related to the Statewide Medicaid Managed Care program and associated federal waivers, shall be appealed to the Agency for Health Care Administration in the manner and form prescribed by the agency.

(b) Medicaid eligibility decisions made by the department shall be appealed to the department.

(c) Appeals related to Medicaid programs administered by the Agency for Persons with Disabilities are subject to s. 393.125.

(2) The hearing authority for appeals heard by the

department may be the Secretary of Children and Families, a panel of department officials, or a hearing officer appointed for that purpose. The hearing authority is responsible for a final administrative decision in the name of the department on all issues that have been the subject of a hearing. With regard to the department, the decision of the hearing authority is final and binding. The department is responsible for seeing that the decision is carried out promptly. The hearing authority for appeals heard by the Agency for Health Care Administration may be the Secretary of Health Care Administration, a panel of agency officials, or a hearing officer appointed for that purpose. The hearing authority is responsible for a final administrative decision in the name of the agency on all issues that have been the subject of a hearing. With regard to the agency, the decision of the hearing authority is final and binding. The agency is responsible for seeing that the decision is carried out promptly.

(3) The department may adopt rules to administer this section. Rules for the Temporary Assistance for Needy Families block grant programs must be similar to the federal requirements for Medicaid programs. The Agency for Health Care Administration shall seek all federal approvals necessary to implement this section. The agency may adopt rules to administer this section and, notwithstanding s. 120.54(1)(b), has 180 days after final federal approval to provide notice of the proposed rules pursuant to s. 120.54(3).

(4) Notwithstanding ss. 120.569 and 120.57, fair hearings conducted by the Agency for Health Care Administration relating to the Medicaid program are exempt from the uniform rules of procedure and need not be conducted by an administrative law judge assigned by the Division of Administrative Hearings.

Section 2. Paragraph (b) of subsection (6) of section 409.905, Florida Statutes, is amended to read:

409.905 Mandatory Medicaid services.—The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(6) HOSPITAL OUTPATIENT SERVICES.—

(b) The agency shall implement a prospective payment methodology for establishing ~~base~~ reimbursement rates for outpatient hospital services ~~for each hospital based on~~

~~allowable costs, as defined by the agency~~. Rates shall be calculated annually and take effect October 1, 2016, and July 1 of each year thereafter. The methodology shall categorize the amount and type of services used in various ambulatory visits which group together procedures and medical visits that share similar characteristics and resource utilization ~~based on the most recent complete and accurate cost report submitted by each hospital~~.

1. Adjustments may not be made to the rates after October 31, 2016, or after July 31 of each ~~the~~ state fiscal year thereafter in which the rates are in ~~take~~ effect~~, except for cases of insufficient collections of intergovernmental transfers authorized under s. 409.908(1) or the General Appropriations Act~~. ~~In such cases, the agency shall submit a budget amendment or amendments under chapter 216 requesting approval of rate reductions by amounts necessary for the aggregate reduction to equal the dollar amount of intergovernmental transfers not collected and the corresponding federal match. Notwithstanding the $1 million limitation on increases to an approved operating budget under ss. 216.181(11) and 216.292(3), a budget amendment exceeding that dollar amount is subject to notice and objection procedures set forth in s. 216.177.~~

2. Errors in source data or calculations discovered after October 31, 2016, or after July 31 of each state fiscal year thereafter must be reconciled in a subsequent rate period. However, the agency may not make any adjustment to a hospital's

reimbursement more than 5 years after a hospital is notified of an audited rate established by the agency. The prohibition against adjustments more than 5 years after notification is remedial and applies to actions by providers involving Medicaid claims for hospital services. Hospital reimbursement is subject to such limits or ceilings as may be established in law or described in the agency's hospital reimbursement plan. Specific exemptions to the limits or ceilings may be provided in the General Appropriations Act.

Section 3. Paragraph (b) of subsection (2) of section 409.909, Florida Statutes, is amended to read:

409.909 Statewide Medicaid Residency Program.—

(2) On or before September 15 of each year, the agency shall calculate an allocation fraction to be used for distributing funds to participating hospitals. On or before the final business day of each quarter of a state fiscal year, the agency shall distribute to each participating hospital one-fourth of that hospital's annual allocation calculated under subsection (4). The allocation fraction for each participating hospital is based on the hospital's number of full-time equivalent residents and the amount of its Medicaid payments. As used in this section, the term:

(b) "Medicaid payments" means the estimated total payments for reimbursing a hospital for direct inpatient and outpatient services for the fiscal year in which the allocation fraction is calculated based on the hospital inpatient appropriation and

outpatient appropriation and the parameters for the inpatient diagnosis-related group base rate, including applicable intergovernmental transfers, specified in the General Appropriations Act, as determined by the agency.

Section 4. Section 409.9115, Florida Statutes, is amended to read:

409.9115 Disproportionate share program for mental health hospitals.—The Agency for Health Care Administration shall design and implement a system of making mental health disproportionate share payments to hospitals that qualify for disproportionate share payments ~~under s. 409.911~~. This system of payments shall conform with federal requirements and shall distribute funds in each fiscal year for which an appropriation is made by making quarterly Medicaid payments. Notwithstanding s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for patients.

