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

5853--A

2011-2012 Regular Sessions

I N S E N A T E

June 23, 2011

Introduced by Sens. HANNON, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the social services law, in relation to long term home health care program enhancement

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

Section 1. Section 3614 of the public health law is amended by adding a new subdivision 14 to read as follows:

14. (A) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW OR REGULATION AND SUBJECT TO THE AVAILABILITY OF FEDERAL FINANCIAL PARTICIPATION AND TO THE PROVISIONS OF PARAGRAPH (G) OF THIS SUBDIVISION, EFFECTIVE SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION OR AS SOON AS PRACTICABLE, THEREAFTER, PAYMENTS BY GOVERNMENT AGENCIES FOR SERVICES PROVIDED BY LONG TERM HOME HEALTH CARE PROGRAMS SHALL BE BASED ON EPISODIC PAYMENTS, EXCEPT FOR SUCH SERVICES PROVIDED TO CHILDREN UNDER EIGHTEEN YEARS OF AGE. IN ESTABLISHING SUCH PAYMENTS, A STATEWIDE BASE PRICE SHALL BE ESTABLISHED, BASED ON THE STATEWIDE AVERAGE OF MEDICAID CLAIMS PAID IN THE BASE PERIOD, FOR EACH SIXTY DAY EPISODE OF CARE AND ADJUSTED BY A REGIONAL WAGE INDEX FACTOR BASED ON THE DEPARTMENT OF LABOR'S TEN LABOR MARKET REGIONS AND AN INDIVIDUAL PATIENT CASE MIX INDEX; PROVIDED HOWEVER THAT THE COMMISSIONER MAY SET AN INTERVAL OTHER THAN SIXTY DAYS FOR SUCH EPISODIC PAYMENT IF THE COMMISSIONER DETERMINES THAT SUCH INTERVAL WOULD MORE EFFECTIVELY ACCOMPLISH THE PURPOSES OF THIS SECTION, SECTION THIRTY-SIX HUNDRED SIXTEEN OF THIS ARTICLE AND SUBDIVISION SIX-A OF SECTION THREE HUNDRED SIXTY-SEVEN-C OF THE SOCIAL SERVICES LAW. SUCH EPISODIC PAYMENTS MAY BE FURTHER ADJUSTED FOR AND SHALL EXCLUDE LOW UTILIZATION CASES WHICH MAY BE REIMBURSED ON AN ALTERNATE BASIS AND TO REFLECT A PERCENTAGE LIMITATION OF THE COST FOR HIGH-

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

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UTILIZATION CASES THAT EXCEED OUTLIER THRESHOLDS OF SUCH PAYMENTS; PROVIDED HOWEVER THAT THE OUTLIER METHODOLOGY SHALL BE ALIGNED TO PATIENT CASE MIX AND SHALL ALSO INCLUDE A MECHANISM FOR ADJUSTMENT WHERE COST AND UTILIZATION NOT RECOGNIZED BY THE OUTLIER PAYMENT ARE NECESSARY FOR THE SAFE AND ADEQUATE CARE OF THE PATIENT; AND PROVIDED FURTHER HOWEVER THAT, PRIOR TO FINALIZATION, THE OUTLIER METHODOLOGY SHALL BE PROVIDED FOR REVIEW AND CONSIDERATION OF ITS EFFECTS ON PATIENT ACCESS TO CARE AND PROVIDER FISCAL STABILITY BY THE LEGISLATURE, REPRESENTATIVES OF CONSUMERS AND STATEWIDE ASSOCIATIONS REPRESENTATIVE OF LONG TERM HOME HEALTH CARE PROGRAMS.

