

5353--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 25, 2013

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Introduced by M. of A. GOTTFRIED, DINOWITZ, SCHIMEL, ROSENTHAL, JAFFEE  
-- read once and referred to the Committee on Health -- recommitted to  
the Committee on Health in accordance with Assembly Rule 3, sec. 2 --  
committee discharged, bill amended, ordered reprinted as amended and  
recommitted to said committee

AN ACT to amend the public health law, in relation to rate of payment  
for home health care programs using statewide average calculation  
excluding certain costs

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

1     Section 1. Subdivision 7 of section 3614 of the public health law, as  
2     added by chapter 41 of the laws of 1992, the opening paragraph as  
3     amended by section 18 of part C of chapter 109 of the laws of 2006, the  
4     second undesignated paragraph as added by chapter 170 of the laws of  
5     1994 and the third undesignated paragraph as added and the closing para-  
6     graph as amended by chapter 59 of the laws of 1993, is amended to read  
7     as follows:  
8     7. (A) Notwithstanding any inconsistent provision of law or regu-  
9     lation, for purposes of establishing rates of payment by governmental  
10    agencies for certified home health agencies for the period April first,  
11    nineteen hundred ninety-five through December thirty-first, nineteen  
12    hundred ninety-five and for rate periods beginning on or after January  
13    first, nineteen hundred ninety-six, the reimbursable base year adminis-  
14    trative and general costs of a provider of services shall not exceed the  
15    statewide average of total reimbursable base year administrative and  
16    general costs of such providers of services; PROVIDED, HOWEVER, THAT FOR  
17    PURPOSES OF ESTABLISHING SUCH RATES OF PAYMENT FOR PERIODS ON AND AFTER  
18    APRIL FIRST, TWO THOUSAND FIFTEEN, SUCH STATEWIDE AVERAGE CALCULATION  
19    SHALL EXCLUDE ANY OTHERWISE REIMBURSABLE COSTS, INCLUDING STEP DOWN  
20    COSTS, REPORTED AND ALLOCABLE AS ADMINISTRATIVE AND GENERAL BUT ATTRIB-  
21    UTABLE TO THE PROVISION AND MANAGEMENT OF PATIENT CARE INCLUDING, BUT  
22    NOT LIMITED TO, COSTS ATTRIBUTABLE TO: PATIENT OUTREACH; ASSESSMENT;  
23    COORDINATION AND MANAGEMENT OF SERVICES; TELEPHONE AND OTHER TELEHEALTH  
24    MONITORING AND COMMUNICATION; MEDICAL SUPPLIES; STAFF TRANSPORTATION AND

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

LBD01599-03-4

1 ESCORT SERVICES; FAMILY AND/OR INFORMAL CAREGIVER SUPPORT SERVICES;  
2 PATIENT RECORDKEEPING; AND TECHNOLOGY INVESTMENTS FOR PATIENT CARE.  
3 SUCH EXCLUDED COSTS SHALL BE CONVEYED BY THE PROVIDER AS A SEPARATE  
4 DOCUMENT OF SUPPLEMENTAL INFORMATION ATTACHED TO THE PROVIDER'S COST  
5 REPORT, AS SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL PROVIDE A  
6 RATE COMPUTATION SHEET TO EACH CERTIFIED HOME HEALTH AGENCY WITH  
7 DISTINCT LINES FOR EACH SERVICE AND RATE WHICH SHALL INCLUDE:

8 (I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENER-  
9 AL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

10 (II) THE PROVIDER'S TOTAL ADMINISTRATIVE AND GENERAL AMOUNT ALLOCABLE  
11 TO THE RATE FOR THE SERVICE;

12 (III) SUCH TOTAL ADMINISTRATIVE AND GENERAL AMOUNT EXCLUSIVE OF THE  
13 PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

14 (IV) THE ALLOWABLE ADMINISTRATIVE AND GENERAL COST AMOUNT BASED ON THE  
15 LIMITATION PROVIDED FOR IN THIS SECTION CALCULATED TO REFLECT THE EXCLU-  
16 SION OF PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

17 (V) ANY ADMINISTRATIVE AND GENERAL COST DISALLOWED TO THE RATE BASED  
18 ON SUCH LIMITATION; AND

19 (VI) THE ADJUSTED RATE BASED ON THE APPLICATION OF THE ADMINISTRATIVE  
20 AND GENERAL COST LIMITATION.

