

8072

I N S E N A T E

June 10, 2016

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

AN ACT to amend the public health law and the social services law, in relation to actuarially sound and adequate rates of payment for managed care plans and service providers

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

1 Section 1. Subdivision 8 of section 4403-f of the public health law,
2 as amended by section 21 of part B of chapter 59 of the laws of 2016, is
3 amended to read as follows:
4 8. Payment rates for managed long term care plan enrollees eligible
5 for medical assistance. The commissioner shall establish payment rates
6 for services provided to enrollees eligible under title XIX of the
7 federal social security act. Such payment rates shall be subject to
8 approval by the director of the division of the budget and shall reflect
9 savings to both state and local governments when compared to costs which
10 would be incurred by such program if enrollees were to receive compara-
11 ble health and long term care services on a fee-for-service basis in the
12 geographic region in which such services are proposed to be provided.
13 Payment rates shall be risk-adjusted to take into account the character-
14 istics of enrollees, or proposed enrollees, including, but not limited
15 to: frailty, disability level, health and functional status, age,
16 gender, the nature of services provided to such enrollees, and other
17 factors as determined by the commissioner. The risk adjusted premiums
18 may also be combined with disincentives or requirements designed to
19 mitigate any incentives to obtain higher payment categories. In setting
20 such payment rates, the commissioner shall consider costs borne by the
21 managed care program to ensure actuarially sound and adequate rates of
22 payment to MANAGED CARE PLANS, INCLUDING THE COSTS FOR REIMBURSING THEIR
23 CONTRACTED PROVIDERS, TO ensure quality of care shall comply with all
24 applicable laws and regulations, state and federal, including, BUT NOT
25 LIMITED TO: regulations as to actuarial soundness for medicaid managed
26 care; THE PROVISIONS OF SECTION THIRTY-SIX HUNDRED FOURTEEN-C OF THIS
27 CHAPTER; PROVISIONS OF SUBDIVISION ONE OF SECTION SIX HUNDRED FIFTY-TWO

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

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1 OF THE LABOR LAW; PROVISIONS OF SECTION TEN OF THE WORKERS' COMPENSATION
2 LAW; PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT FOR EMPLOYEE
3 OVERTIME AND OTHER MANDATORY BENEFITS; AND OTHER EXPENSES MANDATED UPON
4 PLANS OR PROVIDERS FOR EMPLOYEES UNDER THIS CHAPTER OR ANY OTHER
5 PROVISION OF LAW, PLUS AN ADMINISTRATIVE AND GENERAL COST FACTOR THAT IS
6 NO LESS THAN ALLOWED PURSUANT TO SUBDIVISION SIX OF SECTION THREE THOU-
7 SAND SIX HUNDRED TWELVE OF THIS ARTICLE OR PURSUANT TO SUBDIVISIONS
8 SEVEN OR SEVEN-A OF SECTION THREE THOUSAND SIX HUNDRED FOURTEEN OF THIS
9 ARTICLE, AS APPLICABLE. THE AMOUNT OF REIMBURSEMENT REQUIRED TO MEET THE
10 COSTS OF THE AFOREMENTIONED LABOR, ADMINISTRATIVE AND OTHER MANDATED
11 EXPENSES SHALL BE SPECIFICALLY IDENTIFIED AS PART OF THE RATES OF
12 PAYMENT TO MANAGED CARE PLANS AND TO CONTRACTED PROVIDERS; PROVIDED,
13 HOWEVER, NO REIMBURSEMENT CHANGES PURSUANT TO THIS PARAGRAPH SHALL
14 PROVIDE A DIMINUTION OF THE CURRENT RATE OF PAYMENT TO LICENSED HOME
15 CARE AGENCIES.

16 THE COMMISSIONER SHALL ALSO TAKE NECESSARY STEPS TO ENSURE THAT A
17 UNIFORM PROCESS IS ESTABLISHED FOR THE PAYMENT OF SUCH MANDATED COSTS OR
18 BENEFITS TO PROVIDERS.

