

# STATE OF NEW YORK

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7746

2017-2018 Regular Sessions

## IN ASSEMBLY

May 11, 2017

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Introduced by M. of A. GOTTFRIED -- (at request of the Department of Health) -- read once and referred to the Committee on Health

AN ACT to amend chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential health care facilities, in relation to extending the effectiveness of certain provisions thereof; to amend chapter 81 of the laws of 1995, amending the public health law and other laws relating to medical reimbursement and welfare reform, in relation to extending the effectiveness of certain provisions thereof; to amend chapter 58 of the laws of 2008, amending the social services law and the public health law relating to adjustments of rates, in relation to extending the date of the expiration of certain provisions thereof; and to amend chapter 779 of the laws of 1986, amending the social services law relating to authorizing services for non-residents in adult homes, residences for adults and enriched housing programs, in relation to extending the effectiveness of certain provisions thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 228 of chapter 474 of the laws of 1996, amending  
2 the education law and other laws relating to rates for residential  
3 health care facilities, as amended by section 10 of part D of chapter 57  
4 of the laws of 2015, is amended to read as follows:

5 § 228. 1. Definitions. (a) Regions, for purposes of this section,  
6 shall mean a downstate region to consist of Kings, New York, Richmond,  
7 Queens, Bronx, Nassau and Suffolk counties and an upstate region to  
8 consist of all other New York state counties. A certified home health  
9 agency or long term home health care program shall be located in the  
10 same county utilized by the commissioner of health for the establishment  
11 of rates pursuant to article 36 of the public health law.

12 (b) Certified home health agency (CHHA) shall mean such term as  
13 defined in section 3602 of the public health law.

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

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1 (c) Long term home health care program (LTHHCP) shall mean such term  
2 as defined in subdivision 8 of section 3602 of the public health law.

3 (d) Regional group shall mean all those CHHAs and LTHHCPs, respective-  
4 ly, located within a region.

5 (e) Medicaid revenue percentage, for purposes of this section, shall  
6 mean CHHA and LTHHCP revenues attributable to services provided to  
7 persons eligible for payments pursuant to title 11 of article 5 of the  
8 social services law divided by such revenues plus CHHA and LTHHCP reven-  
9 ues attributable to services provided to beneficiaries of Title XVIII of  
10 the federal social security act (medicare).

11 (f) Base period, for purposes of this section, shall mean calendar  
12 year 1995.

13 (g) Target period. For purposes of this section, the 1996 target peri-  
14 od shall mean August 1, 1996 through March 31, 1997, the 1997 target  
15 period shall mean January 1, 1997 through November 30, 1997, the 1998  
16 target period shall mean January 1, 1998 through November 30, 1998, the  
17 1999 target period shall mean January 1, 1999 through November 30, 1999,  
18 the 2000 target period shall mean January 1, 2000 through November 30,  
19 2000, the 2001 target period shall mean January 1, 2001 through November  
20 30, 2001, the 2002 target period shall mean January 1, 2002 through  
21 November 30, 2002, the 2003 target period shall mean January 1, 2003  
22 through November 30, 2003, the 2004 target period shall mean January 1,  
23 2004 through November 30, 2004, and the 2005 target period shall mean  
24 January 1, 2005 through November 30, 2005, the 2006 target period shall  
25 mean January 1, 2006 through November 30, 2006, and the 2007 target  
26 period shall mean January 1, 2007 through November 30, 2007 and the 2008  
27 target period shall mean January 1, 2008 through November 30, 2008, and  
28 the 2009 target period shall mean January 1, 2009 through November 30,  
29 2009 and the 2010 target period shall mean January 1, 2010 through  
30 November 30, 2010 and the 2011 target period shall mean January 1, 2011  
31 through November 30, 2011 and the 2012 target period shall mean January  
32 1, 2012 through November 30, 2012 and the 2013 target period shall mean  
33 January 1, 2013 through November 30, 2013, and the 2014 target period  
34 shall mean January 1, 2014 through November 30, 2014 and the 2015 target  
35 period shall mean January 1, 2015 through November 30, 2015 and the 2016  
36 target period shall mean January 1, 2016 through November 30, 2016 and  
37 the 2017 target period shall mean January 1, 2017 through November 30,  
38 2017 and the 2018 target period shall mean January 1, 2018 through  
39 November 30, 2018 and the 2019 target period shall mean January 1, 2019  
40 through November 30, 2019 and the 2020 target period shall mean January  
41 1, 2020 through November 30, 2020.