21 The amount of such reduction in certified home health agency rates of  
22 payments made during the period April first, nineteen hundred ninety-  
23 five through March thirty-first, nineteen hundred ninety-six shall be  
24 adjusted in the nineteen hundred ninety-six rate period on a pro-rata  
25 basis, if it is determined upon post-audit review by June fifteenth,  
26 nineteen hundred ninety-six and reconciliation that the savings for the  
27 state share, excluding the federal and local government shares, of  
28 medical assistance payments pursuant to title eleven of article five of  
29 the social services law based on the limitation of such payment pursuant  
30 to this subdivision is in excess of one million five hundred thousand  
31 dollars or is less than one million five hundred thousand dollars for  
32 payments made on or before March thirty-first, nineteen hundred ninety-  
33 six to reflect the amount by which such savings are in excess of or  
34 lower than one million five hundred thousand dollars. For rate periods  
35 on and after January first, two thousand five through December thirty-  
36 first, two thousand six, there shall be no such reconciliation of the  
37 amount of savings in excess of or lower than one million five hundred  
38 thousand dollars.

39 (B) No such limit shall be applied to a provider of services reim-  
40 bursed on an initial budget basis, or a new provider, excluding changes  
41 in ownership or changes in name, who begins operations in the year prior  
42 to the year which is used as a base year in determining rates of  
43 payment.

44 (C) For the purposes of this subdivision, reimbursable base year oper-  
45 ational costs shall mean those base year operational costs remaining  
46 after application of all other efficiency standards, including, but not  
47 limited to, peer group cost ceilings or guidelines.

48 (D) The limitation on reimbursement for provider administrative and  
49 general expenses provided by this subdivision shall be expressed as a  
50 percentage reduction for the rate promulgated by the commissioner to  
51 each certified home health agency and long term home health care program  
52 provider; PROVIDED, HOWEVER, THAT SUCH REDUCTION PERCENTAGE SHALL NOT BE  
53 INCREASED FOR ANY PROVIDER AS A CONSEQUENCE OF THE EXCLUSIONS PROVIDED  
54 FOR IN PARAGRAPH (A) OF THIS SUBDIVISION.

1 S 2. The opening paragraph of subdivision 7 of section 3614 of the  
2 public health law, as amended by chapter 170 of the laws of 1994, is  
3 amended to read as follows:

