

STATE OF NEW YORK

6329--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 16, 2021

Introduced by M. of A. GOTTFRIED, REYES, DINOWITZ, FRONTUS, GONZALEZ-ROJAS, BURGOS, CARROLL, KIM, BURDICK, JACOBSON, SIMON, GUNTHER, ABINANTI, CYMBROWITZ, BRABENEC, GALEF, EPSTEIN, KELLES, MAMDANI, PAULIN, QUART, MITAYNES, LUPARDO, BICHOTTE HERMELYN, STECK, L. ROSENTHAL, TAGUE, ENGLEBRIGHT, SOLAGES, FALL, RAMOS, HUNTER, CRUZ, GALLAGHER, CAHILL, FORREST, M. MILLER, JONES, JEAN-PIERRE, SEPTIMO, BARRON, STERN, DICKENS, O'DONNELL, CLARK, FERNANDEZ, LUNSFORD, BRONSON, SEAWRIGHT, MEEKS, JOYNER, HYNDMAN, DARLING, McDONOUGH, HEVESI, STIRPE, DURSO, SILLITTI, McDONALD, SMITH, CUSICK, PERRY, WOERNER, OTIS, ZEBROWSKI, PRETLOW, DE LA ROSA, SAYEGH, J. A. GIGLIO, PHEFFER AMATO, TAPIA, BUTTENSCHON, FAHY, ANDERSON, PEOPLES-STOKES, RAJKUMAR, LAVINE, J. D. RIVERA, NIOU -- read once and referred to the Committee on Health -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, the state finance law and part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to known and projected department of health state fund Medicaid expenditures, in relation to fair pay for home care aides

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

1 Section 1. The public health law is amended by adding a new section
2 3614-f to read as follows:

3 § 3614-f. Fair pay for home care. 1. For the purpose of this section,
4 "home care aide" shall have the same meaning defined in section thirty-
5 six hundred fourteen-c of this article.

6 2. Beginning January first, two thousand twenty-three, the minimum
7 wage for a home care aide shall be no less than one hundred and fifty
8 percent of the higher of: (a) the otherwise applicable minimum wage
9 under section six hundred fifty-two of the labor law, or (b) any other-

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

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1 wise applicable wage rule or order under article nineteen of the labor
2 law.

3 3. Where any home care aide is paid less than required by this
4 section, the home care aide, or the commissioner of labor acting on
5 behalf of the home care aide, may bring an action under article six or
6 nineteen of the labor law.

7 4. (a) The commissioner shall establish a regional minimum hourly base
8 reimbursement rate for all providers employing workers subject to the
9 minimum wage provisions established in subdivision one of this section.
10 The regional minimum hourly base reimbursement rate shall be based on
11 regions established by the commissioner, provided that for areas subject
12 to section thirty-six hundred fourteen-c of this article, each area with
13 a different prevailing rate of total compensation, as defined in that
14 section, shall be its own region.

15 (b) For the purposes of this section, "regional minimum hourly base
16 reimbursement rate" means a reimbursement rate that reflects the average
17 combined costs associated with the provision of direct service inclusive
18 of, but not limited to, overtime costs; all benefits; all payroll taxes,
19 including but not limited to federal insurance contributions act, medi-
20 care, federal unemployment tax act, state unemployment insurance, disa-
21 bility insurance, workers' compensation, and the metropolitan transpor-
22 tation authority tax; related increases tied to base wages such as
23 compression; reasonable administrative costs as defined by the commis-
24 sioner; allowances for capital costs; the development of profit or
25 reserves as allowable by law or regulations of the commissioner; and any
26 additional supplemental payments.

27 5. (a) The initial regional minimum hourly base reimbursement rate
28 shall be no less than the following:

29 (i) thirty-eight dollars and fifty cents per hour in the wage parity
30 region, encompassing all counties subject to section thirty-six hundred
31 fourteen of this article; and

32 (ii) thirty-eight dollars and eighteen cents per hour for the counties
33 in the remainder of the state.

34 (b) For consumer directed personal assistance services provided under
35 section three hundred sixty-five-f of the social services law, the
36 initial regional minimum hourly base reimbursement rate shall reflect
37 the rates established in paragraph (a) of this subdivision, provided
38 that the commissioner may reduce such rates by no more than twelve and
39 nine-tenths percent. In the event that such reduction occurs, a per
40 member, per month increase reflective of actual administrative and
41 general costs, adjusted to reflect regional differences as regions are
42 defined in this section, shall be made to fiscal intermediaries adminis-
43 tering such programs. If the department or a managed care organization
44 chooses not to utilize the per member, per month payment established
45 pursuant to this paragraph, the regional minimum hourly base reimburse-
46 ment rate for that region, as defined in paragraph (a) of this subdivi-
47 sion, shall apply.

