

STATE OF NEW YORK

5374

2021-2022 Regular Sessions

IN SENATE

March 3, 2021

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, the social services law, the state finance law and part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to known and projected department of health state fund Medicaid expenditures, in relation to fair pay for home care aides

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section
2 3614-f to read as follows:

3 § 3614-f. Fair pay for home care. 1. For the purpose of this section,
4 "home care aide" shall have the same meaning defined in section thirty-
5 six hundred fourteen-c of this article.

6 2. The minimum wage for a home care aide shall be no less than one
7 hundred and fifty percent of the higher of: (a) the otherwise applicable
8 minimum wage under section six hundred fifty-two of the labor law, or
9 (b) any otherwise applicable wage rule or order under article nineteen
10 of the labor law.

11 3. Where any home care aide is paid less than required by this
12 section, the home care aide, or the commissioner of labor acting on
13 behalf of the home care aide, may bring an action under article six or
14 nineteen of the labor law.

15 § 2. Paragraph (c) of subdivision 4-a of section 365-f of the social
16 services law is amended by adding a new subparagraph (v) to read as
17 follows:

18 (v) (A) The department shall analyze the certified cost reports of
19 each fiscal intermediary, grouped by regions, to establish a regional
20 minimum rate of reimbursement for each region. The regions shall be
21 established by the commissioner, provided that for areas subject to
22 section thirty-six hundred fourteen-c of the public health law, each

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 area with a different prevailing rate of total compensation, as defined
2 in that section, shall be its own region.

3 (B) For the purposes of this section, "regional minimum rate of
4 reimbursement" means a reimbursement rate reflecting the average
5 combined costs associated with the provision of direct service, reason-
6 able administrative costs as defined by the commissioner, allowances for
7 capital costs, the development of profit or reserves as allowable by law
8 or regulations of the commissioner, and any additional supplemental
9 payments. The regional minimum rate of reimbursement shall be the mini-
10 imum reimbursement rate for fiscal intermediaries providing services
11 under this section and shall be the minimum allowable reimbursement that
12 may be deemed adequate from a managed care provider, under section three
13 hundred sixty-four-j of this chapter or a managed long-term care plan,
14 under section forty-four hundred three-f of the public health law.

15 (C) In the first two years after an increase in the minimum wage has
16 been established, analysis for the regional minimum rate of reimburse-
17 ment shall factor in costs that were not captured in cost reports that
18 result from (A) that increase; and (B) wage compression from that
19 increase.

20 (D) The regional minimum rate of reimbursement shall be modified annu-
21 ally, based on cost reports submitted for the prior fiscal year, as
22 modified under this paragraph. If the minimum rate of reimbursement has
23 not been calculated prior to the start of the fiscal year, the previous
24 year's rate shall remain in place until the new rate is calculated,
25 provided that retroactive adjustments shall be made to the beginning of
26 the fiscal year.

27 § 3. Subdivision 8 of section 3612 of the public health law is amended
28 by adding a new paragraph (e) to read as follows:

29 (e)(i) The department shall analyze the certified cost reports of each
30 licensed home care services agency, grouped by regions, to establish a
31 regional minimum rate of reimbursement for each region. The regions
32 shall be established by the commissioner, provided that for areas
33 subject to section thirty-six hundred fourteen-c of this article, each
34 area with a differing prevailing rate of total compensation, as defined
35 in that section, shall be its own region.

36 (ii) For the purposes of this section, "regional minimum rate of
37 reimbursement" means a reimbursement rate reflecting the average
38 combined costs associated with the provision of direct service, reason-
39 able administrative costs as defined by the commissioner, allowances for
40 capital costs, the development of profit or reserves as allowable by law
41 or regulations of the commissioner, and any additional supplemental
42 payments. The regional minimum rate of reimbursement shall be the mini-
43 imum reimbursement rate for fiscal intermediaries providing services
44 under authorization by a local department of social services and shall
45 be the minimum allowable reimbursement that may be deemed adequate from
46 a managed care provider under section three hundred sixty-four-j of the
47 social services law or a managed long term care plan under section
48 forty-four hundred-f of this chapter.

49 (iii) In the first two years after an increase in the applicable mini-
50 imum wage has been established, determination of the regional minimum
51 rate of reimbursement shall factor in costs that were not captured in
52 cost reports that result from (A) that increase; and (B) wage
53 compression from that increase.

54 (iv) The regional minimum rate of reimbursement shall be modified
55 annually, based on cost reports submitted the prior fiscal year, as
56 modified under this paragraph. If the minimum rate of reimbursement has

not been calculated prior to the start of the fiscal year, the previous year's rate shall remain in place until the new rate is calculated, provided that retroactive adjustments shall be made to the beginning of the fiscal year if reimbursements to licensed home care service agencies by any party were below the new rate.