42 2. (a) Prior to February 1, 1997, for each regional group the commis-  
43 sioner of health shall calculate the 1996 medicaid revenue percentages  
44 for the period commencing August 1, 1996 to the last date for which such  
45 data is available and reasonably accurate.

46 (b) Prior to February 1, 1998, prior to February 1, 1999, prior to  
47 February 1, 2000, prior to February 1, 2001, prior to February 1, 2002,  
48 prior to February 1, 2003, prior to February 1, 2004, prior to February  
49 1, 2005, prior to February 1, 2006, prior to February 1, 2007, prior to  
50 February 1, 2008, prior to February 1, 2009, prior to February 1, 2010,  
51 prior to February 1, 2011, prior to February 1, 2012, prior to February  
52 1, 2013, prior to February 1, 2014, prior to February 1, 2015, ~~and~~  
53 prior to February 1, 2016 ~~and~~, prior to February 1, 2017, prior to  
54 February 1, 2018, prior to February 1, 2019, and prior to February 1,  
55 2020 for each regional group the commissioner of health shall calculate

1 the prior year's medicaid revenue percentages for the period commencing  
2 January 1 through November 30 of such prior year.

3 3. By September 15, 1996, for each regional group the commissioner of  
4 health shall calculate the base period medicaid revenue percentage.

5 4. (a) For each regional group, the 1996 target medicaid revenue  
6 percentage shall be calculated by subtracting the 1996 medicaid revenue  
7 reduction percentages from the base period medicaid revenue percentages.  
8 The 1996 medicaid revenue reduction percentage, taking into account  
9 regional and program differences in utilization of medicaid and medicare  
10 services, for the following regional groups shall be equal to:

11 (i) one and one-tenth percentage points for CHHAs located within the  
12 downstate region;

13 (ii) six-tenths of one percentage point for CHHAs located within the  
14 upstate region;

15 (iii) one and eight-tenths percentage points for LTHHCPs located with-  
16 in the downstate region; and

17 (iv) one and seven-tenths percentage points for LTHHCPs located within  
18 the upstate region.

19 (b) For 1997, 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007,  
20 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 ~~[and]~~, 2017, 2018,  
21 2019 and 2020 for each regional group, the target medicaid revenue  
22 percentage for the respective year shall be calculated by subtracting  
23 the respective year's medicaid revenue reduction percentage from the  
24 base period medicaid revenue percentage. The medicaid revenue reduction  
25 percentages for 1997, 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006,  
26 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 ~~[and]~~, 2017,  
27 2018, 2019 and 2020, taking into account regional and program differ-  
28 ences in utilization of medicaid and medicare services, for the follow-  
29 ing regional groups shall be equal to for each such year:

30 (i) one and one-tenth percentage points for CHHAs located within the  
31 downstate region;

32 (ii) six-tenths of one percentage point for CHHAs located within the  
33 upstate region;

34 (iii) one and eight-tenths percentage points for LTHHCPs located with-  
35 in the downstate region; and

36 (iv) one and seven-tenths percentage points for LTHHCPs located within  
37 the upstate region.

38 (c) For each regional group, the 1999 target medicaid revenue percent-  
39 age shall be calculated by subtracting the 1999 medicaid revenue  
40 reduction percentage from the base period medicaid revenue percentage.  
41 The 1999 medicaid revenue reduction percentages, taking into account  
42 regional and program differences in utilization of medicaid and medicare  
43 services, for the following regional groups shall be equal to:

44 (i) eight hundred twenty-five thousandths (.825) of one percentage  
45 point for CHHAs located within the downstate region;

46 (ii) forty-five hundredths (.45) of one percentage point for CHHAs  
47 located within the upstate region;

48 (iii) one and thirty-five hundredths percentage points (1.35) for  
49 LTHHCPs located within the downstate region; and

50 (iv) one and two hundred seventy-five thousandths percentage points  
51 (1.275) for LTHHCPs located within the upstate region.

