

5671--A

2013-2014 Regular Sessions

I N   S E N A T E

June 3, 2013

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Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- 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 the provision of services by long term home health care programs; and to repeal certain provisions of the public health law relating thereto

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

1     Section 1. Legislative intent. The legislature finds that New York  
2     State's Long Term Home Health Care ("Nursing Home Without Walls")  
3     Program has for over three decades been an integral part of the state's  
4     long term care system and an important service option for the state's  
5     citizens with chronic illness, infirmity and disability. The program  
6     provides quality care to long term care patients at home at approximate-  
7     ly half the cost of institutional care.  
8     As the state shifts to a managed care structure for the delivery of  
9     health services, the legislature finds that this program should continue  
10    to fulfill its vital role in the state's health care system. The legis-  
11    lature finds however that, to effectively function in the new system,  
12    certain changes are necessary to further align this program to the  
13    evolving model of managed care, and concludes that these changes be  
14    instituted simultaneously with managed care implementation.  
15    S 2. The opening paragraph of subdivision 8 of section 3602 of the  
16    public health law, as amended by chapter 622 of the laws of 1988, is  
17    amended and a new paragraph d is added to read as follows:  
18    "Long term home health care program" means a coordinated plan of care  
19    and services provided at home to (I) invalid, infirm, or disabled  
20    persons who are medically eligible for placement in a hospital or resi-  
21    dential health care facility for an extended period of time if such

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

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1 program were unavailable, OR (II) PERSONS REQUIRING HOME AND COMMUNITY-  
2 BASED SERVICES WHO ARE ENROLLED IN A MANAGED CARE PLAN AS DEFINED UNDER  
3 PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION THIRTY-SIX HUNDRED FOUR-  
4 TEEN-C OF THIS ARTICLE.

5 D. A LONG TERM HOME HEALTH CARE PROGRAM AS DEFINED IN THIS SUBDIVISION  
6 AND AUTHORIZED UNDER SECTION THIRTY-SIX HUNDRED TEN OF THIS ARTICLE MAY  
7 BE PROVIDED (I) DIRECTLY, IN ACCORDANCE WITH SECTION THIRTY-SIX HUNDRED  
8 SIXTEEN OF THIS ARTICLE, OR (II) UNDER CONTRACT WITH A MANAGED CARE PLAN  
9 AS DEFINED UNDER PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION THIRTY-SIX  
10 HUNDRED FOURTEEN-C OF THIS ARTICLE.

11 S 3. Subdivision 10 of section 4403-f of the public health law, as  
12 amended by section 41-b of part H of chapter 59 of the laws of 2011, is  
13 amended to read as follows:

14 10. Notwithstanding any inconsistent provision to the contrary, the  
15 enrollment and disenrollment process and services provided or arranged  
16 by all operating demonstrations or any program that receives designation  
17 as a Program of All-Inclusive Care for the Elderly (PACE) as authorized  
18 by federal public law 105-33, subtitle I of title IV of the Balanced  
19 Budget Act of 1997, must meet all applicable federal requirements.  
20 Services may include, but need not be limited to, housing, inpatient and  
21 outpatient hospital services, nursing home care, home health care, adult  
22 day care, assisted living services provided in accordance with article  
23 forty-six-B of this chapter, adult care facility services, enriched  
24 housing program services, hospice care, respite care, personal care,  
25 homemaker services, diagnostic laboratory services, therapeutic and  
26 diagnostic radiologic services, emergency services, emergency alarm  
27 systems, home delivered meals, physical adaptations to the client's  
28 home, physician care (including consultant and referral services),  
29 ancillary services, case management services, transportation, and  
30 related medical services. A PLAN MAY CONTRACT WITH LONG TERM HOME  
31 HEALTH CARE PROGRAMS AUTHORIZED UNDER ARTICLE THIRTY-SIX OF THIS CHAPTER  
32 OR HOME CARE AGENCIES CERTIFIED OR LICENSED PURSUANT TO SUCH ARTICLE FOR  
33 THE PROVISION OF SERVICES, INCLUDING CASE MANAGEMENT SERVICES, TO PLAN  
34 ENROLLEES; PROVIDED THAT SUCH PROGRAMS OR AGENCIES SHALL PROVIDE SUCH  
35 SERVICES CONSISTENT WITH THE PROVISIONS OF THIS SECTION WHICH SHALL  
36 SUPERSEDE ANY INCONSISTENT PROVISIONS OF ARTICLE THIRTY-SIX OF THIS  
37 CHAPTER OR THE REGULATIONS OF THE DEPARTMENT PROMULGATED THERETO.

38 S 4. Subdivision 1 of section 367-c of the social services law, as  
39 added by chapter 895 of the laws of 1977, is amended to read as follows:

40 1. EXCEPT WHEN LONG TERM HOME HEALTH CARE PROGRAM SERVICES ARE  
41 PROVIDED PURSUANT TO A CONTRACT WITH A PLAN APPROVED PURSUANT TO SECTION  
42 FORTY-FOUR HUNDRED THREE-F OF THE PUBLIC HEALTH LAW OR SECTION THREE  
43 HUNDRED SIXTY-FOUR-J OF THIS TITLE, IN WHICH CASE LONG TERM HOME HEALTH  
44 CARE PROGRAM SERVICES SHALL BE AUTHORIZED PURSUANT TO THE PROVISIONS OF  
45 SUCH SECTIONS, LONG TERM HOME HEALTH CARE PROGRAM SERVICES SHALL BE  
46 PROVIDED IN ACCORDANCE WITH THIS SECTION AND SECTION THIRTY-SIX HUNDRED  
47 SIXTEEN OF THE PUBLIC HEALTH LAW.

