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

8529

2011-2012 Regular Sessions

I N A S S E M B L Y

July 13, 2011

Introduced by M. of A. P. RIVERA -- 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 specialized nursing services

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

Section 1. Paragraph (c) of subdivision 11 of section 3614 of the public health law, as added by section 5 of part C of chapter 109 of the laws of 2006, is amended to read as follows:

(c) Such rate adjustments shall be in the form of a uniform percentage add-on to the rates, as determined by the department, based on the proportion of the total allocated adjustment dollars, as determined in paragraph (b) of this subdivision, to the total medicaid expenditures for services provided for certified home health agencies, long-term home health care programs, AIDS nursing, personal care assistants and [private duty] SPECIALIZED nurses services in local social services districts which do not include a city with a population over one million.

S 2. Paragraphs (a) and (1) of subdivision 2 of section 365-a of the social services law, paragraph (a) as amended by chapter 47 of the laws of 1996 and paragraph (1) as amended by chapter 81 of the laws of 1995, are amended to read as follows:

(a) services of qualified physicians, dentists, nurses, and [private duty] SPECIALIZED nursing services shall be further subject to the provisions of [section three hundred sixty-seven-o of] this chapter, optometrists, and other related professional personnel;

(l) care and services of podiatrists which care and services shall only be provided upon referral by a physician, nurse practitioner or certified nurse midwife in accordance with the program of early and periodic screening and diagnosis established pursuant to subdivision three of this section or to persons eligible for benefits under title

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

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XVIII of the federal social security act as qualified medicare beneficiaries in accordance with federal requirements therefor and [private duty] SPECIALIZED nurses which care and services shall only be provided in accordance with regulations of the department of health; provided, however, that [private duty] SPECIALIZED nursing services shall not be restricted when such services are more appropriate and cost-effective than nursing services provided by a home health agency [pursuant to section three hundred sixty-seven-l];

S 3. Paragraph (c) of subdivision 2 of section 365-f of the social services law, as added by chapter 81 of the laws of 1995, is amended to read as follows:

(c) has been determined by the social services district, pursuant to an assessment of the person's appropriateness for the program, conducted with an appropriate long term home health care program, a certified home health agency, or an AIDS home care program or pursuant to the personal care program, as being in need of home care services or [private duty] SPECIALIZED nursing and is able and willing or has a legal guardian able and willing to make informed choices, or has designated a relative or other adult who is able and willing to assist in making informed choices, as to the type and quality of services, including but not limited to such services as nursing care, personal care, transportation and respite services; and

S 4. Section 367-p of the social services law, as added by chapter 81 of the laws of 1995, is amended to read as follows:

S 367-p. Responsibilities of local districts for personal care services, home care services and [private duty] SPECIALIZED nursing. Consistent with the provisions [of section three hundred sixty-seven-n] of this title, local social services district responsibilities for personal care services, home care services and [private duty] SPECIALIZED nursing shall include the following:

(a) local districts with programs which place individuals discharged from hospitals solely into certified home health agencies shall ensure that those individuals are reviewed for possible placement into personal care services within two weeks of discharge and, if appropriate, placed into personal care services within four weeks thereof;

(b) each local district shall, by September first, nineteen hundred ninety-five, review that plan of care for every recipient receiving personal care on a continuous basis pursuant to [sections three hundred sixty-seven-k and three hundred sixty-seven-l of] this title;

(c) each local district shall ensure access to a consumer directed personal assistance program operated pursuant to section three hundred sixty-five-f of this title is available in the district to allow persons receiving home care pursuant to this title to directly arrange and pay for such care; and

(d) local districts shall not restrict, and shall not be restricted from approving, the provision of [private duty] SPECIALIZED nursing as an alternative to nursing services provided by a home health agency where appropriate and cost-effective [pursuant to section three hundred sixty-seven-l].

S 5. Section 367-r of the social services law, as amended by section 58-a of part A of chapter 57 of the laws of 2006, subdivision 1-a as amended by section 10 of part C of chapter 109 of the laws of 2006, is amended to read as follows:

S 367-r. [Private duty] SPECIALIZED nursing services worker recruitment and retention program. 1. The commissioner of health shall, subject to the provisions of subdivision two of this section and to the avail-

ability of federal financial participation, increase medical assistance rates of payment by three percent for services provided on and after December first, two thousand two, for [private duty] SPECIALIZED nursing services for the purposes of improving recruitment and retention of [private duty] SPECIALIZED nurses.

1-a. Medically fragile children. In addition, the commissioner shall further increase rates for [private duty] SPECIALIZED nursing services that are provided to medically fragile children to ensure the availability of such services to such children. In establishing rates of payment under this subdivision, the commissioner shall consider the cost neutrality of such rates as related to the cost effectiveness of caring for medically fragile children in a non-institutional setting as compared to an institutional setting. Medically fragile children shall, for the purposes of this subdivision, have the same meaning as in subdivision three-a of section thirty-six hundred fourteen of the public health law. Such increased rates for services rendered to such children may take into consideration the elements of cost, geographical differentials in the elements of cost considered, economic factors in the area in which the [private duty] SPECIALIZED nursing service is provided, costs associated with the provision of [private duty] SPECIALIZED nursing services to medically fragile children, and the need for incentives to improve services and institute economies and such increased rates shall be payable only to those [private duty] SPECIALIZED nurses who can demonstrate, to the satisfaction of the department of health, satisfactory training and experience to provide services to such children. Such increased rates shall be determined based on application of the case mix adjustment factor for AIDS home care program services rates as determined pursuant to applicable regulations of the department of health. The commissioner may promulgate regulations to implement the provisions of this subdivision.

2. [Private duty] SPECIALIZED nursing services providers which have their rates adjusted pursuant to this section shall use such funds solely for the purposes of recruitment and retention of [private duty] SPECIALIZED nurses or to ensure the delivery of [private duty] SPECIALIZED nursing services to medically fragile children and are prohibited from using such funds for any other purpose. Funds provided under this section are not intended to supplant support provided by a local government. Each such provider, with the exception of self-employed [private duty] SPECIALIZED nurses, shall submit, at a time and in a manner to be determined by the commissioner of health, a written certification attesting that such funds will be used solely for the purpose of recruitment and retention of [private duty] SPECIALIZED nurses or to ensure the delivery of [private duty] SPECIALIZED nursing services to medically fragile children. The commissioner of health is authorized to audit each such provider to ensure compliance with the written certification required by this subdivision and shall recoup all funds determined to have been used for purposes other than recruitment and retention of [private duty] SPECIALIZED nurses or the delivery of [private duty] SPECIALIZED nursing services to medically fragile children. Such recoupment shall be in addition to any other penalties provided by law.

S 6. This act shall take effect immediately.