52 5. (a) For each regional group, if the 1996 medicaid revenue percent-  
53 age is not equal to or less than the 1996 target medicaid revenue  
54 percentage, the commissioner of health shall compare the 1996 medicaid  
55 revenue percentage to the 1996 target medicaid revenue percentage to  
56 determine the amount of the shortfall which, when divided by the 1996

1 medicaid revenue reduction percentage, shall be called the 1996  
2 reduction factor. These amounts, expressed as a percentage, shall not  
3 exceed one hundred percent. If the 1996 medicaid revenue percentage is  
4 equal to or less than the 1996 target medicaid revenue percentage, the  
5 1996 reduction factor shall be zero.

6 (b) For 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006,  
7 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, ~~and~~ 2017,  
8 2018 and 2019, for each regional group, if the medicaid revenue percent-  
9 age for the respective year is not equal to or less than the target  
10 medicaid revenue percentage for such respective year, the commissioner  
11 of health shall compare such respective year's medicaid revenue percent-  
12 age to such respective year's target medicaid revenue percentage to  
13 determine the amount of the shortfall which, when divided by the respec-  
14 tive year's medicaid revenue reduction percentage, shall be called the  
15 reduction factor for such respective year. These amounts, expressed as a  
16 percentage, shall not exceed one hundred percent. If the medicaid reven-  
17 ue percentage for a particular year is equal to or less than the target  
18 medicaid revenue percentage for that year, the reduction factor for that  
19 year shall be zero.

20 6. (a) For each regional group, the 1996 reduction factor shall be  
21 multiplied by the following amounts to determine each regional group's  
22 applicable 1996 state share reduction amount:

23 (i) two million three hundred ninety thousand dollars (\$2,390,000) for  
24 CHHAs located within the downstate region;

25 (ii) seven hundred fifty thousand dollars (\$750,000) for CHHAs located  
26 within the upstate region;

27 (iii) one million two hundred seventy thousand dollars (\$1,270,000)  
28 for LTHHCPs located within the downstate region; and

29 (iv) five hundred ninety thousand dollars (\$590,000) for LTHHCPs  
30 located within the upstate region.

31 For each regional group reduction, if the 1996 reduction factor shall  
32 be zero, there shall be no 1996 state share reduction amount.

33 (b) For 1997, 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007,  
34 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 ~~and~~, 2017, 2018,  
35 2019 and 2020, for each regional group, the reduction factor for the  
36 respective year shall be multiplied by the following amounts to deter-  
37 mine each regional group's applicable state share reduction amount for  
38 such respective year:

39 (i) two million three hundred ninety thousand dollars (\$2,390,000) for  
40 CHHAs located within the downstate region;

41 (ii) seven hundred fifty thousand dollars (\$750,000) for CHHAs located  
42 within the upstate region;

43 (iii) one million two hundred seventy thousand dollars (\$1,270,000)  
44 for LTHHCPs located within the downstate region; and

45 (iv) five hundred ninety thousand dollars (\$590,000) for LTHHCPs  
46 located within the upstate region.

47 For each regional group reduction, if the reduction factor for a  
48 particular year shall be zero, there shall be no state share reduction  
49 amount for such year.

50 (c) For each regional group, the 1999 reduction factor shall be multi-  
51 plied by the following amounts to determine each regional group's appli-  
52 cable 1999 state share reduction amount:

53 (i) one million seven hundred ninety-two thousand five hundred dollars  
54 (\$1,792,500) for CHHAs located within the downstate region;

55 (ii) five hundred sixty-two thousand five hundred dollars (\$562,500)  
56 for CHHAs located within the upstate region;

(iii) nine hundred fifty-two thousand five hundred dollars (\$952,500) for LTHHCPs located within the downstate region; and  
(iv) four hundred forty-two thousand five hundred dollars (\$442,500) for LTHHCPs located within the upstate region.

For each regional group reduction, if the 1999 reduction factor shall be zero, there shall be no 1999 state share reduction amount.

7. (a) For each regional group, the 1996 state share reduction amount shall be allocated by the commissioner of health among CHHAs and LTHHCPs on the basis of the extent of each CHHA's and LTHHCP's failure to achieve the 1996 target medicaid revenue percentage, calculated on a provider specific basis utilizing revenues for this purpose, expressed as a proportion of the total of each CHHA's and LTHHCP's failure to achieve the 1996 target medicaid revenue percentage within the applicable regional group. This proportion shall be multiplied by the applicable 1996 state share reduction amount calculation pursuant to paragraph (a) of subdivision 6 of this section. This amount shall be called the 1996 provider specific state share reduction amount.