48 If a long term home health care program as defined under article thir-  
49 ty-six of the public health law is provided in the social services  
50 district for which he has authority, the local social services official,  
51 before he authorizes care in a nursing home or intermediate care facili-  
52 ty for a person eligible to receive services under this title, shall  
53 notify the person in writing of the provisions of this section.

54 S 5. Subdivision 1 of section 3616 of the public health law, as  
55 amended by chapter 622 of the laws of 1988, is amended to read as  
56 follows:

1 1. A long term home health care program shall be provided [only] to  
2 those patients who REQUIRE HOME AND COMMUNITY BASED SERVICES, INCLUDING  
3 PERSONS WHO are medically eligible for placement in a hospital or resi-  
4 dential health care facility. An AIDS home care program shall be  
5 provided [only] to PERSONS WHO REQUIRE HOME AND COMMUNITY BASED  
6 SERVICES, INCLUDING persons who are medically eligible for placement in  
7 a hospital or residential health care facility and who (a) are diagnosed  
8 by a physician as having acquired immune deficiency syndrome, or (b) are  
9 deemed by a physician, within his judgment, to be infected with the  
10 etiologic agent of acquired immune deficiency syndrome, and whose  
11 illness, infirmity or disability can be reasonably ascertained to be  
12 associated with such infection. EXCEPT WHEN LONG TERM HOME HEALTH CARE  
13 PROGRAM SERVICES ARE PROVIDED PURSUANT TO A CONTRACT WITH A PLAN  
14 APPROVED PURSUANT TO SECTION FORTY-FOUR HUNDRED THREE-F OF THIS CHAPTER  
15 OR SECTION THREE HUNDRED SIXTY-FOUR-J OF THE SOCIAL SERVICES LAW, IN  
16 WHICH CASE LONG TERM HOME HEALTH CARE PROGRAM SERVICES SHALL BE AUTHOR-  
17 IZED PURSUANT TO THE PROVISIONS OF SUCH SECTIONS, LONG TERM HOME HEALTH  
18 CARE PROGRAM SERVICES SHALL BE PROVIDED IN ACCORDANCE WITH THIS SECTION.  
19 Provision of certified home health agency services, a long term home  
20 health care program or an AIDS home care program paid for by government  
21 funds shall be based upon, but not limited to, a comprehensive assess-  
22 ment that shall include, but not be limited to, an evaluation of the  
23 medical, social and environmental needs of each applicant for such  
24 services or program. This assessment shall also serve as the basis for  
25 the development and provision of an appropriate plan of care for the  
26 applicant. In cases in which the applicant is a patient in a hospital or  
27 residential health care facility, the assessment shall be completed by  
28 persons designated by the commissioner, including, but not limited to,  
29 the applicant's physician, the discharge coordinator of the hospital or  
30 residential health care facility referring the applicant, a represen-  
31 tative of the local department of social services, and a representative  
32 of the provider of a long term home health care program, AIDS home care  
33 program, or the certified home health agency that will provide services  
34 for the patient. In cases in which the applicant is not a patient in a  
35 hospital or residential health care facility, the assessment shall be  
36 completed by persons designated by the commissioner including, but not  
37 limited to, the applicant's physician, a representative of the local  
38 department of social services and a representative of the provider of a  
39 long term home health care program, AIDS home care program or the certi-  
40 fied home health agency that will provide services for the patient. The  
41 assessment shall be completed prior to or within thirty days after the  
42 provision of services begins. Payment for services provided prior to the  
43 completion of the assessment shall be made only if it is determined,  
44 based upon such assessment, that the recipient qualifies for such  
45 services. The commissioner shall prescribe the forms on which the  
46 assessment will be made.

47 S 6. Paragraph (b) of subdivision 5 of section 3610 of the public  
48 health law is REPEALED.

49 S 7. Subdivision 6 of section 367-c of the social services law, as  
50 added by chapter 263 of the laws of 1979 and as renumbered by chapter  
51 854 of the laws of 1987, is amended to read as follows:

52 6. Notwithstanding any inconsistent provision of law but subject to  
53 expenditure limitations of this section, the commissioner, subject to  
54 the approval of the state director of the budget, may authorize the  
55 utilization of medical assistance funds to pay for services provided by  
56 specified long term home health care programs in addition to those

1 services included in the medical assistance program under section three  
2 hundred sixty-five-a of this chapter, so long as federal financial  
3 participation is available for such services; PROVIDED HOWEVER THAT  
4 AUTHORIZATION OF MEDICAL ASSISTANCE FUNDS FOR SUCH ADDITIONAL SERVICES  
5 PURSUANT TO A WAIVER UNDER SECTION NINETEEN HUNDRED FIFTEEN-C OF THE  
6 FEDERAL SOCIAL SECURITY ACT SHALL NOT BE CONSTRUED AS REQUISITE FOR LONG  
7 TERM HOME HEALTH CARE PROGRAM AUTHORIZATION OR OPERATION. Expenditures  
8 made under this subdivision shall be deemed payments for medical assist-  
9 ance for needy persons and shall be subject to reimbursement by the  
10 state in accordance with the provisions of section three hundred sixty-  
11 eight-a of this chapter.

12 S 8. This act shall take effect immediately; provided that the amend-  
13 ments to subdivision 10 of section 4403-f of the public health law made  
14 by section three of this act shall not affect the repeal of such section  
15 and shall be deemed repealed therewith.