

SB 249-FN - AS AMENDED BY THE SENATE

03/13/2025 0915s

2025 SESSION

25-1011

05/09

SENATE BILL **249-FN**

AN ACT relative to the uncompensated care and Medicaid fund.

SPONSORS: Sen. Birdsell, Dist 19

COMMITTEE: Health and Human Services

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AMENDED ANALYSIS

This bill revises the funding mechanism for uncompensated care costs under the state Medicaid program, including the distribution of disproportionate share hospital payments. The percentage of funds used for Medicaid payments to hospitals is repealed July 1, 2027. The bill also establishes a committee to study the Medicaid enhancement tax and disproportionate share hospital payments.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Five*

AN ACT relative to the uncompensated care and Medicaid fund.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Uncompensated Care and Medicaid Fund; Definition of Hospital. RSA 167:63, IV is repealed  
2 and reenacted to read as follows:

3 IV. "Hospitals" mean general acute care hospitals licensed under RSA 151 that provide  
4 inpatient and outpatient hospital services, but shall not include government facilities or special  
5 hospitals for rehabilitation.

6 2 Uncompensated Care and Medicaid Fund; Disproportionate Share Hospital Fund. RSA 167:64  
7 is repealed and reenacted to read as follows:

8 167:64 Uncompensated Care and Medicaid Fund; Disproportionate Share Hospital Fund.

9 I. There is hereby established in the state treasury an uncompensated care and Medicaid  
10 fund, which shall consist of the moneys collected pursuant to RSA 84-A. Moneys paid into the fund  
11 shall be exempt from any state budget reductions, and the commissioner of the department of health  
12 and human services is authorized to expend these funds, together with matching federal funds, as  
13 authorized by this section. Investment earnings of the fund shall be credited to the fund. The  
14 moneys in the fund shall be nonlapsing and continually appropriated to the department of health  
15 and human services for the purpose of making hospital payments and provider payments and to  
16 support Medicaid services and Medicaid programs administered by the department of health and  
17 human services in accordance with this section.

18 II. Beginning in state fiscal year 2026 and continuing every state fiscal year thereafter, the  
19 commissioner of the department of health and human services shall provide Medicaid payments,  
20 subject to the payment conditions set forth in paragraph V, to the hospitals in an amount equal to 91  
21 percent of the money collected pursuant to RSA 84-A in the prior state fiscal year. Payments to the  
22 hospitals shall be made in accordance with this section.

23 III. The commissioner of the department of health and human services shall determine  
24 which payment method or methods are used to make the Medicaid payments subject to this section  
25 through Medicaid reimbursement for inpatient or outpatient hospital services, Medicaid  
26 supplemental payments, managed care directed payments, disproportionate share hospital payment  
27 adjustments, or any other Medicaid payment method allowed by the Centers for Medicare and  
28 Medicaid Services (CMS). In determining which Medicaid method or methods to utilize and at what  
29 percentage for each method, the commissioner shall seek to prevent to the greatest extent possible  
30 year over year hospital reimbursement reductions in the aggregate while at the same time achieving

1 the highest available federal match. The commissioner shall work in collaboration with the  
2 hospitals in developing those determinations.

3 IV. All payments made pursuant to this section shall be subject to approval by CMS, and the  
4 department shall secure all necessary waivers or approvals to state plan amendments from CMS.

5 V. Any payments made under this section through directed payments shall comply with 42  
6 CFR 438.6 or any other applicable federal regulation or guidance. The commissioner shall consult  
7 with and consider feedback from the hospitals prior to submission of a payment plan to CMS for  
8 approval. If CMS does not approve the hospital directed payment plan, the commissioner shall seek  
9 to provide payments through increased hospital rates, disproportionate share hospital payments,  
10 supplemental Medicaid payments, or any other allowable Medicaid payment method that provides  
11 for federal fund matching. For purposes of determining the portion of the payments to the hospitals  
12 that are attributable to CMS approved directed payments, the amount shall be the total amount  
13 available for the hospitals to earn under any directed payment, including, but not limited to, any  
14 amount of a directed payment that is at risk, value-based, or subject to performance conditions. In  
15 no event shall the state be liable for any payments the hospitals fail to earn under any CMS  
16 approved directed payments.

