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, ROSENTHAL -- 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 7 of section 3614 of the public health law, as added by chapter 41 of the laws of 1992, the opening paragraph as amended by section 18 of part C of chapter 109 of the laws of 2006, the second undesignated paragraph as added by chapter 170 of the laws of 1994 and the third undesignated paragraph as added and the closing paragraph as amended by chapter 59 of the laws of 1993, is amended to read as follows:

7. (A) Notwithstanding any inconsistent provision of law or regulation, for purposes of establishing rates of payment by governmental agencies for certified home health agencies for the period April first, nineteen hundred ninety-five through December thirty-first, nineteen hundred ninety-five and for rate periods beginning on or after January first, nineteen hundred ninety-six, the reimbursable base year administrative and general costs of a provider of services shall not exceed the statewide average of total reimbursable base year administrative and general costs of such providers of services; PROVIDED, HOWEVER, THAT FOR PURPOSES OF ESTABLISHING SUCH RATES OF PAYMENT FOR PERIODS ON AND AFTER APRIL FIRST, TWO THOUSAND TWELVE, SUCH STATEWIDE AVERAGE CALCULATION SHALL EXCLUDE ANY OTHERWISE REIMBURSABLE COSTS, INCLUDING STEP DOWN COSTS, REPORTED AND ALLOCABLE AS ADMINISTRATIVE AND GENERAL BUT ATTRIBUTABLE 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.

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

(I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENERAL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

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

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

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

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

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

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

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

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

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

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

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

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

(I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENERAL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

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

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

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

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

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

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

7-a. (A) Notwithstanding any inconsistent provision of law or regulation, for the purposes of establishing rates of payment by governmental agencies for long term home health care programs for the period April first, two thousand five, through December thirty-first, two thousand five, and for the period January first, two thousand six through March thirty-first, two thousand seven, and on and after April first, two thousand seven through March thirty-first, two thousand nine, and on and after April first, two thousand nine through March thirty-first, two thousand eleven, and on and after April first, 2011 through March thirty-first, 2013,the reimbursable base year administrative and general

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

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

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

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

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

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

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

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

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

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