(B) INITIAL BASE YEAR EPISODIC PAYMENTS SHALL BE BASED ON MEDICAID PAID CLAIMS FOR SERVICES PROVIDED BY ALL LONG TERM HOME HEALTH CARE PROGRAMS IN THE BASE YEAR TWO THOUSAND TEN, ADJUSTED BY ANNUAL TREND FACTORS USING THE METHODOLOGY DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED SEVEN-C OF THIS CHAPTER; PROVIDED HOWEVER THAT, AS AN ALTERNATIVE TO THE TWO THOUSAND TEN BASE YEAR, THE COMMISSIONER MAY ESTABLISH A PROSPECTIVE BASE FOR THE EPISODIC SYSTEM, BASED ON ANTICIPATED EXPENDITURE NEEDS FOR RATE PERIODS BEGINNING APRIL FIRST, TWO THOUSAND TWELVE, OR AS SOON AS PRACTICABLE THEREAFTER, AND BEYOND, IF THE COMMISSIONER DETERMINES THAT SUCH PROSPECTIVE BASE MORE EFFECTIVELY ACCOMPLISHES THE PURPOSES OF THIS SECTION, SECTION THIRTY-SIX HUNDRED SIXTEEN OF THIS ARTICLE AND SUBDIVISION SIX-A OF SECTION THREE HUNDRED SIXTY-SEVEN-C OF THE SOCIAL SERVICES LAW. SUBSEQUENT BASE YEAR EPISODIC PAYMENTS SHALL BE BASED ON MEDICAID PAID CLAIMS FOR SERVICES PROVIDED BY ALL LONG TERM HOME HEALTH CARE PROGRAMS IN A SUBSEQUENT BASE YEAR, AS DETERMINED BY THE COMMISSIONER, PROVIDED, HOWEVER, THAT SUCH BASE YEAR ADJUSTMENT SHALL BE MADE NOT LESS FREQUENTLY THAN EVERY THREE YEARS. IN DETERMINING CASE MIX, EACH PATIENT SHALL BE CLASSIFIED USING A SYSTEM BASED ON MEASURES WHICH MAY INCLUDE, BUT NOT LIMITED TO, CLINICAL AND FUNCTIONAL MEASURES, AS REPORTED ON THE FEDERAL OUTCOME AND ASSESSMENT INFORMATION SET (OASIS), AS MAY BE AMENDED, OR AS SUCCEEDED AND REPORTED ON A UNIFORM ASSESSMENT TOOL APPROVED BY THE COMMISSIONER, WHICH SHALL ADEQUATELY CAPTURE THE SERVICE REQUIREMENTS OF POST-ACUTE, REHABILITATIVE, CHRONICALLY ILL AND DISABLED PERSONS IN THE LONG TERM HOME HEALTH CARE PROGRAM.

(C) THE COMMISSIONER MAY REQUIRE AGENCIES TO COLLECT AND SUBMIT DATA REQUIRED TO IMPLEMENT THIS SUBDIVISION. THE COMMISSIONER MAY PROMULGATE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBDIVISION.

(D) THE COMMISSIONER IS AUTHORIZED TO FURTHER ADJUST THE STATEWIDE BASE YEAR AMOUNT, OR TO OTHERWISE ADJUST THE PAYMENT, AS MAY BE NECESSARY, TO REFLECT ACTUAL OR PROJECTED INCREASES IN THE COST OF DELIVERING SERVICES IN THE RATE YEAR WHICH ARE NOT REFLECTED IN THE BASE YEAR, INCLUDING COSTS ASSOCIATED WITH: (I) PATIENT POPULATIONS OR SERVICES NOT INCLUDED IN THE BASE YEAR EXPENDITURES, INCLUDING SUCH ADDITIONAL INSTITUTIONAL OR COMMUNITY BASED SERVICES AS THE COMMISSIONER DETERMINES TO BE NECESSARY FOR THE COORDINATED AND EFFICIENT CARE OF LONG TERM HOME HEALTH CARE PROGRAM RECIPIENTS IN THE MOST INTEGRATED SETTING FOR THE PERSON; (II) NEW GOVERNMENTAL MANDATES AND REGULATIONS; (III) LABOR; (IV) DISEASE OUTBREAK; (V) SEVERE SPIKES IN FUEL AND TRANSPORTATION COSTS FOR DIRECT CARE STAFF; OR (VI) SUCH OTHER VARIABLES AS THE COMMISSIONER DETERMINES APPROPRIATE.

