

# City of Philadelphia



(Bill No. 190440)

## 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 § 19-3502* on General Acute Care Hospitals [under § 19-3502(1) or the fee to be assessed on] *or* High Volume Medicaid [Hospitals under § 19-3502(2).] *Hospitals*.

\* \* \*

(4) "Hospital." A facility *or the site of a facility that is* licensed by the Pennsylvania Department of Health as a hospital under 28 Pa. Code, Part IV, Subpart B (relating to general and special hospitals) *and located within the City*.

(5) "Net [Operating] Patient Revenue." Gross [charges for facilities] *revenues received or earned by a hospital for inpatient and outpatient services, including Pennsylvania medical assistance supplemental revenues received by the hospital for inpatient and outpatient hospital services*, less any deducted amounts for bad [debts,] *debt expense*, charity [care,] *care expense*, and contractual [allowances,] *allowances as identified in the hospital's records or on such forms as the Pennsylvania Department of Human Services may prescribe*. [as those terms are applied pursuant to section 801-E of the Act of June 13, 1967, P.L. 31, No. 21, 62 P.S. § 801-E, known as the Public Welfare Code.]

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(6) "Secretary." The Secretary of [Public Welfare] *Human Services* for the Commonwealth.

(7) "High Volume Medicaid Hospital." A Hospital that the Secretary has determined provides over [90,000] *60,000 inpatient acute care* days of care to *Pennsylvania* medical assistance patients [per year] *as evidenced by the hospital's State fiscal year 2014-2015 Medical Assistance hospital cost report on file with the Pennsylvania Department of Human Services as of June 6, 2018*, 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).

\* \* \*

§ 19-3502. Imposition of the General Acute Care Hospital Assessment and High Volume Medicaid Hospital Assessment.

(1) Subject to § 19-3503, effective January 1, [2009 and thereafter,] *2009, through June 30, 2019*, an assessment is hereby imposed upon every General Acute Care Hospital in the City in an amount equal to 3.93% of annual Net Operating Revenue excluding all revenues received from Medicare.

(2) Subject to § 19-3503, effective October 1, 2009, [and thereafter,] *through June 30, 2019*, a High Volume Medicaid Hospital Assessment is hereby imposed upon every High Volume Medicaid Hospital in the City in an amount equal to 3.45% of annual Net Operating Revenue excluding all revenues received from Medicare.

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

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

[(3)] (5) 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 High Volume Medicaid Hospital shall be exempt from the Assessment.

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(6) *Imposition of Assessment with changes of ownership.*

(a) *If a single General Acute Care Hospital or High Volume Medicaid 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 High Volume Medicaid 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.*

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

(a) *The annual Assessment amount for the fiscal year in which the closure or change occurs, prorated by the number of days in the fiscal year during which such Hospital was in operation and subject to the Assessment.*

(b) *Any outstanding Assessment amounts related to periods prior to the closure or change in operation.*

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

(a) *During the State fiscal year in which such Hospital begins operation or in which such a hospital becomes subject to an Assessment, the assessment will not be imposed on such Hospital.*

(b) *For the State fiscal year following the State fiscal year under paragraph (8)(a), an Assessment is imposed on such Hospital in accordance with all preceding paragraphs 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 paragraph (8)(b), an Assessment is imposed on such Hospital in accordance with all*

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*preceding paragraphs 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, [2019,] 2024, or on such later date as may be permitted by the General Assembly.

## § 19-3504. Notice, Returns and Payment.

(1) [On or before December 1 of each year in which an Assessment is in effect or imposed, the Department shall provide notice of the rate of the applicable assessment to each General Acute Care Hospital and High Volume Medicaid Hospital. Failure to provide notice shall not relieve any General Acute Care Hospital or High Volume Medicaid Hospital of any obligation hereunder.

(2)] 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, 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.

[(3)] (2) Every General Acute Care Hospital and High Volume Medicaid Hospital making a return shall certify the correctness thereof.

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

\* \* \*

(2) The special fund established under subsection (1) shall be used solely as follows:

(a) Remittance to the Commonwealth for deposit into that restricted account within the General Fund established by the Commonwealth for appropriation to the Commonwealth Department of [Public Welfare] *Human Services* for [the] *such* purposes [of making supplemental or increased medical assistance payments for emergency department services to General Acute Care Hospitals within the City and to maintain or increase other medical assistance payments to Hospitals within the City.] *as may be authorized by law.*

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(b) In amounts authorized pursuant to an agreement between the Revenue Commissioner and the Secretary, 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 programs, including public health clinics.

