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I N   S E N A T E

January 24, 2014

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Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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 ASSEMBLY, 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  
25    ESCORT SERVICES; FAMILY AND/OR INFORMAL CAREGIVER SUPPORT SERVICES;  
26    PATIENT RECORDKEEPING; AND TECHNOLOGY INVESTMENTS FOR PATIENT CARE.  
27    SUCH EXCLUDED COSTS SHALL BE CONVEYED BY THE PROVIDER AS A SEPARATE

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

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DOCUMENT OF SUPPLEMENTAL INFORMATION ATTACHED TO THE PROVIDER'S COST REPORT, AS SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL PROVIDE A RATE COMPUTATION SHEET TO EACH CERTIFIED HOME HEALTH AGENCY WITH DISTINCT LINES FOR EACH SERVICE AND RATE WHICH SHALL INCLUDE:

(I) THE RATE PRIOR TO THE APPLICATION OF THE ADMINISTRATIVE AND GENERAL COST LIMITATION PROVIDED FOR IN THIS SUBDIVISION;

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

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

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

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

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

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

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

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

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

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

(A) Notwithstanding any inconsistent provision of law or regulation to the contrary, for purposes of establishing rates of payment by govern-

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

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

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

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

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

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

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

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

40 7-a. (A) Notwithstanding any inconsistent provision of law or regu-  
41 lation, for the purposes of establishing rates of payment by govern-  
42 mental agencies for long term home health care programs for the period  
43 April first, two thousand five, through December thirty-first, two thou-  
44 sand five, and for the period January first, two thousand six through  
45 March thirty-first, two thousand seven, and on and after April first,  
46 two thousand seven through March thirty-first, two thousand nine, and on  
47 and after April first, two thousand nine through March thirty-first, two  
48 thousand eleven, and on and after April first, two thousand eleven  
49 through March thirty-first, two thousand thirteen and on and after April  
50 first, two thousand thirteen through March thirty-first, two thousand  
51 fifteen, the reimbursable base year administrative and general costs of  
52 a provider of services shall not exceed the statewide average of total  
53 reimbursable base year administrative and general costs of such provid-  
54 ers of services[.]; PROVIDED, HOWEVER, THAT FOR THE PURPOSES OF ESTAB-  
55 LISHING SUCH RATES OF PAYMENT FOR PERIODS ON AND AFTER APRIL FIRST, TWO  
56 THOUSAND FIFTEEN, SUCH STATEWIDE AVERAGE CALCULATION SHALL EXCLUDE ANY

1 OTHERWISE REIMBURSABLE COSTS, INCLUDING STEP DOWN COSTS, REPORTED AND  
2 ALLOCABLE AS ADMINISTRATIVE AND GENERAL BUT ATTRIBUTABLE TO THE  
3 PROVISION AND MANAGEMENT OF PATIENT CARE INCLUDING, BUT NOT LIMITED TO,  
4 COSTS ATTRIBUTABLE TO: PATIENT OUTREACH; ASSESSMENT; COORDINATION AND  
5 MANAGEMENT OF SERVICES; TELEPHONE AND OTHER TELEHEALTH MONITORING AND  
6 COMMUNICATION; MEDICAL SUPPLIES; STAFF TRANSPORTATION AND ESCORT  
7 SERVICES; FAMILY AND/OR INFORMAL CAREGIVER SUPPORT SERVICES; PATIENT  
8 RECORDKEEPING; AND TECHNOLOGY INVESTMENTS FOR PATIENT CARE. SUCH  
9 EXCLUDED COSTS SHALL BE CONVEYED BY THE PROVIDER AS A SEPARATE DOCUMENT  
10 OF SUPPLEMENTAL INFORMATION ATTACHED TO THE PROVIDER'S COST REPORT, AS  
11 SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL PROVIDE A RATE COMPU-  
12 TATION SHEET TO EACH CERTIFIED HOME HEALTH AGENCY WITH DISTINCT LINES  
13 FOR EACH SERVICE AND RATE WHICH SHALL INCLUDE:

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

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

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

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

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

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

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

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

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

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