§ 4. Section 3614-d of the public health law, as added by section 49 of part B of chapter 57 of the laws of 2015, is amended to read as follows:

§ 3614-d. Universal standards for coding of payment for medical assistance claims for long term care. Claims for payment submitted under contracts or agreements with insurers under the medical assistance program for home and community-based long-term care services provided under this article, by fiscal intermediaries operating pursuant to section three hundred sixty-five-f of the social services law, and by residential health care facilities operating pursuant to article twenty-eight of this chapter shall have standard billing codes. Such insurers shall include but not be limited to Medicaid managed care plans and managed long term care plans. Such payments shall be based on universal billing codes approved by the department or a nationally accredited organization as approved by the department; provided, however, such coding shall be consistent with any codes developed as part of the uniform assessment system for long term care established by the department and shall include, for any entity operating pursuant to this article or section three hundred sixty-five-f of the social services law that is unable to control the cumulative hours worked by an individual in a given payroll period, a code that is specific to the hourly cost of services at an overtime rate.

§ 5. The state finance law is amended by adding a new section 91-h to read as follows:

§ 91-h. Fair pay for home care fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the comptroller, a special fund to be known as the "fair pay for home care fund".

2. The fund shall consist of:

a. revenues and federal medical assistance percentage reimbursements in excess of the standard reimbursement received by the department of health pursuant to section thirty-seven of part B of chapter fifty-seven of the laws of two thousand fifteen;

b. an amount equal to savings from the permanent conversion or decertification of residential health care facility beds, as defined in section twenty-eight hundred one or twenty-eight hundred two of the public health law;

c. any unspent monies from the New York works economic development funds or a life sciences initiative created by section one of chapter fifty-four of the laws of two thousand seventeen which were originally appropriated prior to the two thousand nineteen state fiscal year which have not been bound by a contract as of April first two thousand twenty-one and which are not otherwise legally required to be spent on capital projects under bonding requirements through the dormitory authority of New York state or other bonding entity; and

d. any grants, gifts or bequests received by the state for the purposes of the fund under this section.

3. Monies of the fund shall be distributed to the commissioner of health, or the commissioner's designee, for the purpose of increasing medical assistance reimbursements under title eleven of article five of the social services law to entities operating under article thirty-six

1 of the public health law and section three hundred sixty-five-f of the
2 social services law for wages of home care aides, as defined in section
3 thirty-six hundred fourteen-f of the public health law.

4 § 6. The opening paragraph and paragraph (a) of subdivision 3 of
5 section 2802 of the public health law, as amended by chapter 609 of the
6 laws of 1982, is amended to read as follows:

7 Subject to the provisions of paragraph (b) of subdivision two of this
8 section, the commissioner in [~~approving~~] determining whether to approve
9 or deny the construction of a hospital shall take into consideration and
10 be empowered to request information and advice as to (a) the availability
11 of facilities or services such as preadmission, ambulatory or home
12 care services which may serve as alternatives or substitutes for the
13 whole or any part of the proposed hospital construction, and better
14 enable the state to meet its obligations to provide services in the
15 community set forth in Olmstead v L.C. (by Zimring) 527 U.S. 581 (1999);

16 § 7. Paragraphs (c) of subdivision 18 of section 364-j of the
17 social services law, as added by sections 40-c and 55 of part B of
18 chapter 57 of the laws of 2015, are amended to read as follows:

19 (c) (i) In setting such reimbursement methodologies, the department
20 shall consider costs borne by the managed care program to ensure actuarially
21 sound and adequate rates of payment to ensure quality of care for
22 its enrollees and shall comply with all applicable federal and state
23 laws and regulations, including, but not limited to, those relating to
24 wages, including compression from increases in the minimum wage, labor,
25 and actuarial soundness.

26 [~~(c)~~] (ii) The department [~~of health~~] shall require the independent
27 actuary selected pursuant to paragraph (b) of this subdivision to
28 provide a complete actuarial memorandum, along with all actuarial
29 assumptions made and all other data, materials and methodologies used in
30 the development of rates, to managed care providers thirty days prior to
31 submission of such rates to the centers for medicare and medicaid
32 services for approval. Managed care providers may request additional
33 review of the actuarial soundness of the rate setting process and/or
34 methodology.

35 (iii) Any contract for services under this title by a managed care
36 provider with a long term care entity shall ensure that resources made
37 available by the payer under such contract will support the recruitment,
38 hiring, training and retention of a qualified workforce capable of
39 providing quality care, including compliance with all applicable federal
40 and state laws and regulations, including, but not limited to, those
41 relating to wages and labor. A managed care provider with a long term
42 care entity shall report its method of compliance with this subdivision
43 to the department as a component of cost reports required under section
44 forty-four hundred three-f of the public health law.