\* \* \*

§ 19-3507. Severability.

Should any section, subsection, sentence, clause or phrase of this Chapter be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Chapter in its entirety or of any part thereof other than that declared to be [invalid; provided however that if such decision would cause any High Volume Medicaid Hospital to be subject to the Assessment found in § 19-3502(1), Bill No. 090446-A shall be void in its entirety, other than the provision of Bill No. 090446-A adding this Section 19-3507 to the Code.] *invalid*.

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

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enacted by the General Assembly and that the Revenue Commissioner and the Commonwealth 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, 2019. 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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**Explanation:**

[Brackets] indicate matter deleted.  
*Italics* indicate new matter added.

**Exhibit "A"**

**INTERGOVERNMENTAL AGREEMENT**

This Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between the Commonwealth of Pennsylvania, Department of Human Services, ("DHS") and the City of Philadelphia, acting through its Department of Public Health and its Department of Revenue, "Philadelphia" or "the City".

WHEREAS, DHS is the single state agency responsible to administer the Medicaid Program in Pennsylvania, known as the Pennsylvania Medical Assistance ("MA") Program;

WHEREAS, DHS, as part of its administration of the MA Program, 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.;

WHEREAS, Commonwealth law permits certain municipalities to impose a monetary assessment on the non-Medicare net operating revenue of certain acute care hospitals and high-volume Medicaid hospitals within the municipalities' jurisdiction subject to certain requirements;

WHEREAS, the City of Philadelphia has enacted a city ordinance that authorizes it to impose such assessments on certain acute care hospitals and high-volume Medicaid hospitals within the City; and

WHEREAS, Commonwealth laws require that revenue obtained as a result of such assessments be used for the purpose of ensuring that medical assistance recipients in the municipalities have access to health-care services.

NOW, THEREFORE, the parties, with the intention of being legally bound, hereby agree as follows:

1. The services shall be provided in conformity with the following Riders:

Rider 1	Standard Terms and Conditions.
Rider 2	Audit Clause

The above riders are hereby incorporated by reference and made a part of this Agreement.

For purposes of Rider 1, the term "Contractor" means the City.

2. Term of Agreement. The term of this Agreement will commence on July 1, 2019 and shall be for a term of five (5) years.

3. Information.

Upon DHS's request, the City shall deliver to the DHS background material and other information prepared or obtained by the City incident to the performance of this Agreement. 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 personal interest or the interest of any corporation, partnership or association in which he 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.

This Agreement is subject to audit in accordance with the attached Rider 2, Audit Clause, 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:

Sami Jarrah  
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

City Solicitor  
One Parkway Building  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102

8. Responsibilities of the City.
- a. Beginning in July 2019, the City shall impose annual assessments on general acute care hospitals and high-volume Medicaid 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 will conduct assessments for each state fiscal year (July 1<sup>st</sup>-June 30<sup>th</sup>).
- 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”) and/or delays in the Commonwealth budget approval.
- d. The City shall conduct the assessments by transmitting a notice to each hospital no later than the 15<sup>th</sup> day of the second to last month of each state fiscal year quarter with payment due on the 15<sup>th</sup> day of the final month of each state fiscal year quarter unless the 15<sup>th</sup> 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 1<sup>st</sup>, with payment due to the City on June 1<sup>st</sup>, unless the 1<sup>st</sup> day falls on a weekend or City holiday, in which case payment shall be made on the next business day. 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. DHS must approve 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 ten (10) business days of 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 assessments described in this agreement shall cease on June 30, 2024 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 will 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 will also submit to CMS any amendment to Pennsylvania’s Medicaid State Plan and 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 shall retain from amounts collected each quarter as follows:

For each quarter commencing on or after July 1, 2019, 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.

- c. DHS will 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. 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

In Witness Whereof, intending to be legally bound hereby, the parties hereto have caused this Agreement to be executed by its duly authorized officials.

**Pennsylvania Department of Human Services**

\_\_\_\_\_  
Secretary or designee

\_\_\_\_\_  
DHS Office of General Counsel

\_\_\_\_\_  
Governor's Office of General Counsel

\_\_\_\_\_  
Office of Attorney General

**The City of Philadelphia**  
Acting through its Department of Public Health

  
\_\_\_\_\_  
Health Commissioner

and its Department of Revenue

\_\_\_\_\_  
Revenue Commissioner

Approved as to Form  
City Solicitor

Per \_\_\_\_\_  
Deputy City Solicitor

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 20, 2019. The Bill was Signed by the Mayor on June 26, 2019.



Michael A. Decker  
Chief Clerk of the City Council