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

5671--A

2013-2014 Regular Sessions

I N S E N A T E

June 3, 2013

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:

Section 1. Legislative intent. The legislature finds that New York State's Long Term Home Health Care ("Nursing Home Without Walls") Program has for over three decades been an integral part of the state's long term care system and an important service option for the state's citizens with chronic illness, infirmity and disability. The program provides quality care to long term care patients at home at approximately half the cost of institutional care.

As the state shifts to a managed care structure for the delivery of health services, the legislature finds that this program should continue to fulfill its vital role in the state's health care system. The legislature finds however that, to effectively function in the new system, certain changes are necessary to further align this program to the evolving model of managed care, and concludes that these changes be instituted simultaneously with managed care implementation.

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 and a new paragraph d is added to read as follows:

"Long term home health care program" means a coordinated plan of care and services provided at home to (I) 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

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

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

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

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

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

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

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

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

S 5. Subdivision 1 of section 3616 of the public health law, as amended by chapter 622 of the laws of 1988, is 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. EXCEPT WHEN LONG TERM HOME HEALTH CARE PROGRAM SERVICES ARE PROVIDED PURSUANT TO A CONTRACT WITH A PLAN APPROVED PURSUANT TO SECTION FORTY-FOUR HUNDRED THREE-F OF THIS CHAPTER OR SECTION THREE HUNDRED SIXTY-FOUR-J OF THE SOCIAL SERVICES LAW, IN WHICH CASE LONG TERM HOME HEALTH CARE PROGRAM SERVICES SHALL BE AUTHORIZED PURSUANT TO THE PROVISIONS OF SUCH SECTIONS, LONG TERM HOME HEALTH CARE PROGRAM SERVICES SHALL BE PROVIDED IN ACCORDANCE WITH THIS SECTION. 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.

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

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

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

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

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