17 VI. In the event the commissioner of the department of health and human services  
18 determines there has been a change in federal law, regulations, or CMS guidance that materially  
19 impacts payments to the hospitals in accordance with this section or a material change in the  
20 amount of money collected pursuant to RSA 84-A, the hospitals and commissioner of the department  
21 of health and human services shall collaborate on adjustments, and subject to the commissioner's  
22 determination, to the payment method or methods that are used to make the hospital payments  
23 subject to this section. In determining which Medicaid method or methods to utilize and at what  
24 percentage for each method, the commissioner shall seek to prevent to the greatest extent possible  
25 year over year hospital reimbursement reductions in the aggregate, while at the same time  
26 achieving the highest available federal match.

27 VII.(a) Disproportionate share hospital payments shall only be made to a hospital that is:

28 (1) A "deemed disproportionate share hospital" as defined by criteria set forth under  
29 42 U.S.C. section 1396r-4 and is not otherwise receiving a disproportionate share hospital payment;  
30 or

31 (2) Meets the minimum criteria for disproportionate share eligibility under relevant  
32 federal statutory changes at 42 U.S.C. 1396r-4(d).

33 (b) For purposes of this paragraph, a hospital's uncompensated care costs, for purposes  
34 of calculating a disproportionate share hospital payment, shall include any charity care cost, and any  
35 portion of Medicaid-covered patient care costs unreimbursed by Medicaid payments, that the  
36 commissioner determines would meet the criteria under 42 U.S.C. section 1396r-4(g) governing

1 hospital-specific limits on disproportionate share hospital payments under Title XIX of the Social  
2 Security Act and the provisions of all federal regulations promulgated thereunder.

3 VIII. Payment of the federal share of any amount payable under this section to the hospitals  
4 is contingent upon New Hampshire receiving those federal funds and any necessary CMS approvals  
5 that the department is required to secure pursuant to paragraph IV. In no event shall the state be  
6 liable for any payments in excess of such available federal appropriated funds. In the event of a  
7 reduction or termination of appropriated federal funds by any federal legislative or executive action  
8 that reduces, eliminates, or otherwise modifies the federal appropriation or availability of funding  
9 for the federal share, in whole or in part, the commissioner and the hospitals shall collaborate on  
10 adjustments, and subject to the commissioner's determination, to the payment method or methods  
11 that are used to make the hospitals payments subject to this section. In determining which  
12 Medicaid method or methods to utilize and at what percentage for each method, the commissioner  
13 shall seek to prevent to the greatest extent possible year over year hospital reimbursement  
14 reductions in the aggregate, while at the same time achieving the highest available federal match.  
15 The state shall not be required to transfer funds from any other account or source in the event  
16 federal funds are reduced or unavailable.

17 IX. The remaining funds available under this section shall be used to make provider  
18 payments and to support Medicaid services and Medicaid programs administered by the department  
19 in amounts directed by the budget in each year of the biennium, and from this an amount of at least  
20 9 percent of the money collected pursuant to RSA 84-A in the prior state fiscal year shall be used to  
21 support Medicaid services and Medicaid programs administered by the department of health and  
22 human services with first priority to funding Medicaid service provider payments to community  
23 mental health centers, federally qualified health centers, substance use disorder providers, and  
24 other Medicaid service providers as determined by the commissioner of the department of health and  
25 human services.

26 X. One percent of the funds made available for hospital Medicaid payments shall be placed  
27 in a separate class line for purposes of the department administering this section.

28 XI. No hospital shall be entitled to receive any reimbursement under this section unless it  
29 meets the definition of a hospital, as defined in RSA 167:63, IV.

30 XII. There is hereby established in the department of health and human services the  
31 disproportionate share hospital fund, which shall be kept separate and distinct from all other funds.  
32 All disproportionate hospital share hospital revenue received by the department shall be credited to  
33 the fund. The moneys in the fund shall be nonlapsing and continually appropriated to the  
34 department for the purpose of redistributing disproportionate share hospital funds between and  
35 among hospitals for compliance with the federally required disproportionate share hospital  
36 examinations.

1 XIII. Prior to implementing any change in the Medicaid payment methodology under  
2 paragraph III, VI, or VIII, the commissioner shall submit a document detailing such changes to the  
3 fiscal committee of the general court. The document shall be for informational purposes only and  
4 fiscal committee approval shall not be required for the department to proceed with implementation.

5 3 Application of Receipts; Disproportional Share Hospital Fund; Reference Change. Amend RSA  
6 6:12, I(b)(397) to read as follows:

7 (397) Moneys deposited in the disproportionate share hospital fund established in  
8 RSA 167:64, [V] *XII*.