(1) The following formula shall be used by the agency to calculate the total amount earned for hospitals that participate in the mental health disproportionate share program:

TAP = (DSH/TDSH) x TA

Where:

TAP = total additional payment for a mental health hospital.

DSH = total amount earned by a mental health hospital under the General Appropriations Act ~~s. 409.911~~.

TDSH = sum of total amount earned by each hospital that

participates in the mental health hospital disproportionate share program.

TA = total appropriation for the mental health hospital disproportionate share program.

(2) In order to receive payments under this section, a hospital must participate in the Florida Title XIX program and must:

(a) Agree to serve all individuals referred by the agency who require inpatient psychiatric services, regardless of ability to pay.

(b) Be certified or certifiable to be a provider of Title XVIII services.

(c) Receive all of its inpatient clients from admissions governed by the Baker Act as specified in chapter 394.

Section 5. Section 409.9116, Florida Statutes, is amended to read:

409.9116 Disproportionate share/financial assistance program for rural hospitals.~~In addition to the payments made under s. 409.911,~~ The Agency for Health Care Administration shall administer a federally matched disproportionate share program and a state-funded financial assistance program for statutory rural hospitals. The agency shall make disproportionate share payments to statutory rural hospitals that qualify for such payments and financial assistance payments to statutory rural hospitals that do not qualify for disproportionate share payments. The disproportionate share

program payments shall be limited by and conform with federal requirements. Funds shall be distributed quarterly in each fiscal year for which an appropriation is made. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) The following formula shall be used by the agency to calculate the total amount earned for hospitals that participate in the rural hospital disproportionate share program or the financial assistance program:

TAERH = (CCD + MDD)/TPD

Where:

CCD = total charity care-other, plus charity care-Hill-Burton, minus 50 percent of unrestricted tax revenue from local governments, and restricted funds for indigent care, divided by gross revenue per adjusted patient day; however, if CCD is less than zero, then zero shall be used for CCD.

MDD = Medicaid inpatient days plus Medicaid HMO inpatient days.

TPD = total inpatient days.

TAERH = total amount earned by each rural hospital.

In computing the total amount earned by each rural hospital, the agency must use the average of the 3 most recent years of actual data reported in accordance with s. 408.061(4). The agency shall provide a preliminary estimate of the payments under the rural

disproportionate share and financial assistance programs to the rural hospitals by August 31 of each state fiscal year for review. Each rural hospital shall have 30 days to review the preliminary estimates of payments and report any errors to the agency. The agency shall make any corrections deemed necessary and compute the rural disproportionate share and financial assistance program payments.

(2) The agency shall use the following formula for distribution of funds for the disproportionate share/financial assistance program for rural hospitals.

(a) The agency shall first determine a preliminary payment amount for each rural hospital by allocating all available state funds using the following formula:

PDAER = (TAERH x TARH)/STAERH

Where:

PDAER = preliminary distribution amount for each rural hospital.

TAERH = total amount earned by each rural hospital.

TARH = total amount appropriated or distributed under this section.

STAERH = sum of total amount earned by each rural hospital.

(b) Federal matching funds for the disproportionate share program shall then be calculated for those hospitals that qualify for disproportionate share in paragraph (a).

(c) The state-funds-only payment amount shall then be calculated for each hospital using the formula:

SFOER = Maximum value of (1) SFOL - PDAER or (2) 0

Where:

SFOER = state-funds-only payment amount for each rural hospital.

SFOL = state-funds-only payment level, which is set at 4 percent of TARH.

In calculating the SFOER, PDAER includes federal matching funds from paragraph (b).

(d) The adjusted total amount allocated to the rural disproportionate share program shall then be calculated using the following formula:

ATARH = (TARH - SSFOER)

Where:

ATARH = adjusted total amount appropriated or distributed under this section.

SSFOER = sum of the state-funds-only payment amount calculated under paragraph (c) for all rural hospitals.

(e) The distribution of the adjusted total amount of rural disproportionate share hospital funds shall then be calculated using the following formula:

DAERH = [(TAERH x ATARH)/STAERH]

Where:

DAERH = distribution amount for each rural hospital.

(f) Federal matching funds for the disproportionate share program shall then be calculated for those hospitals that qualify for disproportionate share in paragraph (e).

(g) State-funds-only payment amounts calculated under paragraph (c) and corresponding federal matching funds are then added to the results of paragraph (f) to determine the total distribution amount for each rural hospital.

(3) The Agency for Health Care Administration may recommend to the Legislature a formula to be used in subsequent fiscal years to distribute funds appropriated for this section that includes charity care, uncompensated care to medically indigent patients, and Medicaid inpatient days.

(4) In the event that federal matching funds for the rural hospital disproportionate share program are not available, state matching funds appropriated for the program may be utilized for the Rural Hospital Financial Assistance Program and shall be allocated to rural hospitals based on the formulas in subsections (1) and (2).

