

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

3683--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. GOTTFRIED, DINOWITZ, SCHIMEL, N. RIVERA, ROSEN-
THAL -- read once and referred to the Committee on Health -- reported
and referred to the Committee on Ways and Means -- committee
discharged, bill amended, ordered reprinted as amended and recommitted
to said committee

AN ACT to amend the public health law, in relation to rate of payment
for home health care programs using statewide average calculation
excluding certain costs

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

1 Section 1. Subdivision 7 of section 3614 of the public health law, as
2 added by chapter 41 of the laws of 1992, the opening paragraph as
3 amended by section 18 of part C of chapter 109 of the laws of 2006, the
4 second undesignated paragraph as added by chapter 170 of the laws of
5 1994 and the third undesignated paragraph as added and the closing para-
6 graph as amended by chapter 59 of the laws of 1993, is amended to read
7 as follows:
8 7. (A) Notwithstanding any inconsistent provision of law or regu-
9 lation, for purposes of establishing rates of payment by governmental
10 agencies for certified home health agencies for the period April first,
11 nineteen hundred ninety-five through December thirty-first, nineteen
12 hundred ninety-five and for rate periods beginning on or after January
13 first, nineteen hundred ninety-six, the reimbursable base year adminis-
14 trative and general costs of a provider of services shall not exceed the
15 statewide average of total reimbursable base year administrative and
16 general costs of such providers of services; PROVIDED, HOWEVER, THAT FOR
17 PURPOSES OF ESTABLISHING SUCH RATES OF PAYMENT FOR PERIODS ON AND AFTER
18 APRIL FIRST, TWO THOUSAND TWELVE, SUCH STATEWIDE AVERAGE CALCULATION
19 SHALL EXCLUDE ANY OTHERWISE REIMBURSABLE COSTS, INCLUDING STEP DOWN
20 COSTS, REPORTED AND ALLOCABLE AS ADMINISTRATIVE AND GENERAL BUT ATTRIB-
21 UTABLE TO THE PROVISION AND MANAGEMENT OF PATIENT CARE INCLUDING, BUT

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

LBD02399-03-1

1 NOT LIMITED TO, COSTS ATTRIBUTABLE TO: PATIENT OUTREACH; ASSESSMENT;
2 COORDINATION AND MANAGEMENT OF SERVICES; TELEPHONE AND OTHER TELEHEALTH
3 MONITORING AND COMMUNICATION; MEDICAL SUPPLIES; STAFF TRANSPORTATION AND
4 ESCORT SERVICES; FAMILY AND/OR INFORMAL CAREGIVER SUPPORT SERVICES;
5 PATIENT RECORDKEEPING; AND TECHNOLOGY INVESTMENTS FOR PATIENT CARE.
6 SUCH EXCLUDED COSTS SHALL BE CONVEYED BY THE PROVIDER AS A SEPARATE
7 DOCUMENT OF SUPPLEMENTAL INFORMATION ATTACHED TO THE PROVIDER'S COST
8 REPORT, AS SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL PROVIDE A
9 RATE COMPUTATION SHEET TO EACH CERTIFIED HOME HEALTH AGENCY WITH
10 DISTINCT LINES FOR EACH SERVICE AND RATE WHICH SHALL INCLUDE:

11 (I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENER-
12 AL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

13 (II) THE PROVIDER'S TOTAL ADMINISTRATIVE AND GENERAL AMOUNT ALLOCABLE
14 TO THE RATE FOR THE SERVICE;

15 (III) SUCH TOTAL ADMINISTRATIVE AND GENERAL AMOUNT EXCLUSIVE OF THE
16 PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

17 (IV) THE ALLOWABLE ADMINISTRATIVE AND GENERAL COST AMOUNT BASED ON THE
18 LIMITATION PROVIDED FOR IN THIS SECTION CALCULATED TO REFLECT THE EXCLU-
19 SION OF PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

20 (V) ANY ADMINISTRATIVE AND GENERAL COST DISALLOWED TO THE RATE BASED
21 ON SUCH LIMITATION; AND

22 (VI) THE ADJUSTED RATE BASED ON THE APPLICATION OF THE ADMINISTRATIVE
23 AND GENERAL COST LIMITATION.

24 The amount of such reduction in certified home health agency rates of
25 payments made during the period April first, nineteen hundred ninety-
26 five through March thirty-first, nineteen hundred ninety-six shall be
27 adjusted in the nineteen hundred ninety-six rate period on a pro-rata
28 basis, if it is determined upon post-audit review by June fifteenth,
29 nineteen hundred ninety-six and reconciliation that the savings for the
30 state share, excluding the federal and local government shares, of
31 medical assistance payments pursuant to title eleven of article five of
32 the social services law based on the limitation of such payment pursuant
33 to this subdivision is in excess of one million five hundred thousand
34 dollars or is less than one million five hundred thousand dollars for
35 payments made on or before March thirty-first, nineteen hundred ninety-
36 six to reflect the amount by which such savings are in excess of or
37 lower than one million five hundred thousand dollars. For rate periods
38 on and after January first, two thousand five through December thirty-
39 first, two thousand six, there shall be no such reconciliation of the
40 amount of savings in excess of or lower than one million five hundred
41 thousand dollars.