(b) For 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 [and], 2017, 2018, 2019 and 2020 for each regional group, the state share reduction amount for the respective year shall be allocated by the commissioner of health among CHHAs and LTHHCPs on the basis of the extent of each CHHA's and LTHHCP's failure to achieve the target medicaid revenue percentage for the applicable year, calculated on a provider specific basis utilizing revenues for this purpose, expressed as a proportion of the total of each CHHA's and LTHHCP's failure to achieve the target medicaid revenue percentage for the applicable year within the applicable regional group. This proportion shall be multiplied by the applicable year's state share reduction amount calculation pursuant to paragraph (b) or (c) of subdivision 6 of this section. This amount shall be called the provider specific state share reduction amount for the applicable year.

8. (a) The 1996 provider specific state share reduction amount shall be due to the state from each CHHA and LTHHCP and may be recouped by the state by March 31, 1997 in a lump sum amount or amounts from payments due to the CHHA and LTHHCP pursuant to title 11 of article 5 of the social services law.

(b) The provider specific state share reduction amount for 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 [and], 2017, 2018, 2019 and 2020 respectively, shall be due to the state from each CHHA and LTHHCP and each year the amount due for such year may be recouped by the state by March 31 of the following year in a lump sum amount or amounts from payments due to the CHHA and LTHHCP pursuant to title 11 of article 5 of the social services law.

9. CHHAs and LTHHCPs shall submit such data and information at such times as the commissioner of health may require for purposes of this section. The commissioner of health may use data available from third-party payors.

10. On or about June 1, 1997, for each regional group the commissioner of health shall calculate for the period August 1, 1996 through March 31, 1997 a medicaid revenue percentage, a reduction factor, a state share reduction amount, and a provider specific state share reduction amount in accordance with the methodology provided in paragraph (a) of subdivision 2, paragraph (a) of subdivision 5, paragraph (a) of subdivision 6 and paragraph (a) of subdivision 7 of this section. The provider specific state share reduction amount calculated in accordance with this



subdivision shall be compared to the 1996 provider specific state share reduction amount calculated in accordance with paragraph (a) of subdivision 7 of this section. Any amount in excess of the amount determined in accordance with paragraph (a) of subdivision 7 of this section shall be due to the state from each CHHA and LTHHCP and may be recouped in accordance with paragraph (a) of subdivision 8 of this section. If the amount is less than the amount determined in accordance with paragraph (a) of subdivision 7 of this section, the difference shall be refunded to the CHHA and LTHHCP by the state no later than July 15, 1997. CHHAs and LTHHCPs shall submit data for the period August 1, 1996 through March 31, 1997 to the commissioner of health by April 15, 1997.

11. If a CHHA or LTHHCP fails to submit data and information as required for purposes of this section:

(a) such CHHA or LTHHCP shall be presumed to have no decrease in medicaid revenue percentage between the applicable base period and the applicable target period for purposes of the calculations pursuant to this section; and

(b) the commissioner of health shall reduce the current rate paid to such CHHA and such LTHHCP by state governmental agencies pursuant to article 36 of the public health law by one percent for a period beginning on the first day of the calendar month following the applicable due date as established by the commissioner of health and continuing until the last day of the calendar month in which the required data and information are submitted.

12. The commissioner of health shall inform in writing the director of the budget and the chair of the senate finance committee and the chair of the assembly ways and means committee of the results of the calculations pursuant to this section.

§ 2. Paragraph (f) of subdivision 1 of section 64 of chapter 81 of the laws of 1995, amending the public health law and other laws relating to medical reimbursement and welfare reform, as amended by section 7 of part D of chapter 57 of the laws of 2015, is amended to read as follows:

(f) Prior to February 1, 2001, February 1, 2002, February 1, 2003, February 1, 2004, February 1, 2005, February 1, 2006, February 1, 2007, February 1, 2008, February 1, 2009, February 1, 2010, February 1, 2011, February 1, 2012, February 1, 2013, February 1, 2014, February 1, 2015, February 1, 2016 ~~[and]~~, February 1, 2017, February 1, 2018, February 1, 2019 and February 1, 2020, the commissioner of health shall calculate the result of the statewide total of residential health care facility days of care provided to beneficiaries of title XVIII of the federal social security act (medicare), divided by the sum of such days of care plus days of care provided to residents eligible for payments pursuant to title 11 of article 5 of the social services law minus the number of days provided to residents receiving hospice care, expressed as a percentage, for the period commencing January 1, through November 30, of the prior year respectively, based on such data for such period. This value shall be called the 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 ~~[and]~~, 2017, 2018, 2019 and 2020 statewide target percentage respectively.