(E) IN ADDITION, TO ADJUSTMENTS PROVIDED PURSUANT TO PARAGRAPH (D) OF THIS SUBDIVISION, THE COMMISSIONER IS AUTHORIZED TO PROVIDE A MECHANISM FOR AGENCY SPECIFIC ADJUSTMENTS IN PAYMENT AS ARE NECESSARY FOR THE DELIVERY OF SERVICES OR THE QUALITY, COST-EFFECTIVENESS OR OPERATION OF THE SYSTEM, INCLUDING ADJUSTMENTS FOR: (I) LABOR COSTS FOR DIRECT CARE

STAFF IN THE PARTICULAR MARKET AREA SERVED BY THE AGENCY; (II) CAPITAL COSTS NECESSARY FOR THE AGENCY'S TECHNOLOGY INFRASTRUCTURE, INCLUDING BUT NOT LIMITED TO ELECTRONIC HEALTH RECORDS, POINT OF CARE TECHNOLOGY AND TELEHEALTH CARE; (III) HEALTH SYSTEMS IMPROVEMENT INITIATIVES, INCLUDING CARE TRANSITIONS, PROVIDER COLLABORATION FOR IMPROVED PATIENT OUTCOMES AND REDUCED AVOIDABLE HOSPITALIZATIONS, READMISSIONS, EMERGENCY ROOM USE AND OTHER HIGH COST HEALTH CARE SERVICES USE; (IV) ENHANCEMENTS TO THE AGENCY'S CARE MANAGEMENT CAPACITY, INCLUDING THE INTEGRATION OF BEHAVIORAL HEALTH SERVICES, SPECIALTY NURSING CARE, PRIMARY CARE OR OTHER CARE MANAGEMENT ENHANCEMENTS AS MAY BE APPROVED BY THE COMMISSIONER; AND (V) SUCH OTHER PURPOSES AS THE COMMISSIONER MAY DETERMINE TO BE NECESSARY.

(F) THE EPISODIC SYSTEM SHALL PROVIDE FOR A REQUEST FOR ANTICIPATED PAYMENT (RAP), CONSISTENT WITH THE RAP PROVISIONS UNDER THE EPISODIC PAYMENT SYSTEM APPLICABLE TO LONG TERM HOME HEALTH CARE PROGRAMS UNDER THE FEDERAL MEDICARE PROGRAM.

(G) PRIOR TO STATEWIDE IMPLEMENTATION OF THE EPISODIC SYSTEM, THE COMMISSIONER SHALL CONDUCT A PILOT TEST OF THE SYSTEM BY SELECTED PROVIDERS PARTICIPATING ON A VOLUNTARY BASIS. THE PILOT SHALL ASSESS THE EFFECTS OF THE SYSTEM ON PATIENT CARE AND ACCESS AND ON PROVIDER OPERATIONS AND FISCAL STATUS. THE COMMISSIONER, IN CONJUNCTION WITH REPRESENTATIVES OF PILOT PROVIDERS, STATEWIDE ASSOCIATIONS REPRESENTATIVE OF HOME CARE PROVIDERS AND CONSUMER REPRESENTATIVES, SHALL ASSESS THE RESULTS OF THE PILOT AND REPORT TO THE LEGISLATURE, INCLUDING THE IDENTIFICATION OF ANY ADJUSTMENTS NECESSARY FOR THE OPERATION OF THE EPISODIC SYSTEM FOR STATEWIDE IMPLEMENTATION. UPON THE IMPLEMENTATION OF SUCH ADJUSTMENTS, THE COMMISSIONER SHALL PROCEED TO FURTHER IMPLEMENT THE EPISODIC SYSTEM.