42 (B) No such limit shall be applied to a provider of services reim-
43 bursed on an initial budget basis, or a new provider, excluding changes
44 in ownership or changes in name, who begins operations in the year prior
45 to the year which is used as a base year in determining rates of
46 payment.

47 (C) For the purposes of this subdivision, reimbursable base year oper-
48 ational costs shall mean those base year operational costs remaining
49 after application of all other efficiency standards, including, but not
50 limited to, peer group cost ceilings or guidelines.

51 (D) The limitation on reimbursement for provider administrative and
52 general expenses provided by this subdivision shall be expressed as a
53 percentage reduction for the rate promulgated by the commissioner to
54 each certified home health agency and long term home health care program
55 provider; PROVIDED, HOWEVER, THAT SUCH REDUCTION PERCENTAGE SHALL NOT BE

1 INCREASED FOR ANY PROVIDER AS A CONSEQUENCE OF THE EXCLUSIONS PROVIDED
2 FOR IN PARAGRAPH (A) OF THIS SUBDIVISION.

3 S 2. The opening paragraph of subdivision 7 of section 3614 of the
4 public health law, as amended by chapter 170 of the laws of 1994, is
5 amended to read as follows:

6 (A) Notwithstanding any inconsistent provision of law or regulation to
7 the contrary, for purposes of establishing rates of payment by govern-
8 mental agencies for certified home health agencies and long term home
9 health care programs for rate [period] PERIODS beginning on or after
10 January first, nineteen hundred ninety-five, the department of health
11 may not by rule or regulation limit the reimbursable base year adminis-
12 trative and general costs of a provider of services to a percentage
13 which is other than thirty percent of total reimbursable base year oper-
14 ational costs of such provider of services; PROVIDED, HOWEVER, THAT FOR
15 PURPOSES OF ESTABLISHING SUCH RATES OF PAYMENT FOR PERIODS ON AND AFTER
16 APRIL FIRST, TWO THOUSAND TWELVE, SUCH STATEWIDE AVERAGE CALCULATION
17 SHALL EXCLUDE ANY OTHERWISE REIMBURSABLE COSTS, INCLUDING STEP DOWN
18 COSTS, REPORTED AND ALLOCABLE AS ADMINISTRATIVE AND GENERAL BUT ATTRIB-
19 UTABLE TO THE PROVISION AND MANAGEMENT OF PATIENT CARE INCLUDING, BUT
20 NOT LIMITED TO, COSTS ATTRIBUTABLE TO: PATIENT OUTREACH; ASSESSMENT;
21 COORDINATION AND MANAGEMENT OF SERVICES; TELEPHONE AND OTHER TELEHEALTH
22 MONITORING AND COMMUNICATION; MEDICAL SUPPLIES; STAFF TRANSPORTATION AND
23 ESCORT SERVICES; FAMILY AND/OR INFORMAL CAREGIVER SUPPORT SERVICES;
24 PATIENT RECORDKEEPING; AND TECHNOLOGY INVESTMENTS FOR PATIENT CARE.
25 SUCH EXCLUDED COSTS SHALL BE CONVEYED BY THE PROVIDER AS A SEPARATE
26 DOCUMENT OF SUPPLEMENTAL INFORMATION ATTACHED TO THE PROVIDER'S COST
27 REPORT, AS SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL PROVIDE A
28 RATE COMPUTATION SHEET TO EACH CERTIFIED HOME HEALTH AGENCY WITH
29 DISTINCT LINES FOR EACH SERVICE AND RATE WHICH SHALL INCLUDE:

30 (I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENER-
31 AL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

32 (II) THE PROVIDER'S TOTAL ADMINISTRATIVE AND GENERAL AMOUNT ALLOCABLE
33 TO THE RATE FOR THE SERVICE;

34 (III) SUCH TOTAL ADMINISTRATIVE AND GENERAL AMOUNT EXCLUSIVE OF THE
35 PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

36 (IV) THE ALLOWABLE ADMINISTRATIVE AND GENERAL COST AMOUNT BASED ON THE
37 LIMITATION PROVIDED FOR IN THIS SECTION CALCULATED TO REFLECT THE EXCLU-
38 SION OF PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

39 (V) ANY ADMINISTRATIVE AND GENERAL COST DISALLOWED TO THE RATE BASED
40 ON SUCH LIMITATION; AND

41 (VI) THE ADJUSTED RATE BASED ON THE APPLICATION OF THE ADMINISTRATIVE
42 AND GENERAL COST LIMITATION.