4 (A) Notwithstanding any inconsistent provision of law or regulation to  
5 the contrary, for purposes of establishing rates of payment by govern-  
6 mental agencies for certified home health agencies and long term home  
7 health care programs for rate [period] PERIODS beginning on or after  
8 January first, nineteen hundred ninety-five, the department of health  
9 may not by rule or regulation limit the reimbursable base year adminis-  
10 trative and general costs of a provider of services to a percentage  
11 which is other than thirty percent of total reimbursable base year oper-  
12 ational costs of such provider of services; PROVIDED, HOWEVER, THAT FOR  
13 PURPOSES OF ESTABLISHING SUCH RATES OF PAYMENT FOR PERIODS ON AND AFTER  
14 APRIL FIRST, TWO THOUSAND FIFTEEN, SUCH STATEWIDE AVERAGE CALCULATION  
15 SHALL EXCLUDE ANY OTHERWISE REIMBURSABLE COSTS, INCLUDING STEP DOWN  
16 COSTS, REPORTED AND ALLOCABLE AS ADMINISTRATIVE AND GENERAL BUT ATTRIB-  
17 UTABLE TO THE PROVISION AND MANAGEMENT OF PATIENT CARE INCLUDING, BUT  
18 NOT LIMITED TO, COSTS ATTRIBUTABLE TO: PATIENT OUTREACH; ASSESSMENT;  
19 COORDINATION AND MANAGEMENT OF SERVICES; TELEPHONE AND OTHER TELEHEALTH  
20 MONITORING AND COMMUNICATION; MEDICAL SUPPLIES; STAFF TRANSPORTATION AND  
21 ESCORT SERVICES; FAMILY AND/OR INFORMAL CAREGIVER SUPPORT SERVICES;  
22 PATIENT RECORDKEEPING; AND TECHNOLOGY INVESTMENTS FOR PATIENT CARE.  
23 SUCH EXCLUDED COSTS SHALL BE CONVEYED BY THE PROVIDER AS A SEPARATE  
24 DOCUMENT OF SUPPLEMENTAL INFORMATION ATTACHED TO THE PROVIDER'S COST  
25 REPORT, AS SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL PROVIDE A  
26 RATE COMPUTATION SHEET TO EACH CERTIFIED HOME HEALTH AGENCY WITH  
27 DISTINCT LINES FOR EACH SERVICE AND RATE WHICH SHALL INCLUDE:

28 (I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENER-  
29 AL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

30 (II) THE PROVIDER'S TOTAL ADMINISTRATIVE AND GENERAL AMOUNT ALLOCABLE  
31 TO THE RATE FOR THE SERVICE;

32 (III) SUCH TOTAL ADMINISTRATIVE AND GENERAL AMOUNT EXCLUSIVE OF THE  
33 PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

34 (IV) THE ALLOWABLE ADMINISTRATIVE AND GENERAL COST AMOUNT BASED ON THE  
35 LIMITATION PROVIDED FOR IN THIS SECTION CALCULATED TO REFLECT THE EXCLU-  
36 SION OF PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

37 (V) ANY ADMINISTRATIVE AND GENERAL COST DISALLOWED TO THE RATE BASED  
38 ON SUCH LIMITATION; AND

39 (VI) THE ADJUSTED RATE BASED ON THE APPLICATION OF THE ADMINISTRATIVE  
40 AND GENERAL COST LIMITATION.

41 S 3. Subdivision 7-a of section 3614 of the public health law, as  
42 amended by section 89 of part C of chapter 58 of the laws of 2007 and  
43 the opening paragraph as amended by section 18 of part B of chapter 56  
44 of the laws of 2013, is amended to read as follows:

45 7-a. (A) Notwithstanding any inconsistent provision of law or regu-  
46 lation, for the purposes of establishing rates of payment by govern-  
47 mental agencies for long term home health care programs for the period  
48 April first, two thousand five, through December thirty-first, two thou-  
49 sand five, and for the period January first, two thousand six through  
50 March thirty-first, two thousand seven, and on and after April first,  
51 two thousand seven through March thirty-first, two thousand nine, and on  
52 and after April first, two thousand nine through March thirty-first, two  
53 thousand eleven, and on and after April first, two thousand eleven  
54 through March thirty-first, two thousand thirteen and on and after April  
55 first, two thousand thirteen through March thirty-first, two thousand  
56 fifteen, the reimbursable base year administrative and general costs of