48 6. No payment made to a provider who employs home care aides subject
49 to this section that is less than the regional minimum hourly base
50 reimbursement rate established by the commissioner for a region for
51 services provided under authorization by a local department of social
52 services, a managed care provider under section three hundred sixty-
53 four-j of the social services law, or a managed long-term care provider
54 under section forty-four hundred-f of this chapter shall be deemed
55 adequate.

1 (a) The commissioner shall submit any and all necessary applications
2 for approvals and/or waivers to the federal centers for medicare and
3 medicaid services to secure approval to establish minimum hourly base
4 reimbursement rates and make state-directed payments to providers for
5 the purposes of supporting wage increases.

6 (b) Directed payments shall be made to such providers of medicaid
7 services through contracts with managed care organizations where appli-
8 cable, provided that the commissioner ensures that such directed
9 payments are in accordance with the terms of this section.

10 (c) The commissioner shall ensure that managed care capitation is
11 adjusted to ensure rate adequacy for the managed care organizations.

12 7. Nothing in this section shall preclude providers employing home
13 care aides covered under this section or payers from contracting for
14 services at rates higher than the regional minimum hourly base
15 reimbursement rate if the parties agree to such terms.

16 8. The commissioner shall publish and post regional minimum hourly
17 base reimbursement rates annually and shall take all necessary steps to
18 advise commercial and government programs payers of home care services
19 of the regional minimum hourly base reimbursement rates and require
20 other state authorized payers to reimburse providers of home care
21 services at the minimum hourly base reimbursement rate.

22 9. Following the initial established regional minimum hourly base
23 reimbursement rate established under this section, the commissioner
24 shall annually adjust the regional hourly base reimbursement rate for
25 each region to reflect costs or other increases in wages, benefits, or
26 other requirements. The commissioner shall develop a methodology for
27 annual increases, taking into consideration relevant data sources,
28 including but not limited to information from certified cost reports and
29 statistical reports submitted to the department by providers employing
30 individuals subject to this section for the prior calendar year, consum-
31 er price index increases; subsequent pandemic or other public health
32 emergencies; and other relevant economic factors. Prior to finalizing
33 such methodology, the commissioner shall establish a public workgroup
34 that shall include provider, consumer, managed care organization, and
35 labor representatives from each geographical region in which there is an
36 established regional minimum hourly base reimbursement rate; statewide
37 associations; and other stakeholders to inform the process. The commis-
38 sioner shall publish and take public input on the proposed methodology
39 to be used to update regional minimum hourly base reimbursement rates.

40 10. Annual increases to the regional minimum hourly base reimbursement
41 rates shall be issued and posted by the department by September thirti-
42 eth of the prior calendar year to when such rates shall take effect.

43 11. For years in which rate adjustments to the regional minimum hourly
44 base reimbursement rate have not been calculated prior to the start of
45 the calendar year, the previous year's rate shall remain in place until
46 the new rate is calculated. If it is determined that retroactive rate
47 adjustments are necessary, payment adjustments will be made as a direct
48 pass through to providers within sixty days of the adjusted rate.

49 § 2. Section 3614-d of the public health law, as added by section 49
50 of part B of chapter 57 of the laws of 2015, is amended to read as
51 follows:

52 § 3614-d. Universal standards for coding of payment for medical
53 assistance claims for long term care. Claims for payment submitted under
54 contracts or agreements with insurers under the medical assistance
55 program for home and community-based long-term care services provided
56 under this article, by fiscal intermediaries operating pursuant to

1 section three hundred sixty-five-f of the social services law, and by
2 residential health care facilities operating pursuant to article twen-
3 ty-eight of this chapter shall have standard billing codes. Such insur-
4 ers shall include but not be limited to Medicaid managed care plans and
5 managed long term care plans. Such payments shall be based on universal
6 billing codes approved by the department or a nationally accredited
7 organization as approved by the department; provided, however, such
8 coding shall be consistent with any codes developed as part of the
9 uniform assessment system for long term care established by the depart-
10 ment and shall include, for any entity operating pursuant to this arti-
11 cle or section three hundred sixty-five-f of the social services law
12 that is unable to control the cumulative hours worked by an individual
13 in a given payroll period, a code that is specific to the hourly cost of
14 services at an overtime rate.

15 § 3. The state finance law is amended by adding a new section 91-h to
16 read as follows:

17 § 91-h. Fair pay for home care fund. 1. There is hereby established in
18 the joint custody of the commissioner of taxation and finance and the
19 comptroller, a special fund to be known as the "fair pay for home care
20 fund".