43 S 3. Subdivision 7-a of section 3614 of the public health law, as
44 amended by section 89 of part C of chapter 58 of the laws of 2007 and
45 the opening paragraph as amended by section 18 of part D of chapter 59
46 of the laws of 2011, is amended to read as follows:

47 7-a. (A) Notwithstanding any inconsistent provision of law or regu-
48 lation, for the purposes of establishing rates of payment by govern-
49 mental agencies for long term home health care programs for the period
50 April first, two thousand five, through December thirty-first, two thou-
51 sand five, and for the period January first, two thousand six through
52 March thirty-first, two thousand seven, and on and after April first,
53 two thousand seven through March thirty-first, two thousand nine, and on
54 and after April first, two thousand nine through March thirty-first, two
55 thousand eleven, and on and after April first, 2011 through March thir-
56 ty-first, 2013, the reimbursable base year administrative and general

1 costs of a provider of services shall not exceed the statewide average
2 of total reimbursable base year administrative and general costs of such
3 providers of services; PROVIDED, HOWEVER, THAT FOR THE PURPOSES OF
4 ESTABLISHING SUCH RATES OF PAYMENT FOR PERIODS ON AND AFTER APRIL FIRST,
5 TWO THOUSAND TWELVE, SUCH STATEWIDE AVERAGE CALCULATION SHALL EXCLUDE
6 ANY OTHERWISE REIMBURSABLE COSTS, INCLUDING STEP DOWN COSTS, REPORTED
7 AND ALLOCABLE AS ADMINISTRATIVE AND GENERAL BUT ATTRIBUTABLE TO THE
8 PROVISION AND MANAGEMENT OF PATIENT CARE INCLUDING, BUT NOT LIMITED TO,
9 COSTS ATTRIBUTABLE TO: PATIENT OUTREACH; ASSESSMENT; COORDINATION AND
10 MANAGEMENT OF SERVICES; TELEPHONE AND OTHER TELEHEALTH MONITORING AND
11 COMMUNICATION; MEDICAL SUPPLIES; STAFF TRANSPORTATION AND ESCORT
12 SERVICES; FAMILY AND/OR INFORMAL CAREGIVER SUPPORT SERVICES; PATIENT
13 RECORDKEEPING; AND TECHNOLOGY INVESTMENTS FOR PATIENT CARE. SUCH
14 EXCLUDED COSTS SHALL BE CONVEYED BY THE PROVIDER AS A SEPARATE DOCUMENT
15 OF SUPPLEMENTAL INFORMATION ATTACHED TO THE PROVIDER'S COST REPORT, AS
16 SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL PROVIDE A RATE COMPU-
17 TATION SHEET TO EACH CERTIFIED HOME HEALTH AGENCY WITH DISTINCT LINES
18 FOR EACH SERVICE AND RATE WHICH SHALL INCLUDE:

19 (I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENER-
20 AL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

21 (II) THE PROVIDER'S TOTAL ADMINISTRATIVE AND GENERAL AMOUNT ALLOCABLE
22 TO THE RATE FOR THE SERVICE;

23 (III) SUCH TOTAL ADMINISTRATIVE AND GENERAL AMOUNT EXCLUSIVE OF THE
24 PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

25 (IV) THE ALLOWABLE ADMINISTRATIVE AND GENERAL COST AMOUNT BASED ON THE
26 LIMITATION PROVIDED FOR IN THIS SECTION CALCULATED TO REFLECT THE EXCLU-
27 SION OF PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

28 (V) ANY ADMINISTRATIVE AND GENERAL COST DISALLOWED TO THE RATE BASED
29 ON SUCH LIMITATION; AND

30 (VI) THE ADJUSTED RATE BASED ON THE APPLICATION OF THE ADMINISTRATIVE
31 AND GENERAL COST LIMITATION.

32 (B) No such limit shall be applied to a provider of services reim-
33 bursed on an initial budget basis, or a new provider, excluding changes
34 in ownership or changes in name, who begins operations in the year prior
35 to the year which is used as a base year in determining rates of
36 payment.

37 (C) For the purposes of this subdivision, reimbursable base year oper-
38 ational costs shall mean those base year operational costs remaining
39 after application of all other efficiency standards, including, but not
40 limited to, cost guidelines.

41 (D) The limitation on reimbursement for provider administrative and
42 general expenses provided by this subdivision shall be expressed as a
43 percentage reduction for the rate promulgated by the commissioner to
44 each long term home health care program provider; PROVIDED, HOWEVER,
45 THAT SUCH REDUCTION PERCENTAGE SHALL NOT BE INCREASED FOR ANY PROVIDER
46 AS A CONSEQUENCE OF THE EXCLUSIONS PROVIDED FOR IN PARAGRAPH (A) OF THIS
47 SUBDIVISION.

48 S 4. This act shall take effect on the first of April next succeeding
49 the date on which it shall have become law; provided, however, that the
50 amendments to the opening paragraph of subdivision 7 of section 3614 of
51 the public health law made by section one of this act shall be subject
52 to the expiration and reversion of such opening paragraph pursuant to
53 section 64-b and subdivision 5-a of section 246 of chapter 81 of the
54 laws of 1995, as amended, when upon such date the provisions of section
55 two of this act shall take effect.