



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 240467

Introduced May 16, 2024

**Councilmember Gilmore Richardson
for
Council President Johnson**

**Referred to the
Committee on Finance**

AN ORDINANCE

Amending Chapter 19-3500 of The Philadelphia Code, entitled "Hospital Assessments," to revise provisions relating to hospital assessments; and authorizing the Department of Public Health to enter into an intergovernmental agreement with the Commonwealth, Department of Human Services, relating to such hospital assessments; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 19-3500 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 19-3500. HOSPITAL ASSESSMENTS

§ 19-3501. Definitions.

In this Chapter, the following words and phrases shall have the meanings given to them in this Section, unless the context clearly indicates otherwise:

(1) Assessment. The fee to be assessed under Section 19-3502 on General Acute Care [Hospitals or] *Hospitals*, High Volume Medicaid Hospitals, *Cancer Hospitals*, and *Children's Hospitals*.

[(2) Reserved.] (2) *Cancer Hospital*. A free-standing acute care hospital organized primarily for the treatment of and research on cancer and which is an exempt hospital under Section 801-G of Act No. 21 of 1967, as amended, 62 P.S. § 801-G, known as the *Human Services Code*.

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(3) *Children's Hospital. A hospital that is excluded under 42 CFR 412.23(d) (relating to excluded hospitals: classifications) from reimbursement of certain Federal funds under the prospective payment system described by 42 CFR 412 (relating to prospective payment systems for inpatient hospital services).*

[(3)] (4) *General Acute Care Hospital. Hospital other than a Hospital that the Secretary has determined meets one of the following:*

(a) *Is a type of hospital excluded under 42 C.F.R. § 412.23(a), (b), (d), (e) [and] or (f) (relating to excluded hospitals: classifications) [as of March 20, 2008] from reimbursement of certain Federal funds under the prospective payment system described by 42 C.F.R. Pt. 412 (relating to prospective payment systems for inpatient hospital services).*

* * *

(e) *[Is a standing acute care hospital organized primarily for the treatment of and research on cancer and which is an exempt hospital under Section 801-G of Act No. 21 of 1967, as amended, 62 P.S. § 801-G, known as the Human Services Code.] Is a cancer hospital.*

(f) *Is a children's hospital.*

[(4)] (5) * * *

[(5)] (6) * * *

[(6)] (7) * * *

[(7)] (8) *High Volume Medicaid Hospital. A Hospital that the Secretary has determined provides over 60,000 inpatient acute care days of care to Pennsylvania medical assistance patients as evidenced by the hospital's State fiscal year [2014-2015] 2018-2019 Medical Assistance hospital cost report on file with the Pennsylvania Department of Human Services as of [June 6, 2018,] June 22, 2021, and is a non-profit hospital subsidiary of a state-related institution as that term is defined in 62 Pa. C.S. § 103 (relating to definitions).*

[(8)] (9) * * *

§ 19-3502. *Imposition of the General Acute Care Hospital [Assessment and] Assessment, High Volume Medicaid Hospital Assessment, Cancer Hospital Assessment, and Children's Hospital Assessment.*

* * *

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(3) Subject to Section 19-3503, effective July 1, 2019, [and thereafter] *through June 30, 2024*, an Assessment is hereby imposed upon every General Acute Care Hospital in the City in an amount equal to three and eight tenths percent (3.8%) of annualized State Fiscal Year 2016-2017 Net Patient Revenue, excluding all revenues received from Medicare.

(4) Subject to Section 19-3503, effective July 1, 2019, [and thereafter] *through June 30, 2024*, an Assessment is hereby imposed upon every High Volume Medicaid Hospital in the City in an amount equal to three and six tenths percent (3.6%) of annualized State Fiscal Year 2016-2017 Net Patient Revenue, excluding all revenues received from Medicare.

(5) Subject to Section 19-3503, effective July 1, 2024, and thereafter, an Assessment is hereby imposed upon every General Acute Care Hospital, High Volume Medicaid Hospital, and Cancer Hospital in the City in an amount equal to three and nine tenths percent (3.9%) of annualized State Fiscal Year 2021-2022 Net Patient Revenue, excluding all revenues received from Medicare.

(6) Subject to Section 19-3503, effective July 1, 2024, and thereafter, an Assessment is hereby imposed upon every Children's Hospital in the City in an amount equal to two percent (2.0%) of annualized State Fiscal Year 2021-2022 Net Patient Revenue, excluding all revenues received from Medicare.

[(5)] (7) Notwithstanding any exemptions granted by any other Federal, State or local tax or other law, including, without limitation, Section 204(a)(3) of the Act of May 22, 1933 (P.L. 853), known as the General County Assessment Law, no General Acute Care [Hospital or] *Hospital*, High Volume Medicaid Hospital, *Cancer Hospital*, or *Children's Hospital* shall be exempt from the Assessment.