(H) THE COMMISSIONER, IN CONSULTATION WITH REPRESENTATIVES OF LONG TERM HOME HEALTH CARE PROGRAMS AND STATEWIDE ASSOCIATIONS REPRESENTATIVE OF LONG TERM HOME HEALTH CARE PROGRAMS, SHALL REVIEW THE EPISODIC SYSTEM AFTER THE FIRST FULL YEAR OF IMPLEMENTATION, AND, WITHIN NINETY DAYS FOLLOWING THE COMPLETION OF SUCH PERIOD, SHALL REPORT TO THE LEGISLATURE, INCLUDING THE IDENTIFICATION OF AND PLAN FOR EXECUTING ADJUSTMENTS AS MAY BE NECESSARY FOR THE OPERATION OF THE EPISODIC SYSTEM.

S 2. The opening paragraph of subdivision 8 of section 3602 of the public health law, as amended by chapter 622 of the laws of 1988, is amended to read as follows:

"Long term home health care program" means a coordinated plan of care and services provided at home TO PERSONS REQUIRING HOME AND COMMUNITY-BASED SERVICES, INCLUDING to invalid, infirm, or disabled persons who are medically eligible for placement in a hospital or residential health care facility for an extended period of time if such program were unavailable; PROVIDED, HOWEVER, THAT SUCH PROGRAM SHALL PROVIDE OR ARRANGE FOR, AND COORDINATE SUCH SERVICES, INCLUDING SUCH COMMUNITY AND INSTITUTIONAL SERVICES, AS THE COMMISSIONER DETERMINES NECESSARY FOR THE PROVISION OF A COORDINATED, INTEGRATED PLAN OF CARE IN THE MOST INTEGRATED SETTING FOR THE PERSON.

S 3. Section 367-c of the social services law is amended by adding a new subdivision 6-a to read as follows:

6-A. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISIONS ONE THROUGH FIVE OF THIS SECTION, ON AND AFTER SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, AUTHORIZATION UNDER THIS TITLE FOR RECIPIENT PARTICIPATION IN A LONG TERM HOME HEALTH CARE PROGRAM SHALL BE IN ACCORDANCE WITH THIS SUBDIVISION.