(5) In order to receive payments under this section, a hospital must be a rural hospital as defined in s. 395.602 and must meet the following additional requirements:

(a) Agree to conform to all agency requirements to ensure high quality in the provision of services, including criteria adopted by agency rule concerning staffing ratios, medical records, standards of care, equipment, space, and such other standards and criteria as the agency deems appropriate as specified by rule.

(b) Agree to accept all patients, regardless of ability to pay, on a functional space-available basis.

(c) Agree to provide backup and referral services to the county public health departments and other low-income providers within the hospital's service area, including the development of written agreements between these organizations and the hospital.

(d) For any hospital owned by a county government which is leased to a management company, agree to submit on a quarterly basis a report to the agency, in a format specified by the agency, which provides a specific accounting of how all funds dispersed under this act are spent.

(6) This section applies only to hospitals that were defined as statutory rural hospitals, or their successor-in-interest hospital, prior to January 1, 2001. Any additional hospital that is defined as a statutory rural hospital, or its successor-in-interest hospital, on or after January 1, 2001, is not eligible for programs under this section unless additional funds are appropriated each fiscal year specifically to the rural hospital disproportionate share and financial assistance programs in an amount necessary to prevent any hospital, or its successor-in-interest hospital, eligible for the programs prior to January 1, 2001, from incurring a reduction in payments because of the eligibility of an additional hospital to participate in the programs. A hospital, or its successor-in-interest hospital, which received funds pursuant to this section before January 1, 2001, and which qualifies under s. 395.602(2)(e), shall be included in the programs under this section and is not required to seek additional appropriations

under this subsection.

Section 6. Section 18 of chapter 2012-33, Laws of Florida, is amended to read:

Section 18. Notwithstanding s. 430.707, Florida Statutes, and subject to federal approval of an additional site for the Program of All-Inclusive Care for the Elderly (PACE), the Agency for Health Care Administration shall contract with a current PACE organization authorized to provide PACE services in Southeast Florida to develop and operate a PACE program in Broward County to serve frail elders who reside in Broward County or Miami-Dade County. The organization shall be exempt from chapter 641, Florida Statutes. The agency, in consultation with the Department of Elderly Affairs and subject to an appropriation, shall approve up to 150 initial enrollee slots in the Broward program established by the organization.

Section 7. Sections 409.911, 409.9113, 409.9118, and 409.9119, Florida Statutes, are repealed.

Section 8. Paragraph (d) of subsection (1) of section 409.908, Florida Statutes, is amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive

bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(1) Reimbursement to hospitals licensed under part I of chapter 395 must be made prospectively or on the basis of negotiation.

~~(d) Hospitals that provide services to a disproportionate share of low-income Medicaid recipients, or that participate in~~

~~the regional perinatal intensive care center program under chapter 383, or that participate in the statutory teaching hospital disproportionate share program may receive additional reimbursement. The total amount of payment for disproportionate share hospitals shall be fixed by the General Appropriations Act. The computation of these payments must be made in compliance with all federal regulations and the methodologies described in ss. 409.911 and 409.9113.~~

Section 9. Subsection (7) of section 1009.66, Florida Statutes, is amended to read:

1009.66 Nursing Student Loan Forgiveness Program.—

(7) Funds contained in the Nursing Student Loan Forgiveness Trust Fund which are to be used for loan forgiveness for those nurses employed by hospitals, birth centers, and nursing homes must be matched on a dollar-for-dollar basis by contributions from the employing institutions, except that this provision shall not apply to state-operated medical and health care facilities, public schools, county health departments, federally sponsored community health centers, teaching hospitals as defined in s. 408.07, or family practice teaching hospitals as defined in s. 395.805~~, or specialty hospitals for children as used in s. 409.9119~~. An estimate of the annual trust fund dollars shall be made at the beginning of the fiscal year based on historic expenditures from the trust fund. Applicant requests shall be reviewed on a quarterly basis, and applicant awards shall be based on the following priority of employer until all

such estimated trust funds are awarded: state-operated medical and health care facilities; public schools; county health departments; federally sponsored community health centers; teaching hospitals as defined in s. 408.07; family practice teaching hospitals as defined in s. 395.805; ~~specialty hospitals for children as used in s. 409.9119;~~ and other hospitals, birth centers, and nursing homes.

Section 10. Paragraph (b) of subsection (4) of section 1009.67, Florida Statutes, is amended to read:

1009.67 Nursing scholarship program.—

(4) Credit for repayment of a scholarship shall be as follows:

(b) Eligible health care facilities include nursing homes and hospitals in this state, state-operated medical or health care facilities, public schools, county health departments, federally sponsored community health centers, colleges of nursing in universities in this state, and Florida College System institution nursing programs in this state, or family practice teaching hospitals as defined in s. 395.805~~, or specialty children's hospitals as described in s. 409.9119~~. The recipient shall be encouraged to complete the service obligation at a single employment site. If continuous employment at the same site is not feasible, the recipient may apply to the department for a transfer to another approved health care facility.

Section 11. This act shall take effect July 1, 2016.