[(6)] (8) Imposition of Assessment with changes of ownership.

(a) If a single General Acute Care [Hospital or] *Hospital*, High Volume Medicaid Hospital, *Cancer Hospital*, or *Children's Hospital* changes ownership or control, the Hospital resulting from the change in ownership or control is liable for any outstanding Assessment amounts, including outstanding amounts related to periods prior to the change of ownership or control.

(b) If two or more General Acute Care [Hospitals or] *Hospitals*, High Volume Medicaid Hospitals, *Cancer Hospitals*, or *Children's Hospitals* subject to an Assessment merge or consolidate, such Hospital resulting from the merger or consolidation is liable for any outstanding Assessment amounts, including outstanding amounts related to periods prior to the change of ownership or control, of any such Hospital that was merged or consolidated.

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[(7)] (9) Calculation of Assessment with closures or other changes in operation. A General Acute Care [Hospital or] *Hospital*, High Volume Medicaid Hospital, *Cancer Hospital*, or *Children's Hospital* that closes during a fiscal year is liable for:

* * *

[(8)] (10) Calculation of Assessment for new hospitals. A General Acute Care [Hospital or] *Hospital*, High Volume Medicaid Hospital, *Cancer Hospital*, or *Children's Hospital* that begins operation during a fiscal year in which an Assessment is in effect shall be assessed as follows:

* * *

(b) For the State fiscal year following the State fiscal year under subsection [(8)(a),] (10)(a), an Assessment is imposed on such Hospital in accordance with all preceding subsections in this Section, using Net Patient Revenue from the hospital's initial state fiscal year of operation, excluding all revenues received from Medicare.

(c) For the State fiscal years following the State fiscal year under subsection [(8)(b),] (10)(b), an Assessment is imposed on such Hospital in accordance with all preceding subsections in this Section, using Net Patient Revenue from the hospital's first full state fiscal year of operation, excluding all revenues received from Medicare.

* * *

§ 19-3503. Cessation of Assessment.

* * *

(2) The assessments imposed by this Chapter shall cease on June 30, [2024,] 2029, or on such later date as may be permitted by the General Assembly.

* * *

§ 19-3504. Notice, Returns and Payment.

(1) Returns shall be filed on such forms as the Department may prescribe, and each Assessment shall be payable electronically in four equal installments by no later than, respectively, September 15, December 15, March 15, and June 1, of each fiscal year; provided [that,] *that*:

(a) for the fiscal year ending June 30, 2010, only, the four equal installments shall be payable by no later than October 30, January 30, April 30, and [June 1.] *June 1*;

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(b) *for the fiscal year ending June 30, 2025 only, the four equal installments shall be payable by no later than December 20, December 20, March 17, and June 2.*

(2) Every General Acute Care [Hospital and] *Hospital*, High Volume Medicaid Hospital, *Cancer Hospital*, and *Children’s Hospital* making a return shall certify the correctness thereof.

* * *

§ 19-3505. Deposit and Distribution of Tax Revenues.

(1) The Department shall collect the Assessments from General Acute Care [Hospitals and] *Hospitals*, High Volume Medicaid Hospitals, *Cancer Hospitals*, and *Children’s Hospitals* and deposit the revenues received therefrom in a special fund established for purposes set forth herein.

* * *

SECTION 2. *Conforming changes.* The Department of Revenue is hereby authorized to make, by regulation, such changes to the provisions of Chapter 19-3500 of The Philadelphia Code as may be necessary to conform to applicable State authorizing legislation, so long as such changes maintain the basic intent of this Ordinance.

SECTION 3. *Intergovernmental Agreement.*

(1) The Department of Public Health, on behalf of the City, is hereby authorized to enter into an intergovernmental agreement (the “Agreement”) with the Commonwealth of Pennsylvania, Department of Human Services for a term of five (5) years, substantially in the form set forth in Exhibit A, pursuant to which additional funds could be made available to hospitals that provide services to Medicaid recipients, under certain terms and conditions.

(2) The City Solicitor shall include in said Agreement such terms and conditions as he may deem necessary to protect the interests of the City.

SECTION 4. *Effective date.*

(1) Sections 1 and 2 of this Ordinance shall be effective upon certification by the City Solicitor to the Chief Clerk of Council that the necessary authorizing legislation has been enacted by the General Assembly and that the Revenue Commissioner and the Commonwealth

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Secretary of Human Services have entered into an agreement regarding authorized retention of funds by the City; provided that Sections 1 and 2 shall have no applicability to any assessments for periods prior to July 1, 2024. Sections 1 and 2 of this Ordinance and the assessments imposed thereunder are subject to all of the conditions and requirements specified under the aforementioned State authorizing legislation. To the extent any quarterly due date authorized by Sections 1 and 2 occurred prior to the Effective Date of Sections 1 and 2, the payments that would have been due on such dates shall become due, in one lump sum, at the next due date following such Effective Date.