IF A PERSON WHO REQUIRES HOME AND COMMUNITY BASED SERVICES, INCLUDING A PERSON WHO REQUIRES CARE IN A NURSING FACILITY, DESIRES TO REMAIN AT HOME AND IS DEEMED BY HIS OR HER PHYSICIAN ABLE TO RECEIVE CARE AT HOME, SUCH PERSON SHALL HAVE THE OPTION TO ENROLL IN A LONG TERM HOME HEALTH CARE PROGRAM IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION, SECTION THIRTY-SIX HUNDRED SIXTEEN OF THE PUBLIC HEALTH LAW AND APPLICABLE REGULATIONS OF THE DEPARTMENT. TO ENROLL IN SUCH PROGRAM, SUCH PERSON OR SUCH PERSON'S REPRESENTATIVE SHALL SO INFORM A PROVIDER OF A LONG TERM HOME HEALTH CARE PROGRAM. THE LONG TERM HOME HEALTH CARE PROGRAM PROVIDER SHALL INFORM THE LOCAL SOCIAL SERVICES OFFICIAL OR OTHER PERSON OR ENTITY DESIGNATED BY THE DEPARTMENT AND SHALL CONDUCT A COMPREHENSIVE ASSESSMENT OF THE PATIENT'S NEEDS IN ACCORDANCE WITH SECTION THIRTY-SIX HUNDRED SIXTEEN OF THE PUBLIC HEALTH LAW. IF THE RESULTS OF THE ASSESSMENT INDICATE THAT THE PERSON CAN RECEIVE THE APPROPRIATE LEVEL OF CARE AT HOME, A REPRESENTATIVE OF THE LONG TERM HOME HEALTH CARE PROGRAM, WITH THE INPUT OF THE PERSON OR THE PERSON'S REPRESENTATIVE, SHALL PREPARE FOR SUCH PERSON A PLAN OF CARE SUBJECT TO THE APPROVAL OF SUCH PERSON'S PHYSICIAN. IF THE PLAN OF CARE INDICATES THAT THE PERSON CAN BE CARED FOR APPROPRIATELY AT HOME BY THE LONG TERM HOME HEALTH CARE PROGRAM, THE PERSON MAY BE ADMITTED TO THE PROGRAM. THE LONG TERM HOME HEALTH CARE PROGRAM SHALL NOTIFY THE LOCAL SOCIAL SERVICES OFFICIAL OR ALTERNATE ENTITY DESIGNATED BY THE DEPARTMENT OF THE PERSON'S ADMISSION TO THE LONG TERM HOME HEALTH CARE PROGRAM. THE PERSON'S ELIGIBILITY FOR THE LONG TERM HOME HEALTH CARE PROGRAM ALONG WITH THE PLAN OF CARE THAT HAS BEEN PREPARED FOR SUCH PERSON SHALL BE SUBJECT TO AUDIT BY THE LOCAL SOCIAL SERVICES OFFICIAL OR ALTERNATE ENTITY IDENTIFIED BY THE DEPARTMENT. SUCH PERSON SHALL RECEIVE A COMPREHENSIVE REASSESSMENT AT LEAST EVERY ONE HUNDRED EIGHTY DAYS, PURSUANT TO SECTION THIRTY-SIX HUNDRED SIXTEEN OF THE PUBLIC HEALTH LAW, WHICH SHALL BE THE BASIS FOR DETERMINING THE PERSON'S CONTINUED ELIGIBILITY AND CARE UNDER THE LONG TERM HOME HEALTH CARE PROGRAM. THE COMMISSIONER SHALL SUBMIT THE APPROPRIATE WAIVERS AND STATE PLAN AMENDMENTS NECESSARY TO EFFECTUATE THIS SUBDIVISION.

S 4. Subdivisions 1 and 2 of section 3616 of the public health law, subdivision 1 as amended by chapter 622 of the laws of 1988 and subdivision 2 as amended by section 33 of part B of chapter 109 of the laws of 2010, are amended to read as follows:

1. A long term home health care program shall be provided [only] to those patients who REQUIRE HOME AND COMMUNITY BASED SERVICES, INCLUDING PERSONS WHO are medically eligible for placement in a hospital or residential health care facility. An AIDS home care program shall be provided [only] to persons who REQUIRE HOME AND COMMUNITY BASED SERVICES, INCLUDING PERSONS WHO are medically eligible for placement in a hospital or residential health care facility and who (a) are diagnosed by a physician as having acquired immune deficiency syndrome, or (b) are deemed by a physician, within his judgment, to be infected with the etiologic agent of acquired immune deficiency syndrome, and whose illness, infirmity or disability can be reasonably ascertained to be associated with such infection. Provision of certified home health agency services, a long term home health care program or an AIDS home care program paid for by government funds shall be based upon, but not limited to, a comprehensive assessment that shall include, but not be limited to, an evaluation of the medical, social and environmental needs of each applicant for such services or program. This assessment shall also serve as the basis for the development and provision of an appropriate plan of care for the applicant. In cases in which the applicant is a patient in

a hospital or residential health care facility, the assessment shall be completed by persons designated by the commissioner, including, but not limited to, the applicant's physician, the discharge coordinator of the hospital or residential health care facility referring the applicant, [a representative of the local department of social services,] and a representative of the provider of a long term home health care program, AIDS home care program, or the certified home health agency that will provide services for the patient. In cases in which the applicant is not a patient in a hospital or residential health care facility, the assessment shall be completed by persons designated by the commissioner including, but not limited to, the applicant's physician[, a representative of the local department of social services] and a representative of the provider of a long term home health care program, AIDS home care program or the certified home health agency that will provide services for the patient. [The assessment shall be completed prior to or within thirty days after the provision of services begins. Payment for services provided prior to the completion of the assessment shall be made only if it is determined, based upon such assessment, that the recipient qualifies for such services.] The commissioner shall prescribe the forms on which the assessment will be made.