§ 3. Subparagraph (ii) of paragraph (b) of subdivision 3 of section 64 of chapter 81 of the laws of 1995, amending the public health law and other laws relating to medical reimbursement and welfare reform, as amended by section 8 of part D of chapter 57 of the laws of 2015, is amended to read as follows:

(ii) If the 1997, 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 ~~[and]~~, 2017,

1 2018, 2019 and 2020 statewide target percentages are not for each year  
2 at least three percentage points higher than the statewide base percent-  
3 age, the commissioner of health shall determine the percentage by which  
4 the statewide target percentage for each year is not at least three  
5 percentage points higher than the statewide base percentage. The  
6 percentage calculated pursuant to this paragraph shall be called the  
7 1997, 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009,  
8 2010, 2011, 2012, 2013, 2014, 2015, 2016 ~~and~~, 2017, 2018, 2019 and  
9 2020 statewide reduction percentage respectively. If the 1997, 1998,  
10 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011,  
11 2012, 2013, 2014, 2015, 2016 ~~and~~, 2017, 2018, 2019 and 2020 statewide  
12 target percentage for the respective year is at least three percentage  
13 points higher than the statewide base percentage, the statewide  
14 reduction percentage for the respective year shall be zero.

15 § 4. Subparagraph (iii) of paragraph (b) of subdivision 4 of section  
16 64 of chapter 81 of the laws of 1995, amending the public health law and  
17 other laws relating to medical reimbursement and welfare reform, as  
18 amended by section 9 of part D of chapter 57 of the laws of 2015, is  
19 amended to read as follows:

20 (iii) The 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008,  
21 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 ~~and~~, 2017, 2018, 2019  
22 and 2020 statewide reduction percentage shall be multiplied by one  
23 hundred two million dollars respectively to determine the 1998, 2000,  
24 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012,  
25 2013, 2014, 2015, 2016 ~~and~~, 2017, 2018, 2019 and 2020 statewide aggre-  
26 gate reduction amount. If the 1998 and the 2000, 2001, 2002, 2003, 2004,  
27 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016  
28 ~~and~~, 2017, 2018, 2019 and 2020 statewide reduction percentage shall be  
29 zero respectively, there shall be no 1998, 2000, 2001, 2002, 2003, 2004,  
30 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016  
31 ~~and~~, 2017, 2018, 2019 and 2020 reduction amount.

32 § 5. Subdivision (i-1) of section 79 of part C of chapter 58 of the  
33 laws of 2008, amending the social services law and the public health law  
34 relating to adjustments of rates, as amended by section 64 of part C of  
35 chapter 60 of the laws of 2014, is amended to read as follows:

36 (i-1) section thirty-one-a of this act shall be deemed repealed July  
37 1, ~~2017~~ 2020;

38 § 6. Subdivision 12 of section 246 of chapter 81 of the laws of 1995,  
39 amending the public health law and other laws relating to medical  
40 reimbursement and welfare reform, as amended by section 15 of part D of  
41 chapter 57 of the laws of 2015, is amended to read as follows:

42 12. Sections one hundred five-b through one hundred five-f of this act  
43 shall expire ~~March 31, 2017~~ June 30, 2018.

44 § 7. Section 4 of chapter 779 of the laws of 1986, amending the social  
45 services law relating to authorizing services for non-residents in adult  
46 homes, residences for adults and enriched housing programs, as amended  
47 by section 63 of part C of chapter 60 of the laws of 2014, is amended to  
48 read as follows:

49 § 4. This act shall take effect on the one hundred twentieth day after  
50 it shall have become a law and shall remain in full force and effect  
51 until July 1, ~~2017~~ 2020, provided however, that effective immediately,  
52 the addition, amendment and/or repeal of any rules or regulations neces-  
53 sary for the implementation of the foregoing sections of this act on its  
54 effective date are authorized and directed to be made and completed on  
55 or before such effective date.

56 § 8. This act shall take effect immediately.