S T A T E O F N E W Y O R K

3209

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

Introduced by M. of A. CHRISTENSEN, GREENE, COOK, MILLMAN, WEISENBERG, FIELDS, ABBATE, MAISEL, REILLY -- Multi-Sponsored by -- M. of A. ALFANO, CAHILL, DelMONTE, KOON, MARKEY, McENENY, PEOPLES, PHEFFER, ROSENTHAL, SCHIMEL, SEMINERIO -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the social services law, in relation to rates of payment for continuous nursing services for medically fragile persons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3-a of section 3614 of the public health law, as amended by section 9 of part C of chapter 109 of the laws of 2006, is amended to read as follows:

3-a. Medically fragile [children] PERSONS. Rates of payment for continuous nursing services for medically fragile [children] PERSONS provided by a certified home health agency, a licensed home care services agency or a long term home health care program shall be established to ensure the availability of such services, whether provided by registered nurses or licensed practical nurses who are employed by or under contract with such agencies or programs, and shall be established at a rate that is at least equal to rates of payment for such services rendered to patients eligible for AIDS home care programs; provided, however, that a certified home health agency, a licensed home care services agency or a long term home health care program that receives such enhanced rates for continuous nursing services for medically fragile [children] PERSONS shall use such enhanced rates to increase payments to registered nurses and licensed practical nurses who provide such services. In the case of services provided by certified home health agencies and long term home health care programs through contracts with licensed home care services agencies, rate increases received by such certified home health agencies and long term home health care programs

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

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pursuant to this subdivision shall be reflected in payments made to the registered nurses or licensed practical nurses employed by such licensed home care services agencies to render services to these [children] PERSONS. In establishing rates of payment under this subdivision, the commissioner shall consider the cost neutrality of such rates as related to the cost effectiveness of caring for medically fragile [children] PERSONS in a non-institutional setting as compared to an institutional setting. For the purposes of this subdivision, a medically fragile [child] PERSON shall mean a [child] PERSON who is at risk of hospitalization or institutionalization, including but not limited to [children] PERSONS who are technologically-dependent for life or health-sustaining functions, require complex medication regimen or medical interventions to maintain or to improve their health status or are in need of ongoing assessment or intervention to prevent serious deterioration of their health status or medical complications that place their life, health or development at risk, but who are capable of being cared for at home if provided with appropriate home care services, including but not limited to case management services and continuous nursing services. The commissioner shall promulgate regulations to implement provisions of this subdivision and may also direct the providers specified in this subdivision to provide such additional information and in such form as the commissioner shall determine is reasonably necessary to implement the provisions of this subdivision.

S 2. Subdivisions 1-a and 2 of section 367-r of the social services law, subdivision 1-a as amended by section 10 of part C of chapter 109 of the laws of 2006, and subdivision 2 as amended by section 58-a of part A of chapter 57 of the laws of 2006, are amended to read as follows:

1-a. Medically fragile [children] PERSONS. In addition, the commissioner shall further increase rates for private duty nursing services that are provided to medically fragile [children] PERSONS to ensure the availability of such services to such [children] PERSONS. In establishing rates of payment under this subdivision, the commissioner shall consider the cost neutrality of such rates as related to the cost effectiveness of caring for medically fragile [children] PERSONS in a non-institutional setting as compared to an institutional setting. Medically fragile [children] PERSONS shall, for the purposes of this subdivision, have the same meaning as in subdivision three-a of section thirty-six hundred fourteen of the public health law. Such increased rates for services rendered to such [children] PERSONS may take into consideration the elements of cost, geographical differentials in the elements of cost considered, economic factors in the area in which the private duty nursing service is provided, costs associated with the provision of private duty nursing services to medically fragile [children] PERSONS, and the need for incentives to improve services and institute economies and such increased rates shall be payable only to those private duty nurses who can demonstrate, to the satisfaction of the department of health, satisfactory training and experience to provide services to such [children] PERSONS. Such increased rates shall be determined based on application of the case mix adjustment factor for AIDS home care program services rates as determined pursuant to applicable regulations of the department of health. The commissioner may promulgate regulations to implement the provisions of this subdivision.

2. Private duty nursing services providers which have their rates adjusted pursuant to this section shall use such funds solely for the purposes of recruitment and retention of private duty nurses or to

ensure the delivery of private duty nursing services to medically fragile [children] PERSONS and are prohibited from using such funds for any other purpose. Funds provided under this section are not intended to supplant support provided by a local government. Each such provider, with the exception of self-employed private duty nurses, shall submit, at a time and in a manner to be determined by the commissioner of health, a written certification attesting that such funds will be used solely for the purpose of recruitment and retention of private duty nurses or to ensure the delivery of private duty nursing services to medically fragile [children] PERSONS. The commissioner of health is authorized to audit each such provider to ensure compliance with the written certification required by this subdivision and shall recoup all funds determined to have been used for purposes other than recruitment and retention of private duty nurses or the delivery of private duty nursing services to medically fragile [children] PERSONS. Such recoupment shall be in addition to any other penalties provided by law.

S 3. This act shall take effect on the thirtieth day after it shall have become a law, provided that:

1. the amendments to subdivision 3-a of section 3614 of the public health law made by section one of this act shall not affect the expiration and repeal of such subdivision and shall expire and be deemed repealed therewith; and

2. the amendments to section 367-r of the social services law made by section two of this act shall not affect the expiration of such section and shall be deemed to expire therewith.