1 a provider of services shall not exceed the statewide average of total  
2 reimbursable base year administrative and general costs of such provid-  
3 ers of services[.]; PROVIDED, HOWEVER, THAT FOR THE PURPOSES OF ESTAB-  
4 LISHING SUCH RATES OF PAYMENT FOR PERIODS ON AND AFTER APRIL FIRST, TWO  
5 THOUSAND FIFTEEN, SUCH STATEWIDE AVERAGE CALCULATION SHALL EXCLUDE ANY  
6 OTHERWISE REIMBURSABLE COSTS, INCLUDING STEP DOWN COSTS, REPORTED AND  
7 ALLOCABLE AS ADMINISTRATIVE AND GENERAL BUT ATTRIBUTABLE TO THE  
8 PROVISION AND MANAGEMENT OF PATIENT CARE INCLUDING, BUT NOT LIMITED TO,  
9 COSTS ATTRIBUTABLE TO: PATIENT OUTREACH; ASSESSMENT; COORDINATION AND  
10 MANAGEMENT OF SERVICES; TELEPHONE AND OTHER TELEHEALTH MONITORING AND  
11 COMMUNICATION; MEDICAL SUPPLIES; STAFF TRANSPORTATION AND ESCORT  
12 SERVICES; FAMILY AND/OR INFORMAL CAREGIVER SUPPORT SERVICES; PATIENT  
13 RECORDKEEPING; AND TECHNOLOGY INVESTMENTS FOR PATIENT CARE. SUCH  
14 EXCLUDED COSTS SHALL BE CONVEYED BY THE PROVIDER AS A SEPARATE DOCUMENT  
15 OF SUPPLEMENTAL INFORMATION ATTACHED TO THE PROVIDER'S COST REPORT, AS  
16 SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL PROVIDE A RATE COMPU-  
17 TATION SHEET TO EACH CERTIFIED HOME HEALTH AGENCY WITH DISTINCT LINES  
18 FOR EACH SERVICE AND RATE WHICH SHALL INCLUDE:

19 (I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENER-  
20 AL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

21 (II) THE PROVIDER'S TOTAL ADMINISTRATIVE AND GENERAL AMOUNT ALLOCABLE  
22 TO THE RATE FOR THE SERVICE;

23 (III) SUCH TOTAL ADMINISTRATIVE AND GENERAL AMOUNT EXCLUSIVE OF THE  
24 PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

25 (IV) THE ALLOWABLE ADMINISTRATIVE AND GENERAL COST AMOUNT BASED ON THE  
26 LIMITATION PROVIDED FOR IN THIS SECTION CALCULATED TO REFLECT THE EXCLU-  
27 SION OF PATIENT CARE RELATED COSTS DESCRIBED IN THIS PARAGRAPH;

28 (V) ANY ADMINISTRATIVE AND GENERAL COST DISALLOWED TO THE RATE BASED  
29 ON SUCH LIMITATION; AND

30 (VI) THE ADJUSTED RATE BASED ON THE APPLICATION OF THE ADMINISTRATIVE  
31 AND GENERAL COST LIMITATION.

32 (B) No such limit shall be applied to a provider of services reim-  
33 bursed on an initial budget basis, or a new provider, excluding changes  
34 in ownership or changes in name, who begins operations in the year prior  
35 to the year which is used as a base year in determining rates of  
36 payment.

37 (C) For the purposes of this subdivision, reimbursable base year oper-  
38 ational costs shall mean those base year operational costs remaining  
39 after application of all other efficiency standards, including, but not  
40 limited to, cost guidelines.

41 (D) The limitation on reimbursement for provider administrative and  
42 general expenses provided by this subdivision shall be expressed as a  
43 percentage reduction for the rate promulgated by the commissioner to  
44 each long term home health care program provider; PROVIDED, HOWEVER,  
45 THAT SUCH REDUCTION PERCENTAGE SHALL NOT BE INCREASED FOR ANY PROVIDER  
46 AS A CONSEQUENCE OF THE EXCLUSIONS PROVIDED FOR IN PARAGRAPH (A) OF THIS  
47 SUBDIVISION.

48 S 4. This act shall take effect on the first of April next succeeding  
49 the date on which it shall have become law; provided, however, that the  
50 amendments to the opening paragraph of subdivision 7 of section 3614 of  
51 the public health law made by section one of this act shall be subject  
52 to the expiration and reversion of such opening paragraph pursuant to  
53 section 64-b and subdivision 5-a of section 246 of chapter 81 of the  
54 laws of 1995, as amended, when upon such date the provisions of section  
55 two of this act shall take effect.