

2009-2010 Regular Sessions

I N S E N A T E

January 15, 2009

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Subdivision 3-a of section 3614 of the public health law,
2 as amended by section 9 of part C of chapter 109 of the laws of 2006, is
3 amended to read as follows:
4 3-a. Medically fragile [children] PERSONS. Rates of payment for
5 continuous nursing services for medically fragile [children] PERSONS
6 provided by a certified home health agency, a licensed home care
7 services agency or a long term home health care program shall be estab-
8 lished to ensure the availability of such services, whether provided by
9 registered nurses or licensed practical nurses who are employed by or
10 under contract with such agencies or programs, and shall be established
11 at a rate that is at least equal to rates of payment for such services
12 rendered to patients eligible for AIDS home care programs; provided,
13 however, that a certified home health agency, a licensed home care
14 services agency or a long term home health care program that receives
15 such enhanced rates for continuous nursing services for medically frag-
16 ile [children] PERSONS shall use such enhanced rates to increase
17 payments to registered nurses and licensed practical nurses who provide
18 such services. In the case of services provided by certified home health
19 agencies and long term home health care programs through contracts with
20 licensed home care services agencies, rate increases received by such
21 certified home health agencies and long term home health care programs
22 pursuant to this subdivision shall be reflected in payments made to the
23 registered nurses or licensed practical nurses employed by such licensed
24 home care services agencies to render services to these [children]

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

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1 PERSONS. In establishing rates of payment under this subdivision, the
2 commissioner shall consider the cost neutrality of such rates as related
3 to the cost effectiveness of caring for medically fragile [children]
4 PERSONS in a non-institutional setting as compared to an institutional
5 setting. For the purposes of this subdivision, a medically fragile
6 [child] PERSON shall mean a [child] PERSON who is at risk of hospitali-
7 zation or institutionalization, including but not limited to [children]
8 PERSONS who are technologically-dependent for life or health-sustaining
9 functions, require complex medication regimen or medical interventions
10 to maintain or to improve their health status or are in need of ongoing
11 assessment or intervention to prevent serious deterioration of their
12 health status or medical complications that place their life, health or
13 development at risk, but who are capable of being cared for at home if
14 provided with appropriate home care services, including but not limited
15 to case management services and continuous nursing services. The commis-
16 sioner shall promulgate regulations to implement provisions of this
17 subdivision and may also direct the providers specified in this subdivi-
18 sion to provide such additional information and in such form as the
19 commissioner shall determine is reasonably necessary to implement the
20 provisions of this subdivision.

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

26 1-a. Medically fragile [children] PERSONS. In addition, the commis-
27 sioner shall further increase rates for private duty nursing services
28 that are provided to medically fragile [children] PERSONS to ensure the
29 availability of such services to such [children] PERSONS. In establish-
30 ing rates of payment under this subdivision, the commissioner shall
31 consider the cost neutrality of such rates as related to the cost effec-
32 tiveness of caring for medically fragile [children] PERSONS in a non-in-
33 stitutional setting as compared to an institutional setting. Medically
34 fragile [children] PERSONS shall, for the purposes of this subdivision,
35 have the same meaning as in subdivision three-a of section thirty-six
36 hundred fourteen of the public health law. Such increased rates for
37 services rendered to such [children] PERSONS may take into consideration
38 the elements of cost, geographical differentials in the elements of cost
39 considered, economic factors in the area in which the private duty nurs-
40 ing service is provided, costs associated with the provision of private
41 duty nursing services to medically fragile [children] PERSONS, and the
42 need for incentives to improve services and institute economies and such
43 increased rates shall be payable only to those private duty nurses who
44 can demonstrate, to the satisfaction of the department of health, satis-
45 factory training and experience to provide services to such [children]
46 PERSONS. Such increased rates shall be determined based on application
47 of the case mix adjustment factor for AIDS home care program services
48 rates as determined pursuant to applicable regulations of the department
49 of health. The commissioner may promulgate regulations to implement the
50 provisions of this subdivision.

51 2. Private duty nursing services providers which have their rates
52 adjusted pursuant to this section shall use such funds solely for the
53 purposes of recruitment and retention of private duty nurses or to
54 ensure the delivery of private duty nursing services to medically frag-
55 ile [children] PERSONS and are prohibited from using such funds for any
56 other purpose. Funds provided under this section are not intended to

1 supplant support provided by a local government. Each such provider,
2 with the exception of self-employed private duty nurses, shall submit,
3 at a time and in a manner to be determined by the commissioner of
4 health, a written certification attesting that such funds will be used
5 solely for the purpose of recruitment and retention of private duty
6 nurses or to ensure the delivery of private duty nursing services to
7 medically fragile [children] PERSONS. The commissioner of health is
8 authorized to audit each such provider to ensure compliance with the
9 written certification required by this subdivision and shall recoup all
10 funds determined to have been used for purposes other than recruitment
11 and retention of private duty nurses or the delivery of private duty
12 nursing services to medically fragile [children] PERSONS. Such recoup-
13 ment shall be in addition to any other penalties provided by law.

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

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

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