45 (iv) A long term care entity that contracts with a managed care
46 provider shall annually submit written certification to the department
47 as a component of cost reports required under section thirty-six
48 hundred twelve of the public health law and sections three hundred
49 sixty-five-a and three hundred sixty-seven-q of this title, as applica-
50 ble, as to how it applied the amounts paid in compliance with
51 this subdivision to support the recruitment, hiring, training and
52 retention of a qualified workforce capable of providing quality care
53 and consistent with section three hundred sixty-five-a of this title.

54 § 8. Subdivision 8 of section 4403-f of the public health law, as
55 amended by section 21 of part B of chapter 59 of the laws of 2016, is
56 amended to read as follows:

1 8. Payment rates for managed long term care plan enrollees eligible
2 for medical assistance. The commissioner shall establish payment rates
3 for services provided to enrollees eligible under title XIX of the
4 federal social security act. Such payment rates shall be subject to
5 approval by the director of the division of the budget and shall reflect
6 savings to both state and local governments when compared to costs which
7 would be incurred by such program if enrollees were to receive compara-
8 ble health and long term care services on a fee-for-service basis in the
9 geographic region in which such services are proposed to be provided.
10 Payment rates shall be risk-adjusted to take into account the character-
11 istics of enrollees, or proposed enrollees, including, but not limited
12 to: frailty, disability level, health and functional status, age,
13 gender, the nature of services provided to such enrollees, and other
14 factors as determined by the commissioner. The risk adjusted premiums
15 may also be combined with disincentives or requirements designed to
16 mitigate any incentives to obtain higher payment categories. In setting
17 such payment rates, the commissioner shall consider costs borne by the
18 managed care program to ensure actuarially sound and adequate rates of
19 payment to ensure quality of care and shall comply with all applicable
20 laws and regulations, state and federal, including ~~[regulations as to]~~,
21 but not limited to, those relating to wages, labor and actuarial sound-
22 ness ~~[for medicaid managed care]~~.

23 § 9. Paragraph (c) of subdivision 1 of section 92 of part H of chapter
24 59 of the laws of 2011 amending the public health law and other laws
25 relating to known and projected department of health state fund Medicaid
26 expenditures, as amended by section 1 of part CCC of chapter 56 of the
27 laws of 2020, is amended to read as follows:

28 (c) Projections may be adjusted by the director of the budget to
29 account for any changes in the New York state federal medical assistance
30 percentage amount established pursuant to the federal social security
31 act, changes in provider revenues, reductions to local social services
32 district medical assistance administration, minimum wage increases,
33 increases to the mandatory base wage for home care workers pursuant to
34 article 36 of the public health law, and beginning April 1, 2012 the
35 operational costs of the New York state medical indemnity fund and state
36 costs or savings from the basic health plan. Such projections may be
37 adjusted by the director of the budget to account for increased or expe-
38 dited department of health state funds medicaid expenditures as a result
39 of a natural or other type of disaster, including a governmental decla-
40 ration of emergency.

41 § 10. Paragraph (a) of subdivision 3 of section 3614-c of the public
42 health law is amended by adding a new subparagraph (v) to read as
43 follows:

44 (v) for all periods on or after July first, two thousand twenty-one,
45 the cash portion of the minimum rate of home care aide total compen-
46 sation shall be the minimum wage for home care aides in the applicable
47 region, as defined in section thirty-six hundred fourteen-f of this
48 article. The benefit portion of the minimum rate of home care aide total
49 compensation shall be four dollars and eighty-four cents.

50 § 11. Subparagraph (iv) of paragraph (b) of subdivision 3 of section
51 3614-c of the public health law, as amended by section 1 of part 00 of
52 chapter 56 of the laws of 2020, is amended and a new subparagraph (v) is
53 added to read as follows:

54 (iv) for all periods on or after March first, two thousand sixteen,
55 the cash portion of the minimum rate of home care aide total compen-
56 sation shall be ten dollars or the minimum wage as laid out in paragraph

(b) of subdivision one of section six hundred fifty-two of the labor law, whichever is higher. The benefit portion of the minimum rate of home care aide total compensation shall be three dollars and twenty-two cents[-];

(v) for all periods on or after July first, two thousand twenty-one, the cash portion of the minimum rate of home care aide total compensation shall be the minimum wage for the applicable region, as defined in section thirty-six hundred fourteen-f of this chapter. The benefit portion of the minimum rate of home care aide total compensation shall be three dollars and eighty-nine cents.

§ 12. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, any other application of any provision of this act, or any other provision of any law or code amended by this act.

§ 13. This act shall take effect immediately; provided, however, that the amendments to section 364-j of the social services law made by section seven of this act and the amendments to section 4403-f of the public health law made by section eight of this act shall not affect the repeal of such sections and shall expire and be deemed repealed therewith.