21 2. The fund shall consist of, but not be limited to:

22 a. revenues and federal medical assistance percentage reimbursements
23 in excess of the standard reimbursement received by the department of
24 health pursuant to section thirty-seven of part B of chapter fifty-seven
25 of the laws of two thousand fifteen;

26 b. an amount equal to savings from the permanent conversion or decer-
27 tification of residential health care facility beds, as defined in
28 section twenty-eight hundred one or twenty-eight hundred two of the
29 public health law;

30 c. any unspent monies from the New York works economic development
31 funds or a life sciences initiative created by section one of chapter
32 fifty-four of the laws of two thousand seventeen which were originally
33 appropriated prior to the two thousand nineteen state fiscal year which
34 have not been bound by a contract as of April first two thousand twen-
35 ty-one and which are not otherwise legally required to be spent on capi-
36 tal projects under bonding requirements through the dormitory authority
37 of New York state or other bonding entity; and

38 d. any grants, gifts or bequests received by the state for the
39 purposes of the fund under this section.

40 3. Monies of the fund shall be distributed to the commissioner of
41 health, or the commissioner's designee, for the purpose of increasing
42 medical assistance reimbursements under title eleven of article five of
43 the social services law to entities subject to minimum wage requirements
44 for home care aides under section thirty-six hundred fourteen-f of the
45 public health law, provided that the monies of this fund shall be
46 utilized to offset general fund expenses related to implementation and
47 ongoing costs of section thirty-six hundred fourteen-f of the public
48 health law and shall not be the sole source of funds made available to
49 meet the requirements established by such section.

50 § 4. Paragraph (c) of subdivision 1 of section 92 of part H of chapter
51 59 of the laws of 2011 amending the public health law and other laws
52 relating to known and projected department of health state fund Medicaid
53 expenditures, as amended by section 1 of part CCC of chapter 56 of the
54 laws of 2020, is amended to read as follows:

55 (c) Projections may be adjusted by the director of the budget to
56 account for any changes in the New York state federal medical assistance

1 percentage amount established pursuant to the federal social security
2 act, changes in provider revenues, reductions to local social services
3 district medical assistance administration, minimum wage increases,
4 increases to the mandatory base wage for home care workers pursuant to
5 article 36 of the public health law, and beginning April 1, 2012 the
6 operational costs of the New York state medical indemnity fund and state
7 costs or savings from the basic health plan. Such projections may be
8 adjusted by the director of the budget to account for increased or expedited
9 department of health state funds medicaid expenditures as a result
10 of a natural or other type of disaster, including a governmental declaration
11 of emergency.

12 § 5. Paragraph (a) of subdivision 3 of section 3614-c of the public
13 health law is amended by adding a new subparagraph (v) to read as
14 follows:

15 (v) for all periods on or after January first, two thousand twenty-
16 three, the cash portion of the minimum rate of home care aide total
17 compensation shall be the minimum wage for home care aides in the appli-
18 cable region, as defined in section thirty-six hundred fourteen-f of
19 this article. The benefit portion of the minimum rate of home care aide
20 total compensation shall be four dollars and eighty-four cents.

21 § 6. Subparagraph (iv) of paragraph (b) of subdivision 3 of section
22 3614-c of the public health law, as amended by section 1 of part 00 of
23 chapter 56 of the laws of 2020, is amended and a new subparagraph (v) is
24 added to read as follows:

25 (iv) for all periods on or after March first, two thousand sixteen,
26 the cash portion of the minimum rate of home care aide total compen-
27 sation shall be ten dollars or the minimum wage as laid out in paragraph
28 (b) of subdivision one of section six hundred fifty-two of the labor
29 law, whichever is higher. The benefit portion of the minimum rate of
30 home care aide total compensation shall be three dollars and twenty-two
31 cents[-];

32 (v) for all periods on or after January first, two thousand twenty-
33 three, the cash portion of the minimum rate of home care aide total
34 compensation shall be the minimum wage for the applicable region, as
35 defined in section thirty-six hundred fourteen-f of this chapter. The
36 benefit portion of the minimum rate of home care aide total compensation
37 shall be three dollars and eighty-nine cents.

38 § 7. Severability. If any provision of this act, or any application of
39 any provision of this act, is held to be invalid, or to violate or be
40 inconsistent with any federal law or regulation, that shall not affect
41 the validity or effectiveness of any other provision of this act, or of
42 any other application of any provision of this act which can be given
43 effect without that provision or application; and to that end, the
44 provisions and applications of this act are severable.

45 § 8. This act shall take effect immediately.