19 IN SETTING ACTUARIALLY SOUND AND ADEQUATE PAYMENT RATES, THE COMMIS-
20 SIONER SHALL CONSIDER THE ANALYSIS AND RECOMMENDATIONS OF AN INDEPENDENT
21 ACTUARY, WHICH SHALL ALSO PROVIDE ITS ANALYSIS DIRECTLY TO THE CHAIRS OF
22 THE SENATE AND ASSEMBLY COMMITTEES ON HEALTH, THE CHAIR OF THE SENATE
23 FINANCE COMMITTEE AND THE CHAIR OF THE ASSEMBLY COMMITTEE ON WAYS AND
24 MEANS.

25 S 2. Paragraph (a) of subdivision 13 of section 3614 of the public
26 health law, as amended by section 22 of part D of chapter 57 of the laws
27 of 2015, is amended to read as follows:

28 (a) Notwithstanding any inconsistent provision of law or regulation
29 and subject to the availability of federal financial participation,
30 effective April first, two thousand twelve through March thirty-first,
31 two thousand nineteen, payments by government agencies for services
32 provided by certified home health agencies, except for such services
33 provided to children under eighteen years of age and other discreet
34 groups as may be determined by the commissioner pursuant to regulations,
35 shall be based on episodic payments. In establishing such payments, a
36 statewide base price shall be established for each sixty day episode of
37 care and adjusted by a regional wage index factor and an individual
38 patient case mix index. Such episodic payments may be further adjusted
39 for low utilization cases and to reflect a percentage limitation of the
40 cost for high-utilization cases that exceed outlier thresholds of such
41 payments. EPISODIC PAYMENTS SHALL BE FURTHER ADJUSTED TO ENSURE ADEQUACY
42 FOR COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, STATE AND
43 FEDERAL, INCLUDING: THE PROVISIONS OF SECTION THIRTY-SIX HUNDRED FOUR-
44 TEEN-C OF THIS CHAPTER; PROVISIONS OF SUBDIVISION ONE OF SECTION SIX
45 HUNDRED FIFTY-TWO OF THE LABOR LAW; PROVISIONS OF THE FEDERAL FAIR LABOR
46 STANDARDS ACT FOR EMPLOYEE OVERTIME AND OTHER MANDATORY BENEFITS; AND
47 OTHER EXPENSES MANDATED UPON PLANS OR PROVIDERS FOR EMPLOYEES UNDER THIS
48 CHAPTER OR ANY OTHER PROVISION OF LAW; PLUS AN ADMINISTRATIVE AND GENER-
49 AL COST FACTOR THAT IS NO LESS THAN ALLOWED PURSUANT TO SUBDIVISION
50 SEVEN OF THIS SECTION. THE AMOUNT OF REIMBURSEMENT REQUIRED TO MEET THE
51 COSTS OF THE AFOREMENTIONED LABOR, ADMINISTRATIVE AND OTHER MANDATED
52 EXPENSES SHALL BE SPECIFICALLY IDENTIFIED AS PART OF THE RATES OF
53 PAYMENT PROVIDED PURSUANT TO THIS SECTION. THE REIMBURSEMENT TO PROVID-
54 ERS PURSUANT TO THIS SUBDIVISION SHALL BE IN ADDITION TO THE CURRENT
55 RATE OF PAYMENT FOR ADMINISTRATIVE AND OTHER MANDATED EXPENSES;
56 PROVIDED, HOWEVER, NO REIMBURSEMENT CHANGES PURSUANT TO THIS PARAGRAPH

