

STATE OF NEW YORK

6963

2023-2024 Regular Sessions

IN SENATE

May 16, 2023

Introduced by Sens. RIVERA, 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, in relation to regional minimum hourly base reimbursement rates for home care aides

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

1 Section 1. Section 3614-f of the public health law is amended by
2 adding eight new subdivisions 5, 6, 7, 8, 9, 10, 11 and 12 to read as
3 follows:

4 5. (a) By October sixteenth, two thousand twenty-three, the commis-
5 sioner shall establish a regional minimum hourly base reimbursement
6 rate for all providers employing workers subject to the minimum wage
7 provisions established in subdivision two of this section. The
8 regional minimum hourly base reimbursement rate shall be based on
9 regions established by the commissioner, provided that for areas subject
10 to section thirty-six hundred fourteen-c of this article, each area with
11 a different prevailing rate of total compensation, as defined in that
12 section, shall be its own region.

13 (b) For the purposes of this section, "regional minimum hourly base
14 reimbursement rate" means a reimbursement rate that reflects:

15 (1) a direct care related payment which shall reflect the total direct
16 care related costs for home care aides and other direct care related
17 staff necessary to comply with federal and state statutory and regula-
18 tory requirements for such providers, and which shall include:

19 A. base hourly wage guaranteed home care aides pursuant to subdivi-
20 sion two of this section;

21 B. overtime costs;

22 C. employee benefits, including both paid time off and supplemental
23 benefits or benefits as determined by collective bargaining agreements;

24 D. federal insurance contributions act;

25 E. Medicare;

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

LBD10383-04-3

1 F. federal unemployment tax act;
2 G. worker wage parity as provided by section thirty-six hundred four-
3 teen-c of this article, as applicable;
4 H. other payroll taxes;
5 I. fair labor standards act compliance;
6 J. New York state labor law compliance;
7 K. COVID-19 sick pay;
8 L. state unemployment insurance;
9 M. disability insurance;
10 N. workers' compensation;
11 O. travel time and travel reimbursement;
12 P. the metropolitan transportation authority tax; and
13 Q. related increases tied to base wages;

14 (2) a component to reflect operational expenses necessary to comply
15 with federal and state statutory and regulatory requirements for such
16 providers, and which shall include:

17 A. operational supervision and support, including but not limited to
18 nursing staff, home health aide supervision and team support; and

19 B. other operational support, including but not limited to quality
20 assurance and improvement programs, education and recruitment; and

21 (3) a component to reflect administrative and general operating
22 expenses which shall include rent and facilities management and business
23 support, including but not limited to information technology, human
24 resources, legal, compliance, finance, management, margin and communi-
25 cations.

26 (c) The regional minimum hourly base rate cannot be less than the most
27 current average fee for service county rates for level two personal care
28 service for each region as posted by the department for personal care
29 agencies or other providers delivering like services through other Medi-
30 caid programs.

31 (d) Once a regional minimum hourly base reimbursement rate has
32 been established under this section, the commissioner shall thereaft-
33 er annually adjust the regional hourly base reimbursement rate for
34 each region by a trend factor to reflect and accommodate any additional
35 labor law increases, changes or mandates.

36 6. For mainstream managed care and fully capitated Medicaid managed
37 care products for those dually eligible for both Medicaid and Medicare,
38 the commissioner shall submit any and all necessary applications for
39 approvals and/or waivers to the federal centers for Medicare and Medi-
40 caid services to secure approval to establish regional minimum hourly
41 base reimbursement rates and make state-directed payments through to
42 providers for the purposes of supporting wage increases.

43 (a) If approved by the federal centers for Medicare and Medicaid
44 services, directed payments shall be made to such providers of Medi-
45 caid services through contracts with managed care organizations where
46 applicable, provided that the commissioner ensures that such directed
47 payments are in accordance with the terms of this section.

48 (b) If the state directed payment is not approved, the provisions of
49 subdivision seven of this section shall apply.

50 7. For partially capitated managed long term care plans, or where
51 state directed payments pursuant to subdivision six of this section have
52 not been approved, the department shall require plans to justify
53 contracts offering deviations from the regional minimum hourly base
54 reimbursement rates in a report to the department. This report shall be
55 sent to the department, with a copy to the provider prior to the final-
56 izing of any contract, unless otherwise permitted by this section, with-

1 in five working days of the contract being offered to a provider with
2 rate deviations. Any report shall include a rationale for paying below
3 the regional minimum hourly base reimbursement rate, and the impacted
4 provider shall have the opportunity to respond to the report within
5 thirty days of filing with the department. The department shall compile
6 such reports and publish and post a summary of them semi-annually.

7 8. The commissioner shall establish actuarially sound regional
8 reimbursement rate ranges for Medicaid managed care organizations in
9 order to comply with this section. These ranges will reflect managed
10 care adjustments including but not limited to: (a) managed care plan
11 variations in utilizations from the regional utilization average; (b)
12 the impact of risk adjustment; and (c) premium withholds. Rate ranges
13 shall also account for quality incentives, volume, costs associated with
14 value-based arrangements, and reimbursement for individuals with hard to
15 serve needs.

16 9. Nothing in this section shall preclude providers employing home
17 health aides covered under this section or payers from paying or
18 contracting for services at rates higher than the regional mini-
19 um hourly base reimbursement rate if the parties mutually agree to such
20 terms. Notwithstanding subdivision seven of this section, plans and
21 providers can also mutually agree to enter into value-based contracts at
22 a rate less than the regional minimum hourly base reimbursement rate.

23 10. The commissioner shall amend the model managed care contracts to
24 reflect the requirements of this section. In addition, the commissioner
25 shall post the managed care, certified and licensed home care services
26 agencies and fiscal intermediaries cost report data in a simple under-
27 standable manner on the department's website by February fifteenth, two
28 thousand twenty-four and annually thereafter.

29 11. The commissioner shall publish and post regional minimum hourly
30 base reimbursement rates annually, and shall take all necessary steps
31 to advise commercial and government programs payers of home care
32 services of the regional minimum hourly base reimbursement rates.

33 12. To ensure compliance with minimum wage increases, the comptroller
34 shall have the authority to review the contracts entered into between a
35 managed care organization and a licensed home care services agency,
36 fiscal intermediary, or any agency subject to the provisions of this
37 section to ensure that rates being offered are adequate and meet the
38 department's actuarial standards. The comptroller, in consultation with
39 the Medicaid inspector general, shall develop and promulgate a process
40 to ensure such audits comply with state and federal law to protect
41 proprietary information and contracts. In the event that the comptroller
42 finds evidence that managed care organizations are not paying sufficient
43 adequate rates, they will refer such instances to the department and the
44 Medicaid fraud control unit for enforcement. If the department or the
45 Medicaid fraud control unit chooses not to pursue action related to this
46 referral, it shall inform, in writing, the comptroller's office as to
47 the reasoning. Such reports, and the department's responses, shall be
48 public information and made available on the comptroller's website.

49 § 2. Severability. If any provision of this act, or any application of
50 any provision of this act, is held to be invalid, or to violate or be
51 inconsistent with any federal law or regulation, that shall not affect
52 the validity or effectiveness of any other provision of this act, or any
53 other application of any provision of this act which can be given effect
54 without that provision or application; and to that end, the provisions
55 and applications of this act are severable.

56 § 3. This act shall take effect immediately.