(2) Section 3 of this Ordinance shall be effective immediately.

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Exhibit "A"

HOSPITAL ASSESSMENT INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement is made between the Commonwealth of Pennsylvania ("Commonwealth"), Department of Human Services ("DHS") and the City of Philadelphia, by and through its Department of Public Health and its Department of Revenue ("the City").

DHS is the single state agency responsible for administering the Medicaid Program in Pennsylvania, known as the Pennsylvania Medical Assistance ("MA") Program. As part of its administration of the MA Program, DHS is authorized to make payments to hospitals that provide services to Medicaid recipients and payments to managed care organizations upon approval of the Centers for Medicare & Medicaid Services. Commonwealth law permits certain municipalities to impose a monetary assessment on the non-Medicare net operating revenue of certain acute care hospitals, high-volume Medicaid hospitals, cancer hospitals, and children's hospitals within the municipalities' jurisdiction subject to certain requirements.

The City of Philadelphia has enacted a city ordinance that authorizes it to impose such assessments on certain acute care hospitals, high-volume Medicaid hospitals, cancer hospitals, and children's hospitals within the City. Commonwealth laws require that revenue obtained as a result of such assessments be used for the purpose of ensuring that MA recipients in the municipalities have access to health-care services.

The parties, intending to be legally bound, agree as follows:

1. Conformity of Services.

The services provided pursuant to this agreement shall be provided in conformity with the following appendices.

Appendix A	Standard Grant Terms and Conditions
Appendix B	Audit Clause E

The above appendices are incorporated and made part of this agreement.

Any reference to the terms "Contract" or "Grant" within these appendices shall refer to this agreement. Any reference to the terms "Contractor" or "Grantee" within these appendices shall mean the City.

2. Term.

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- a. Performance Period. The Performance Period of this agreement will commence on July 1, 2024 and will remain in effect until the Expiration Date of this agreement.
- b. Effective Date. The Effective Date of this agreement is the date the agreement has been fully executed by the City and all approvals required by the Commonwealth procurement procedures have been obtained as indicated by the date of the last Commonwealth signature. This agreement is not binding in any way on the Commonwealth or the Department until it has been fully executed, as prescribed in the preceding sentence, and sent to the City.
- c. Expiration Date. The Expiration Date of this agreement is June 30, 2029, unless the agreement is extended in accordance with Paragraph 2 of Appendix A or terminated earlier in accordance with Paragraph 18 of Appendix A.

3. Information.

Upon DHS's request, the City shall deliver to DHS background material and other information prepared or obtained by the City incident to the performance of this agreement or as DHS determines necessary to support DHS's claims for federal financial participation of supplemental payments made to qualifying providers. In addition, the City shall cooperate and assist the Commonwealth, as requested, in any federal or state review or audit of the intergovernmental transfer of funds or supplemental payments made from the transfer of funds. This provision shall survive expiration or termination of this agreement.

4. City's Conflict of Interest.

The City assures that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services under this agreement. The City further assures that in the performance of this agreement, it will not knowingly employ any person having such interest.

5. Interest of the Commonwealth and Others.

No officer, member or employee of the Commonwealth and no member of its General Assembly, who exercises any functions or responsibilities under this agreement, shall participate in any decision relating to this agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested; nor shall any such officer, member or employee of the Commonwealth or member of its General Assembly have interest, direct or indirect, in this agreement or any proceeds from this agreement.

6. Audit Clause.

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This agreement is subject to audit in accordance with the attached Appendix B, Audit Clause E, incorporated herein.

7. Notice.

Any written notice to any party under this agreement shall be deemed sufficient if delivered personally, or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address or using a delivery method, (provided such delivery is confirmed), as such party may designate by notice given pursuant to this section:

For DHS:

Deputy Secretary
Office of Medical Assistance Programs
Room 515
Health & Welfare Building
625 Forster Street
Harrisburg, PA 17120

With copy to:

Chief Counsel
Department of Human Services
Third Floor West
Health & Welfare Building
625 Forster Street
Harrisburg, PA 17120

For the City:

Ryan Taylor
Chief Operating Officer and Deputy Commissioner
Department of Public Health
1101 Market St, Suite 1320
Philadelphia, PA 19107

And to:

Revenue Commissioner
Municipal Services Building, Suite 630
1401 JF Kennedy Boulevard
Philadelphia, PA 19102

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City Solicitor
One Parkway Building
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