1 SHALL PROVIDE A DIMINUTION OF THE CURRENT RATE OF PAYMENT TO LICENSED
2 HOME CARE AGENCIES.

3 S 3. Section 3614 of the public health law is amended by adding a new
4 subdivision 7-b to read as follows:

5 7-B. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, RULE OR REGU-
6 LATION, THE COMMISSIONER SHALL ADJUST MEDICAL ASSISTANCE RATES OF
7 PAYMENT FOR SERVICES PROVIDED BY LONG TERM HOME HEALTH CARE PROGRAM
8 PROVIDERS TO ENSURE ADEQUACY FOR COMPLIANCE WITH ALL APPLICABLE LAWS AND
9 REGULATIONS, STATE AND FEDERAL, INCLUDING: THE PROVISIONS OF SECTION
10 THIRTY-SIX HUNDRED FOURTEEN-C OF THIS CHAPTER; PROVISIONS OF SUBDIVISION
11 ONE OF SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW; PROVISIONS OF
12 SECTION TEN OF THE WORKERS' COMPENSATION LAW; PROVISIONS OF THE FEDERAL
13 FAIR LABOR STANDARDS ACT FOR EMPLOYEE OVERTIME AND OTHER MANDATORY BENE-
14 FITS, AND OTHER EXPENSES MANDATED UPON PLANS OR PROVIDERS FOR EMPLOYEES
15 UNDER THIS CHAPTER OR ANY OTHER PROVISION OF LAW; PLUS AN ADMINISTRATIVE
16 AND GENERAL COST FACTOR THAT IS NO LESS THAN ALLOWED PURSUANT TO SUBDI-
17 VISION SEVEN-A OF THIS SECTION. THE AMOUNT OF REIMBURSEMENT REQUIRED TO
18 MEET THE COSTS OF THE AFOREMENTIONED LABOR, ADMINISTRATIVE AND OTHER
19 MANDATED EXPENSES SHALL BE SPECIFICALLY IDENTIFIED AS PART OF THE RATES
20 OF PAYMENT PROVIDED PURSUANT TO THIS SECTION. THE REIMBURSEMENT TO
21 PROVIDERS PURSUANT TO THIS SUBDIVISION SHALL NOT PROVIDE A DIMINUTION OF
22 THE CURRENT RATE OF PAYMENT TO PROVIDERS.

23 S 4. The public health law is amended by adding a new section 3614-f
24 to read as follows:

25 S 3614-F. REIMBURSEMENT OF MANDATORY WAGE AND BENEFIT COMPENSATION
26 EXPENSES. THE SPECIFICALLY IDENTIFIED FUNDING PROVIDED TO THE CERTIFIED
27 HOME HEALTH AGENCY PURSUANT TO SUBDIVISION THIRTEEN OF SECTION
28 THIRTY-SIX HUNDRED FOURTEEN OF THIS ARTICLE, LONG TERM HOME HEALTH
29 PROGRAM PURSUANT TO SUBDIVISION SEVEN-B OF SECTION THIRTY-SIX HUNDRED
30 FOURTEEN OF THIS ARTICLE OR MANAGED CARE PLAN PURSUANT TO SUBDIVISION
31 EIGHT OF SECTION FORTY-FOUR HUNDRED THREE-F OF THIS CHAPTER, FOR THE
32 SATISFACTION OF THE PROVIDER REIMBURSEMENT REQUIREMENTS OF SECTION THIR-
33 TY-SIX HUNDRED FOURTEEN-C OF THIS CHAPTER, PROVISIONS OF SUBDIVISION ONE
34 OF SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW, PROVISIONS OF SECTION
35 TEN OF THE WORKERS' COMPENSATION LAW, PROVISIONS OF THE FEDERAL FAIR
36 LABOR STANDARDS ACT FOR EMPLOYEE OVERTIME AND OTHER MANDATORY BENEFITS;
37 AND OTHER EXPENSES MANDATED UPON PLANS AND PROVIDERS FOR EMPLOYEES UNDER
38 THIS CHAPTER OR ANY OTHER PROVISION OF LAW, AND AN ADMINISTRATIVE AND
39 GENERAL COST FACTOR THAT IS NO LESS THAN ALLOWED PURSUANT TO SUBDIVISION
40 SIX OF SECTION THIRTY-SIX HUNDRED TWELVE OF THIS ARTICLE, SHALL BE USED
41 BY SUCH ENTITY IN REIMBURSING A LICENSED HOME CARE AGENCY FOR SUCH AGEN-
42 CY'S COMPLIANCE WITH THE AFOREMENTIONED PAYMENT AND BENEFIT REQUIRE-
43 MENTS. THE REIMBURSEMENT TO PROVIDERS PURSUANT TO THIS SECTION SHALL NOT
44 PROVIDE A DIMINUTION OF THE CURRENT RATE OF PAYMENT TO LICENSED HOME
45 CARE AGENCIES.