2. Continued provision of a long term home health care program, AIDS home care program or certified home health agency services paid for by government funds shall be based upon a comprehensive assessment of the medical, social and environmental needs of the recipient of the services. Such assessment shall be performed at least every one hundred eighty days by the provider of a long term home health care program, AIDS home care program or the certified home health agency providing services for the patient [and the local department of social services], and shall be reviewed by a physician charged with the responsibility by the commissioner. The commissioner shall prescribe the forms on which the assessment will be made.

S 5. The closing paragraph of subdivision 2 of section 3610 of the public health law, as amended by section 65 of part A of chapter 58 of the laws of 2010, is amended to read as follows:

If the application is approved, the applicant shall be so notified in writing. The commissioner's written approval of the application shall constitute authorization to provide a long term home health care program. [In making his or her authorization, the commissioner shall stipulate the maximum number of persons which a provider of a long term home health care program may serve.] If the commissioner proposes to disapprove the application, he or she shall notify the applicant in writing, stating his or her reasons for disapproval, and afford the applicant an opportunity for a public hearing.

S 6. Subdivision 5 of section 3610 of the public health law, as amended by chapter 636 of the laws of 1980, is amended to read as follows:

5. (a) Notwithstanding the provisions of subdivision four of this section, the commissioner shall suspend, limit or revoke the authorization of a provider of a long term home health care program after taking into consideration the public need for the program and the availability of other services which may serve as alternatives or substitutes, and after finding that suspending, limiting, or revoking the authorization of such provider would be within the public interest in order to conserve health resources by restricting the level of services to those which are actually needed.

(b) [Notwithstanding the provisions of subdivision four of this section, the commissioner may reduce the maximum number of persons which a provider of a long term home health care program is authorized to serve after finding that the number stipulated in such provider's authorization is not being effectively utilized. In addition, the commissioner may increase the number of persons which a provider of a long term home health care program is authorized to serve after finding that the number stipulated in such provider's authorization is insufficient to serve persons eligible to receive long term home health care who reside in the area served by such provider.

(c)] Whenever any finding as described in paragraph (a) of this subdivision is under consideration with respect to any particular provider of a long term home health care program, the commissioner shall cause to be published, in a newspaper of general circulation in the geographic area of such provider, at least thirty days prior to making such a finding an [annnouncement] ANNOUNCEMENT that such a finding is under consideration and an address to which interested persons can write to make their views known. The commissioner shall take all public comments into consideration in making such a finding.

[(d)] (C) The commissioner shall, upon making any finding described in paragraph (a) of this subdivision with respect to any provider of a long term home health care program, cause such provider and the appropriate health systems agency to be notified of the finding at least thirty days in advance of taking the proposed action. Upon receipt of any such notification and before the expiration of the thirty days or such longer period as may be specified in the notice, the provider or the appropriate health systems agency may request a public hearing to be held in the county in which the provider is located. In no event shall the revocation, suspension or limitation take effect prior to the thirtieth day after the date of the notice, or prior to the effective date specified in the notice or prior to the date of the hearing decision, whichever is later.

[(e)] (D) Except as otherwise provided by law, all appeals from a finding of the commissioner made pursuant to paragraph (a) of this subdivision shall be directly to the appellate division of the supreme court in the third department. Except as otherwise expressly provided by law, such appeals shall have preference over all issues in all courts.

S 7. This act shall take effect immediately.