8. Responsibilities of the City.

- a. The City shall impose annual assessments on general acute care hospitals, high-volume Medicaid hospitals, cancer hospitals, and children's hospitals located within the City's jurisdiction in accordance with federal, state and city law, as well as the requirements of this agreement.
- b. The City shall conduct assessments for each state fiscal year (July 1st-June 30th).
- c. The City shall collect payment of the annual assessed amounts on a quarterly basis in equal installments, or on a mutually agreed upon schedule should quarterly payments not be possible due to the delay in approval from the Centers for Medicare & Medicaid Services ("CMS"), delays in the Commonwealth budget approval, or both.
- d. For the state fiscal year beginning July 1, 2024 and ending June 30, 2025, the City shall conduct the assessments by transmitting a notice to each hospital no later than the 20th day of November 2024 with payment due on the 20th day of December 2024 for the July 1, 2024 through September 30, 2024 period; no later than the 20th day of November 2024 with payment due on the 20th day of December 2024 for the October 1, 2024 through December 31, 2024 period, no later than the 14th day of February 2025 with payment due on the 17th day of March 2025 for the January 1, 2025 through March 31, 2025 period; and no later than the 1st of May 2025 with payment due on the 2nd day of June 2025 for the April 1, 2025 through June 30, 2025 period.

For each subsequent state fiscal year, the City shall conduct the assessments by transmitting a notice to each hospital no later than the 15th day of the second to last month of each state fiscal year quarter with payment due on the 15th day of the final month of each state fiscal year quarter unless the 15th day falls on a weekend or City holiday, in which case payment shall be made on the next business day. For the final quarter of each state fiscal year, the City shall transmit the notice to each hospital no later than May 1st, with payment due to the City on June 1 unless the 1st day falls on a weekend or City holiday, in which case payment shall be made on the next business day.

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The notice to the hospital may, at the City's discretion, include the requirement that the payment to the City be made by electronic, ACH transfer. The City shall obtain DHS approval for the content and format of any notice, or any changes made to the approved notice.

- e. The City shall make an electronic transfer of the payments received for each quarter into a restricted Commonwealth account in the general fund to be specified by DHS. For all transfers, the City shall transfer the funds to the Commonwealth within 10 business days after receipt. If the business day in which a transfer is due falls on a weekend or City holiday, payment shall be made on the next business day. Prior to each quarterly deposit, the City shall retain from the total funds received for that quarter an amount to be determined by DHS in accordance with paragraph 9.b below.
- f. The City shall cease imposing the assessments described in this agreement on June 30, 2029, or earlier, if required by law.
- g. The City shall maintain all records relating to this agreement as well as comply with any additional requirements imposed by CMS.

9. Responsibilities of DHS.

- a. DHS shall seek a waiver from CMS pursuant to 42 CFR § 433.68 (e), to the extent necessary to fulfill its obligations under this agreement and state law. DHS shall submit to CMS any amendment to the Commonwealth's Medicaid State Plan, for submissions as may be required under 42 CFR 438.6(c), and for rate certifications as may be required under 42 CFR 438.7, and for HealthChoices agreements to the extent necessary to fulfill its obligations under this agreement and state law.
- b. At the beginning of each fiscal year, DHS will determine which hospitals will be assessed and the specific amount of each hospital's assessment. At such time, DHS will also determine the amount that the City may retain from amounts collected each quarter as follows:

For each quarter commencing on or after July 1, 2024, the City shall retain \$3,000,000 from the city/state share of the assessment revenue that is collected for that quarter. The funds retained by the City shall be used by the City to fund the City's costs of administration and collection of the assessments; and to fund a portion of the City's costs of operating public health clinics and public health programs.

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- c. DHS shall provide the City with sufficient information to allow for the timely electronic transfer of the funds generated by the assessment into a restricted Commonwealth account.

10. Assignment.

Neither the City nor DHS may assign any of the duties or rights set forth in this agreement under any circumstances.

11. Amendment.

This Agreement contains all terms and conditions agreed upon by the Parties, and no other agreement, oral or written, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the Parties hereto.

12. Counterparts.

This agreement may be executed by the parties hereto in any number of separate counterparts and all of such counterparts, when together, shall be deemed to constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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The parties, through their authorized representatives, have signed this agreement below.

Commonwealth of Pennsylvania Department of Human Services

Secretary or designee Date

Approved as to form and legality:

DHS Office of General Counsel Date

Governor's Office of General Counsel Date

Office of Attorney General Date

Comptroller Date

The City of Philadelphia Acting through its Department of Public Health

Health Commissioner Date

and its Department of Revenue

Revenue Commissioner Date

Approved as to Form
City Solicitor

Per _____

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Chief Deputy City Solicitor

Date

Comptroller

Date