46 S 5. Paragraph (c) of subdivision 18 of section 364-j of the social
47 services law, as added by section 40-c of part B of chapter 57 of the
48 laws of 2015, is amended to read as follows:

49 (c) In setting such reimbursement methodologies, the department shall
50 consider costs borne by the managed care program to ensure actuarially
51 sound and adequate rates of payment to ensure quality of care, AND TO
52 COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS, STATE AND FEDERAL,
53 INCLUDING, BUT NOT LIMITED TO REGULATIONS AS TO ACTUARIAL SOUNDNESS FOR
54 MEDICAID MANAGED CARE; THE PROVISIONS OF SECTION THIRTY-SIX HUNDRED
55 FOURTEEN-C OF THIS CHAPTER; PROVISIONS OF SUBDIVISION ONE OF SECTION SIX
56 HUNDRED FIFTY-TWO OF THE LABOR LAW; PROVISIONS OF SECTION TEN OF THE

1 WORKERS' COMPENSATION LAW; PROVISIONS OF THE FEDERAL FAIR LABOR STAND-
2 ARDS ACT FOR EMPLOYEE OVERTIME AND OTHER MANDATORY BENEFITS; AND OTHER
3 EXPENSES MANDATED UPON PLANS OR PROVIDERS FOR EMPLOYEES UNDER THIS CHAP-
4 TER OR ANY OTHER PROVISION OF LAW, PLUS AN ADMINISTRATIVE AND GENERAL
5 COST FACTOR THAT IS NO LESS THAN ALLOWED PURSUANT TO SUBDIVISION SIX OF
6 SECTION THIRTY-SIX HUNDRED TWELVE OF THIS ARTICLE OR PURSUANT TO SUBDI-
7 VISION SEVEN OR SEVEN-A OF SECTION THIRTY-SIX HUNDRED FOURTEEN OF THIS
8 ARTICLE, AS APPLICABLE. THE AMOUNT OF REIMBURSEMENT REQUIRED TO MEET
9 THE COSTS OF THE AFOREMENTIONED LABOR, ADMINISTRATIVE AND OTHER MANDATED
10 EXPENSES SHALL BE SPECIFICALLY IDENTIFIED AS PART OF THE RATES OF
11 PAYMENT PROVIDED PURSUANT TO THIS SECTION. THE COMMISSIONER SHALL TAKE
12 NECESSARY STEPS TO ENSURE THAT A UNIFORM PROCESS IS ESTABLISHED FOR THE
13 PAYMENT FOR SUCH MANDATED COSTS OR BENEFITS TO PROVIDERS. THE REIMBURSE-
14 MENT TO PROVIDERS PURSUANT TO THIS SUBDIVISION SHALL NOT PROVIDE A DIMI-
15 NUTION OF THE CURRENT RATE OF PAYMENT TO LICENSED HOME CARE AGENCIES.

16 S 6. The commissioner of health shall provide for expeditious adjust-
17 ment and increase of managed care organization premiums to ensure actu-
18 arial soundness and adequacy of rates for timely compliance with the
19 amendments to subdivision 8 of section 4403-f of the public health law
20 made by section one of this act and the amendments to paragraph (c) of
21 subdivision 18 of section 364-j of the social services law made by
22 section five of this act.

23 The commissioner shall provide for such increases in managed care
24 organization rates, including: (i) developing a uniform process for the
25 payment of such increases to providers; and (ii) ensuring the expe-
26 ditious and duly adjusted rates paid to contracted providers to ensure
27 timely compliance with the amendments made by sections one, four and
28 five of this act.

29 Furthermore, the commissioner shall provide for the efficient imple-
30 mentation of this act, minimizing any new administrative, procedural or
31 documentation burden on managed care plans or providers.

32 S 7. This act shall take effect immediately; provided, however, that
33 the amendments to subdivision 8 of section 4403-f of the public health
34 law made by section one of this act shall not affect the repeal of such
35 section and shall be deemed repealed therewith; and provided, further,
36 that the amendments to paragraph (c) of subdivision 18 of section 364-j
37 of the social services law made by section five of this act shall not
38 affect the repeal of such section and shall be deemed repealed there-
39 with.