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

190

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. CAHILL, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. BRENNAN, CANESTRARI, COOK, GLICK, HOOPER, JACOBS, McENENY, PRETLOW, J. RIVERA, ROBINSON, TOWNS, WEISENBERG -- read once and referred to the Committee on Ways and Means

AN ACT to amend chapter 53 of the laws of 1990 constituting the aid to localities budget, in relation to the personal care trend language

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

Section 1. Legislative intent and declaration. The legislature hereby finds and declares that a medicaid rate setting methodology for personal care services, entitled "Personal Care Trend Language", was incorporated in chapter 53 of the laws of 1990. The legislature further declares that its intention in adopting the subject provisions of chapter 53 of the laws of 1990 was to correct inadequacies and inconsistencies in the amount of medicaid reimbursement paid to personal care providers across the state by mandating a more consistent and equitable medicaid reimbursement rate, ensuring thereby that personal care providers would be able and available to provide services to medically indigent elderly, disabled, ill and infirm individuals.

The legislature further finds that, since their adoption, medicaid personal care rate setting provisions of chapter 53 of the laws of 1990 have from time to time been construed by public officials and agencies, and in courts, in a manner inconsistent with the legislature's intent in respect of those provisions, the public policy of the state, the financial viability of the personal care program and access by the public to personal care services upon which thousands of the state's citizenry rely. Therefore, the legislature hereby finds and declares that it is necessary to amend the subject provisions of chapter 53 of the laws of 1990 to clarify the legislature's intent in adopting the same.

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

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S 2. That part of section 1 of chapter 53 of the laws of 1990 constituting the aid to localities budget making an appropriation to the department of social services for the medical assistance program is amended to read as follows:

DEPARTMENT OF SOCIAL SERVICES

SCHEDULE

MEDICAL ASSISTANCE PROGRAM

General Fund - Local Assistance Account

PERSONAL CARE TREND LANGUAGE

Notwithstanding any inconsistent provision of law or regulation to the contrary, for services provided by personal care providers for the rate or contract year beginning on or after July 1, 1990, payments will be based upon reimbursement rate in effect for rate or contract years beginning prior to July 1, 1990 and adjusted by a trend factor. This trend factor, subject to approval by the director of the budget, shall be developed in accordance with regulations promulgated by the department of social services and shall reflect appropriate external price indicators for three major components which comprise the cost of personal care: aide wage and benefit; administrative and operating; and clinical; provided however that the department of social services shall provide public notice of the criteria utilized in calculating the trend factor; and provided further, however, that the department of social services and the director of the budget shall, within two months of receipt of a rate request, review and approve rates which are based on the trend factor determinants and established at or below the mandatory trend factor; and provided further, however, that exceptions to the trend factor shall be considered and acted upon by the department of social services and the division of the budget within four months from receipt, for extraordinary circumstances, such as the inability to provide adequate personal care services, a diminution in the quality of services and such other factors as defined by the department in consultation with personal care providers and local districts. Additionally, the department of social services, in

consultation with personal care providers, local departments of social services and the panel of independent economists which advises the department of health concerning trend factor for hospitals, shall no later than January 1, 1991, summit to the legislature and governor a plan containing the criteria for the establishment of a rate setting methodology for personal care which shall at a minimum consider: (a) changes in the cost of living; (b) applicable minimum wage laws; (c) any changes in federal department of labor, bureau of labor statistics; (d) administration, operation and clinical factors; (e) the cost of training personal care workers; [and] (f) the development of a rate year consistent with article 36 home health care providers; AND (G) THE RATES CHARGED BY PERSONAL CARE PROVIDERS TO UNINSURED PERSONS TO WHOM SUCH SERVICES ARE PROVIDED; PROVIDED HOWEVER, THAT IN NO EVENT SHALL A RATE OR RATES CHARGED TO UNINSURED RECIPIENTS OF PERSONAL CARE SERVICES OR ANY AVERAGE OF OR OTHER CALCULATION BASED UPON SUCH RATE OR RATES BE DEEMED TO BE A MINIMUM OR MAXIMUM RATE FOR PURPOSES OF ESTABLISHING PROVIDER REIMBURSEMENT RATES FOR PERSONAL CARE SERVICES RENDERED TO PERSONS ELIGIBLE FOR MEDICAL ASSISTANCE. Such plan shall also consider a method, developed by the department of health in consultation with the department of social services and representatives of the home care industry, by which the methodology used by the department of health to establish rates for certified home health agencies, long term home health care programs and the AIDS home care programs shall consider in the establishment of such rates, rates approved by the department of social services and the division of the budget for personal care in order to assure adequate reimbursement for aide services provided by certified home health agencies, long term home health care programs and AIDS home care programs -- less ..... (10,000,000)

S 3. This act shall take effect immediately.