# STATE OF NEW YORK

7513

2021-2022 Regular Sessions

# IN SENATE

November 8, 2021

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

AN ACT to amend the social services law and the public health law, in relation to providing increased rates for private duty nursing services that are provided to medically fragile adults

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

Section 1. Subdivisions 2 and 3 of section 367-r of the social services law, subdivision 2 as amended and subdivision 3 as added by section 2 of part PP of chapter 56 of the laws of 2020, are amended to read as follows:

2. Medically fragile children **and adults**. (a) In addition, the commissioner shall further increase rates for private duty nursing services that are provided to medically fragile children to ensure the availability of such services to such children. **Furthermore, no later than sixty days after the chapter of the laws of two thousand twenty-two that amended this subdivision takes effect, increased rates shall be extended for private duty nursing services provided to medically fragile adults.** In establishing rates of payment under this subdivision, the commissioner shall consider the cost neutrality of such rates as related to the cost effectiveness of caring for medically fragile children **and adults** in a non-institutional setting as compared to an institutional setting. Medically fragile children shall, for the purposes of this subdivision, have the same meaning as in subdivision three-a of section thirty-six hundred fourteen of the public health law. **For purposes of this subdivision, "medically fragile adult" shall be defined as any individual who previously qualified as a medically fragile child but no longer meets the age requirement.** Such increased rates for services rendered to such children **and adults** may take into consideration the elements of cost, geographical differentials in the elements of cost considered, economic factors in the area in which the private duty nurs-

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

LBD13224-03-1

ing service is provided, costs associated with the provision of private duty nursing services to medically fragile children **and adults**, and the need for incentives to improve services and institute economies and such increased rates shall be payable only to those private duty nurses who can demonstrate, to the satisfaction of the department of health, satisfactory training and experience to provide services to such children **and adults**. Such increased rates shall be determined based on application of the case mix adjustment factor for AIDS home care program services rates as determined pursuant to applicable regulations of the department of health. The commissioner may promulgate regulations to implement the provisions of this subdivision.

(b) Private duty nursing services providers which have their rates adjusted pursuant to paragraph (b) of subdivision one of this section and paragraph (a) of this subdivision shall use such funds solely for the purposes of recruitment and retention of private duty nurses or to ensure the delivery of private duty nursing services to medically fragile children **and adults** and are prohibited from using such funds for any other purpose. Funds provided under paragraph (b) of subdivision one of this section and paragraph (a) of this subdivision are not intended to supplant support provided by a local government. Each such provider, with the exception of self-employed private duty nurses, shall submit, at a time and in a manner to be determined by the commissioner of health, a written certification attesting that such funds will be used solely for the purpose of recruitment and retention of private duty nurses or to ensure the delivery of private duty nursing services to medically fragile children **and adults**. The commissioner of health is authorized to audit each such provider to ensure compliance with the written certification required by this subdivision and shall recoup all funds determined to have been used for purposes other than recruitment and retention of private duty nurses or the delivery of private duty nursing services to medically fragile children **and adults**. Such recoupment shall be in addition to any other penalties provided by law.

(c) The commissioner of health shall, subject to the provisions of paragraph (b) of this subdivision, and the provisions of subdivision three of this section, and subject to the availability of federal financial participation, annually increase fees for the fee-for-service reimbursement of private duty nursing services provided to medically fragile children by fee-for-service private duty nursing services providers who enroll and participate in the provider directory pursuant to subdivision three of this section, over a period of three years, commencing October first, two thousand twenty, by one-third annual increments, until such fees for reimbursement equal the final benchmark payment designed to ensure adequate access to the service. In developing such benchmark the commissioner of health may utilize the average two thousand eighteen Medicaid managed care payments for reimbursement of such private duty nursing services. The commissioner may promulgate regulations to implement the provisions of this paragraph.

**(d) The commissioner of health shall, subject to the provisions of paragraph (b) of this subdivision, and the provisions of subdivision three of this section, and subject to the availability of federal financial participation, increase fees for the fee-for-service reimbursement of private duty nursing services provided to medically fragile adults by fee-for-service private duty nursing services providers who enroll and participate in the provider directory pursuant to subdivision three of this section, no later than sixty days after the chapter of the laws of two thousand twenty-two that amended this subdivision takes effect, so**

such fees for reimbursement equal the benchmark payment designed to ensure adequate access to the service. In developing such benchmark the commissioner of health may utilize the average two thousand twenty Medicaid managed care payments for reimbursement of such private duty nursing services. The commissioner may promulgate regulations to implement the provisions of this paragraph.

3. Provider directory for fee-for-service private duty nursing services provided to medically fragile children and adults. The commissioner of health is authorized to establish a directory of qualified providers for the purpose of promoting the availability and ensuring delivery of fee-for-service private duty nursing services to medically fragile children [~~and individuals transitioning out of such category of care~~] and adults. Qualified providers enrolling in the directory shall ensure the availability and delivery of and shall provide such services to those individuals as are in need of such services, and shall receive increased reimbursement for such services pursuant to [~~paragraph (c)~~] paragraphs (c) and (d) of subdivision two of this section. The directory shall offer enrollment to all private duty nursing services providers to promote and ensure the participation in the directory of all nursing services providers available to serve medically fragile children and adults.

§ 2. Subdivision 3-a of section 3614 of the public health law, as amended by section 9 of part C of chapter 109 of the laws of 2006, is amended to read as follows:

3-a. Medically fragile children and adults. Rates of payment for continuous nursing services for medically fragile children and adults provided by a certified home health agency, a licensed home care services agency or a long term home health care program shall be established to ensure the availability of such services, whether provided by registered nurses or licensed practical nurses who are employed by or under contract with such agencies or programs, and shall be established at a rate that is at least equal to rates of payment for such services rendered to patients eligible for AIDS home care programs; provided, however, that a certified home health agency, a licensed home care services agency or a long term home health care program that receives such enhanced rates for continuous nursing services for medically fragile children and adults shall use such enhanced rates to increase payments to registered nurses and licensed practical nurses who provide such services. In the case of services provided by certified home health agencies and long term home health care programs through contracts with licensed home care services agencies, rate increases received by such certified home health agencies and long term home health care programs pursuant to this subdivision shall be reflected in payments made to the registered nurses or licensed practical nurses employed by such licensed home care services agencies to render services to these children and adults. In establishing rates of payment under this subdivision, the commissioner shall consider the cost neutrality of such rates as related to the cost effectiveness of caring for medically fragile children and adults in a non-institutional setting as compared to an institutional setting. For the purposes of this subdivision, a medically fragile child shall mean a child who is at risk of hospitalization or institutionalization, including but not limited to children who are technologically-dependent for life or health-sustaining functions, require complex medication regimen or medical interventions to maintain or to improve their health status or are in need of ongoing assessment or intervention to prevent serious deterioration of their health status or medical compli-

cations that place their life, health or development at risk, but who are capable of being cared for at home if provided with appropriate home care services, including but not limited to case management services and continuous nursing services. **For the purposes of this subdivision, a medically fragile adult shall mean any individual who previously qualified as a medically fragile child but no longer meets the age requirement.** The commissioner shall promulgate regulations to implement provisions of this subdivision and may also direct the providers specified in this subdivision to provide such additional information and in such form as the commissioner shall determine is reasonably necessary to implement the provisions of this subdivision.

§ 3. This act shall take effect immediately.