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

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:

Section 1. Subdivision 8 of section 4403-f of the public health law, as amended by section 21 of part B of chapter 59 of the laws of 2016, is amended to read as follows:

8. Payment rates for managed long term care plan enrollees eligible for medical assistance. The commissioner shall establish payment rates for services provided to enrollees eligible under title XIX of the federal social security act. Such payment rates shall be subject to approval by the director of the division of the budget and shall reflect savings to both state and local governments when compared to costs which would be incurred by such program if enrollees were to receive comparable health and long term care services on a fee-for-service basis in the geographic region in which such services are proposed to be provided. Payment rates shall be risk-adjusted to take into account the characteristics of enrollees, or proposed enrollees, including, but not limited to: frailty, disability level, health and functional status, age, gender, the nature of services provided to such enrollees, and other factors as determined by the commissioner. The risk adjusted premiums may also be combined with disincentives or requirements designed to mitigate any incentives to obtain higher payment categories. In setting such payment rates, the commissioner shall consider costs borne by the managed care program to ensure actuarially sound and adequate rates of payment to MANAGED CARE PLANS, INCLUDING THE COSTS FOR REIMBURSING THEIR CONTRACTED PROVIDERS, TO ensure quality of care shall comply with all applicable laws and regulations, state and federal, including, BUT NOT LIMITED TO: regulations as to actuarial soundness for medicaid managed care; THE PROVISIONS OF SECTION THIRTY-SIX HUNDRED FOURTEEN-C OF THIS 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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OF THE LABOR LAW; PROVISIONS OF SECTION TEN OF THE WORKERS' COMPENSATION LAW; PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT FOR EMPLOYEE OVERTIME AND OTHER MANDATORY BENEFITS; AND OTHER EXPENSES MANDATED UPON PLANS OR PROVIDERS FOR EMPLOYEES UNDER THIS CHAPTER OR ANY OTHER PROVISION OF LAW, PLUS AN ADMINISTRATIVE AND GENERAL COST FACTOR THAT IS NO LESS THAN ALLOWED PURSUANT TO SUBDIVISION SIX OF SECTION THREE THOUSAND SIX HUNDRED TWELVE OF THIS ARTICLE OR PURSUANT TO SUBDIVISIONS SEVEN OR SEVEN-A OF SECTION THREE THOUSAND SIX HUNDRED FOURTEEN OF THIS ARTICLE, AS APPLICABLE. THE AMOUNT OF REIMBURSEMENT REQUIRED TO MEET THE COSTS OF THE AFOREMENTIONED LABOR, ADMINISTRATIVE AND OTHER MANDATED EXPENSES SHALL BE SPECIFICALLY IDENTIFIED AS PART OF THE RATES OF PAYMENT TO MANAGED CARE PLANS AND TO CONTRACTED PROVIDERS; PROVIDED, HOWEVER, NO REIMBURSEMENT CHANGES PURSUANT TO THIS PARAGRAPH SHALL PROVIDE A DIMINUTION OF THE CURRENT RATE OF PAYMENT TO LICENSED HOME CARE AGENCIES.

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

IN SETTING ACTUARIALLY SOUND AND ADEQUATE PAYMENT RATES, THE COMMISSIONER SHALL CONSIDER THE ANALYSIS AND RECOMMENDATIONS OF AN INDEPENDENT ACTUARY, WHICH SHALL ALSO PROVIDE ITS ANALYSIS DIRECTLY TO THE CHAIRS OF THE SENATE AND ASSEMBLY COMMITTEES ON HEALTH, THE CHAIR OF THE SENATE FINANCE COMMITTEE AND THE CHAIR OF THE ASSEMBLY COMMITTEE ON WAYS AND MEANS.

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

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

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

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

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

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

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

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

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

WORKERS' COMPENSATION LAW; PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT FOR EMPLOYEE OVERTIME AND OTHER MANDATORY BENEFITS; AND OTHER EXPENSES MANDATED UPON PLANS OR PROVIDERS FOR EMPLOYEES UNDER THIS CHAPTER OR ANY OTHER PROVISION OF LAW, PLUS AN ADMINISTRATIVE AND GENERAL COST FACTOR THAT IS NO LESS THAN ALLOWED PURSUANT TO SUBDIVISION SIX OF SECTION THIRTY-SIX HUNDRED TWELVE OF THIS ARTICLE OR PURSUANT TO SUBDIVISION SEVEN OR SEVEN-A OF SECTION THIRTY-SIX HUNDRED FOURTEEN OF THIS ARTICLE, AS APPLICABLE. THE AMOUNT OF REIMBURSEMENT REQUIRED TO MEET THE COSTS OF THE AFOREMENTIONED LABOR, ADMINISTRATIVE AND OTHER MANDATED EXPENSES SHALL BE SPECIFICALLY IDENTIFIED AS PART OF THE RATES OF PAYMENT PROVIDED PURSUANT TO THIS SECTION. THE COMMISSIONER SHALL TAKE NECESSARY STEPS TO ENSURE THAT A UNIFORM PROCESS IS ESTABLISHED FOR THE PAYMENT FOR SUCH MANDATED COSTS OR BENEFITS TO PROVIDERS. THE REIMBURSEMENT TO PROVIDERS PURSUANT TO THIS SUBDIVISION SHALL NOT PROVIDE A DIMINUTION OF THE CURRENT RATE OF PAYMENT TO LICENSED HOME CARE AGENCIES.

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

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

Furthermore, the commissioner shall provide for the efficient implementation of this act, minimizing any new administrative, procedural or documentation burden on managed care plans or providers.

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