

STATE OF NEW YORK

3193--A

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sens. MANNION, HINCHEY, KENNEDY, LANZA, PALUMBO -- read twice and ordered printed, and when printed to be committed to the Committee on Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, in relation to reimbursement for residential habilitation services

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

Section 1. Paragraph (ii) of subdivision (c) of section 43.02 of the mental hygiene law, as amended by section 3 of part 00 of chapter 58 of the laws of 2015, is amended and a new subdivision (d) is added to read as follows:

(ii) methodologies used in the establishment of the schedules of rates or fees pursuant to this section provided, however, that in accordance with subdivision (d) of this section, the commissioner of health shall adopt rules and regulations including methodologies developed by him or her for services provided by any facility or program licensed, operated or approved by the office for people with developmental disabilities; provided, however, that such rules and regulations shall be subject to the approval of the office for people with developmental disabilities and shall take into account the policies and goals of such office.

(d) (i) For purposes of this subdivision, the following terms shall have the following meanings:

(1) "Retainer days" are days of medical leave or an associated day where any other institutional or in-patient medical payment is made for providing residential habilitation services to a person eligible for medical assistance pursuant to title eleven of article five of the social services law.

(2) "Service days" are days when residential habilitation services are provided in a community residence under the home and community-based waiver operated by the office for people with developmental disabilities

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

LBD04991-02-3

1 and pursuant to regulations promulgated by the commissioner of the
2 office for people with developmental disabilities to a person who is
3 either present in the community residence or is absent from the communi-
4 ty residence and residential habilitation services are performed by
5 staff. Such services shall include habilitation services, protective
6 oversight services, supervision services, nursing supervision of direct
7 care staff and coordination of a person's health care needs, the coordi-
8 nation of necessary medical appointments, follow-up reports from medical
9 appointments, follow-up and interface with hospital staff regarding
10 emergency room visits and other hospitalizations, services and supplies
11 related to program-related transportation, nutrition services directly
12 related to habilitation services and psychology services that support a
13 person's need for behavioral supports in a service setting.

14 (3) "Therapy days" are days when a person eligible for medical assist-
15 ance pursuant to title eleven of article five of the social services law
16 is away from a supervised community residence and is not otherwise
17 receiving services from paid residential habilitation staff and the
18 absence is for the purpose of visiting with family or friends, or a
19 vacation. The therapy day must be described in the person's plan of care
20 to be eligible for payment and the person may not receive another Medi-
21 caid-funded residential or in-patient service on that day.

22 (4) "Occupancy adjustment" is an adjustment to the calculated daily
23 rate of an agency which provides residential habilitation services in a
24 supervised community residence to account for vacancy days.

25 (5) "Vacancy days" are days for which the provider is unable to bill
26 for Medicaid due to a person residing in a community residence having
27 moved from one residential site to another, or due to the death of the
28 individual.

29 (ii) Notwithstanding any inconsistent provision of this section, or
30 any other law or regulation to the contrary and subject to the avail-
31 ability of federal financial participation, for any reimbursement for
32 residential habilitation services provided in a supervised community
33 residence according to a daily unit of service as promulgated by the
34 commissioner of health:

35 (1) retainer days shall be reimbursed at one hundred percent the daily
36 rate as determined pursuant to regulations promulgated by the commis-
37 sioner of health, provided, however a provider is limited to being paid
38 fourteen retainer days per rate year, multiplied by certified capacity;

39 (2) therapy days shall be reimbursed at one hundred percent the daily
40 rate as determined pursuant to regulations promulgated by the commis-
41 sioner of health, provided, however, a provider is limited to being paid
42 ninety-six therapy days per rate year per person; and

43 (3) for the rate periods beginning July first, two thousand twenty-
44 one, providers shall receive an occupancy adjustment to the operating
45 component of their rate, as the operating component of their rate is
46 determined pursuant to regulations promulgated by the commissioner of
47 health, for vacancy days. The occupancy adjustment percentage shall be
48 calculated by dividing the sum of a provider's rate period reported
49 retainer days, service days and therapy days by one hundred percent of
50 the provider's certified capacity. The certified capacity of the provid-
51 er is calculated by taking into account capacity changes throughout the
52 year, multiplied by one hundred percent of the year's days. The adjust-
53 ment will begin on July first, two thousand twenty-one and shall be
54 recalculated on an annual basis based on the most current and complete
55 twelve months of experience. The occupancy adjustment will be the lower

1 of the provider's actual occupancy adjustment percentage or five
2 percent.

3 § 2. This act shall take effect immediately and shall be deemed to
4 have been in full force and effect on and after April 1, 2024.