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

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2011-2012 Regular Sessions

I N A S S E M B L Y

May 20, 2011

Introduced by M. of A. GUNTHER, LIFTON, BURLING, PALMESANO -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to creating a rural home health flexibility program

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

Section 1. Section 3622 of the public health law, as renumbered by section 22 of part C of chapter 58 of the laws of 2004, is renumbered section 3623 and a new section 3622 is added to read as follows:

S 3622. RURAL HOME HEALTH FLEXIBILITY PROGRAM. 1. THE LEGISLATURE FINDS AND DECLARES THAT THE PROVISION AND ACCESSIBILITY OF HOME HEALTH CARE AND LONG TERM HOME HEALTH CARE PROGRAM SERVICES IN RURAL AREAS NECESSITATES REGULATORY FLEXIBILITY IN ORDER FOR LIMITED RESOURCES TO BE BEST UTILIZED AND MAXIMIZED TO MEET THE HEALTH CARE NEEDS OF RURAL CITIZENS AND TO PROMOTE THE EFFICIENCY OF THE DELIVERY OF SERVICES IN RURAL AREAS. THE LEGISLATURE THEREFORE ESTABLISHES A RURAL HOME HEALTH FLEXIBILITY PROGRAM FOR SUCH PURPOSES.

2. PURSUANT TO THE PURPOSES OF THIS SECTION, THE COMMISSIONER, NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW OR REGULATION, SHALL CONSIDER FOR APPROVAL PROPOSALS FROM PROVIDERS OPERATING UNDER THIS ARTICLE AND SERVING RURAL COUNTIES TO:

(A) CREATE AND OPERATE A LONG TERM HOME HEALTH CARE PROGRAM WHICH DOES NOT PROVIDE ALL THE REQUIRED SERVICES SPECIFIED IN REGULATIONS OF THE DEPARTMENT, PROVIDED THAT:

(I) THERE IS DEMONSTRATED NEED FOR SUCH PROGRAM IN THE SERVICE AREA; AND

(II) THE APPLICANT TO PROVIDE SUCH PROGRAM DEMONSTRATES TO THE COMMISSIONER'S SATISFACTION THAT SUCH APPLICANT HAS MADE, AND CONTINUES TO MAKE, ALL APPROPRIATE EFFORTS TO PROVIDE ALL REQUIRED SERVICES BUT THAT THE LACK OF AVAILABLE HEALTH PERSONNEL WITHIN THE SERVICE AREA IS AN OBSTACLE.

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

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(B) ESTABLISH OR OPERATE A CERTIFIED HOME HEALTH AGENCY OR LONG TERM HOME HEALTH CARE PROGRAM WHICH SERVES A GEOGRAPHIC AREA LESS THAN AN ENTIRE PLANNING AREA WHEN:

(I) NO OTHER PROVIDER OTHERWISE SERVES THE ENTIRE PLANNING AREA;

(II) COLLABORATIVE APPROACHES TO THE SERVICE OF CITIZENS IN THE PLANNING AREA IS APPROPRIATE FOR FEASIBILITY AND EFFICIENCY; AND

(III) THE DEPARTMENT IS SATISFIED THAT SUCH COLLABORATION WILL RESULT IN ACCESSIBLE AND ECONOMICALLY-FEASIBLE SERVICES WITHIN THE PLANNING AREA.

(C) QUALIFY FOR HOME TELEHEALTH REIMBURSEMENT PURSUANT TO THIS ARTICLE WHEN ALL OF THE CONDITIONS ORDINARILY REQUIRED FOR SUCH REIMBURSEMENT OR SERVICES ARE UNABLE TO BE MET, PROVIDED THAT THE APPLICANT DEMONSTRATES, AND CONTINUES TO UNDERTAKE, BEST EFFORTS TO MEET SUCH REQUIREMENTS AND THAT THE QUALITY OR SAFETY OF PATIENT CARE WILL NOT BE DIMINISHED AS A RESULT.

(D) BE EXEMPTED FROM THE APPLICABILITY OF A REGULATORY REQUIREMENT, OR ANY PART THEREOF, THAT IMPOSES ADVERSE IMPACTS ON SUCH RURAL PROVIDERS WHEN:

(I) SUCH IMPACTS HAVE BEEN IDENTIFIED BY THE DEPARTMENT PURSUANT TO ARTICLE TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT; AND

(II) COMPLIANCE WITH SUCH REQUIREMENTS WOULD BE OVERLY BURDENSOME BECAUSE OF THE CONSTRAINTS OR DEMANDS OF THE PROVIDER'S RURAL AREA, OR THE PROVIDER'S RESOURCES.

(E) RECEIVE APPROVAL FOR SUCH OTHER AREAS OF FLEXIBILITY THE COMMISSIONER IDENTIFIES, WITH THE ASSISTANCE OF THE WORKGROUP AUTHORIZED IN SUBDIVISION THREE OF THIS SECTION, APPROPRIATE TO THE PURPOSES OF THIS SECTION, INCLUDING PROPOSALS TO ENHANCE THE ADMINISTRATION, SERVICES AND QUALITY OF CARE PROVIDED BY A HOME CARE AGENCY OR PROGRAM, PROVIDED THAT SUCH FLEXIBILITY DOES NOT COMPROMISE THE QUALITY AND SAFETY OF SERVICES PROVIDED.

3. THE COMMISSIONER SHALL CONVENE A TEMPORARY WORKGROUP COMPRISED OF REPRESENTATIVES OF CERTIFIED HOME HEALTH AGENCIES, LONG TERM HOME HEALTH CARE PROGRAMS AND LICENSED HOME CARE SERVICES AGENCIES SERVING RURAL COUNTIES, AS WELL AS RURAL CONSUMERS AND RURAL WORKFORCE REPRESENTATIVES, TO ASSIST IN IDENTIFYING ADDITIONAL AREAS FOR FLEXIBILITY IN THE DEPARTMENT'S RULES, REGULATIONS AND ADMINISTRATIVE REQUIREMENTS, CONSISTENT WITH THE PURPOSES OF THIS SECTION.

S 2. This act shall take effect immediately.