9 4 Committee Established. There is established a committee to study the Medicaid enhancement  
10 tax and disproportionate share hospital payments.

11 I. The members of the committee shall be as follows:

12 (a) Three members of the senate appointed by the president of the senate. One member  
13 shall be from the senate finance committee and one member shall be from the senate health and  
14 human services committee. Two members shall be from the majority party and one member shall be  
15 a member of the minority party.

16 (b) Two members of the house of representatives, appointed by the speaker of the house  
17 of representatives. One member shall be from the house health and human services committee and  
18 one member shall be from the house finance committee.

19 II. Members of the committee shall receive mileage at the legislative rate when attending to  
20 the duties of the committee.

21 III. The committee shall:

22 (a) Study the Medicaid enhancement tax in the state of New Hampshire.

23 (b) Study disproportionate share hospital payments in New Hampshire.

24 (c) Study the relationship between the Medicaid enhancement tax and disproportionate  
25 share hospital payments in New Hampshire and review the history of this issue in New Hampshire.

26 (d) Study the feasibility of the state of New Hampshire moving to a directed payment  
27 plan for disproportionate share hospital payments.

28 (e) Solicit testimony from any person or organization with relevant information or  
29 expertise.

30 (f) Draft legislation to address any issues identified around the topics studied and  
31 reviewed by the committee. This draft legislation shall be included in the committee's final report.

32 IV. The members of the study committee shall elect a chairperson from among the members.  
33 The first meeting of the committee shall be called by the first-named senate member. The first  
34 meeting of the committee shall be held within 30 days of the effective date of this section. Three  
35 members of the committee shall constitute a quorum.

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1           V. The committee shall report its findings and any recommendations for proposed legislation  
2 to the president of the senate, the speaker of the house of representatives, the senate clerk, the  
3 house clerk, the governor, and the state library on or before November 1, 2025.

4           5 Repeal; Effective July 1, 2027. RSA 167:64, II, relative to Medicaid payments to hospitals, is  
5 repealed.

6           6 Effective Date.

7           I. Section 5 of this act shall take effect July 1, 2027.

8           II. The remainder of this act shall take effect July 1, 2025.

**SB 249-FN- FISCAL NOTE**  
AS AMENDED BY THE SENATE (AMENDMENT #2025-0915s)

AN ACT relative to the uncompensated care and Medicaid fund.

**FISCAL IMPACT:** This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
<b>Revenue</b>	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
<b>Expenditures*</b>	\$0	Approximately \$19 million increase in state expenditures	Approximately \$19 million increase in state expenditures	\$0
<i>Funding Source(s)</i>	Medicaid Enhancement Tax revenue, general funds			
<b>Appropriations*</b>	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

\*Expenditure = Cost of bill

\*Appropriation = Authorized funding to cover cost of bill

**METHODOLOGY:**

This bill establishes in statute the amount that hospitals are entitled to receive in the form of directed payments, rate increases, and Disproportionate Share Hospital (DSH) payments. As amended, the bill provides for Medicaid payments to hospitals equal to 91 percent of the Medicaid Enhancement Tax (MET) collected in the previous year. The previous statutory funding mechanism, which expired June 30, 2024, also required an amount equal to 91 percent of MET to be distributed to hospital. In the absence of a legislative directive, the Department of Health and Human Services, at the direction of the Governor's Office, submitted a Medicaid State Plan amendment to return to hospitals an amount equal to 80 percent of MET collected. The governor's recommended budget for FY26/27 assumes this 80 percent figure. Assuming payments to hospitals consist of 50 percent general funds and 50 percent federal funds\*, this bill will cost approximately \$19 million per fiscal year in state general funds. This figure was arrived at as follows:

- FY25 MET revenues are estimated at \$348.3 million.
- Hospitals would receive an amount equal to 91 percent of MET collected, or \$316.95 million. This compares to 80 percent of MET collected, or \$278.64 million, under the governor's budget proposal.

- The difference of \$38.3 million is assumed to be funded with 50 percent state funds and 50 percent matching federal funds. The state cost would therefore be approximately \$19.15 million per year.

The distribution described above would be in place for only the FY26/27 biennium, as the bill repeals the relevant provision on July 1, 2027.

\*The actual federal match will likely vary as the Medicaid program transitions away from Disproportionate Share Hospital payments and towards directed payments.

**AGENCIES CONTACTED:**

None