

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, DeMONTE, 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:

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

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

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

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

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

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

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

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

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

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