

# STATE OF NEW YORK

2118

2021-2022 Regular Sessions

## IN SENATE

January 19, 2021

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

AN ACT to amend the social services law and the public health law, in relation to needs assessment and rate adequacy for medicaid

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

1 Section 1. Section 365-a of the social services law is amended by  
2 adding a new subdivision 11 to read as follows:

3 11. For any determination of the amount, nature and manner of provid-  
4 ing assistance under this article for which an assessment tool is used,  
5 the department, in consultation with the independent actuary, represen-  
6 tatives of medical assistance recipients, representatives of the managed  
7 care programs, representatives of long term care providers and other  
8 interested parties, shall evaluate existing assessment tools and develop  
9 additional professionally and statistically valid assessment tools to be  
10 used to assist in determining the amount, nature and manner of services  
11 and care needs of individuals which shall involve consideration of vari-  
12 ables including but not limited to physical and behavioral functioning;  
13 activities of daily living and instrumental activities of daily living;  
14 family, social or geographic determinants of health; primary or second-  
15 ary diagnoses of cognitive impairment or mental illness; and other  
16 appropriate conditions or factors.

17 § 2. Paragraphs (c) of subdivision 18 of section 364-j of the social  
18 services law, as added by sections 40-c and 55 of part B of chapter 57  
19 of the laws of 2015, are amended to read as follows:

20 (c) (i) In setting such reimbursement methodologies, the department  
21 shall consider costs borne by the managed care program to ensure actuar-  
22 ially sound and adequate rates of payment to ensure quality of care for  
23 its enrollees and shall comply with all applicable federal and state  
24 laws and regulations, including, but not limited to, those relating to  
25 wages, labor, and actuarial soundness.

26 [~~e~~] (ii) The department [~~of health~~] shall require the independent  
27 actuary selected pursuant to paragraph (b) of this subdivision to  
28 provide a complete actuarial memorandum, along with all actuarial

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

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1 assumptions made and all other data, materials and methodologies used in  
2 the development of rates, to managed care providers thirty days prior to  
3 submission of such rates to the centers for medicare and medicaid  
4 services for approval. Managed care providers may request additional  
5 review of the actuarial soundness of the rate setting process and/or  
6 methodology.

7 (iii) In fulfilling the requirements of this paragraph, the department  
8 shall establish separate rate cells or risk adjustments to reflect the  
9 costs of care for specific high-need enrollees in managed care provid-  
10 ers. The commissioner shall make any necessary amendments to the state  
11 plan for medical assistance under section three hundred sixty-three-a of  
12 this title, and submit any applications for waivers of the federal  
13 social security act, as may be necessary to ensure federal financial  
14 participation. As used in this subparagraph and subparagraph (iv) of  
15 this paragraph, "managed care provider" shall mean a managed care  
16 provider operating on a full capitation basis or a managed long term  
17 care plan operating under section forty-four hundred three-f of the  
18 public health law; and "long term care entity" shall mean a home care  
19 services agency under article thirty-six of the public health law, a  
20 fiscal intermediary in the consumer directed personal assistance  
21 program, other long term care provider authorized under a home and  
22 community based waiver administered by the department or the office for  
23 people with developmental disabilities. The high-need rate cells or  
24 risk adjustments established in accordance with this subparagraph shall  
25 be consistent with subdivision eleven of section three hundred sixty-  
26 five-a of this title and include, but shall not be limited to:

27 (A) individuals enrolled with a managed care provider, who remain in  
28 the community and who daily receive live-in twenty-four hour personal  
29 care or home health services or twelve hours or more of personal care,  
30 home health services or home and community support services;

31 (B) such other individuals who, based on the assessment of their care  
32 needs, their diagnosis or other factors, are determined to present espe-  
33 cially high needs related to factors that would influence the delivery  
34 (including but not limited to home location) or their use of services,  
35 as may be identified by the department.

36 (iv) Any contract for services under this title by a managed care  
37 provider with a long term care entity shall ensure that resources made  
38 available by the payer under such contract will support the recruitment,  
39 hiring, training and retention of a qualified workforce capable of  
40 providing quality care, including compliance with all applicable federal  
41 and state laws and regulations, including, but not limited to, those  
42 relating to wages and labor. A managed care provider with a long term  
43 care entity shall report its method of compliance with this subdivision  
44 to the department as a component of cost reports required under section  
45 forty-four hundred three-f of the public health law.

46 (v) A long term care entity that contracts with a managed care provid-  
47 er shall annually submit written certification to the department as a  
48 component of cost reports required under section thirty-six hundred  
49 twelve of the public health law and sections three hundred sixty-five-a  
50 and three hundred sixty-seven-q of this title, as applicable, as to how  
51 it applied the amounts paid in compliance with this subdivision to  
52 support the recruitment, hiring, training and retention of a qualified  
53 workforce capable of providing quality care and consistent with section  
54 three hundred sixty-five-a of this title.

55 § 3. Subparagraph (ii) of paragraph (a) and paragraph (g) of subdivi-  
56 sion 7 and subdivision 8 of section 4403-f of the public health law,

1 subparagraph (ii) of paragraph (a) of subdivision 7 as amended by  
2 section 43 of part C of chapter 60 of the laws of 2014, paragraph (g) of  
3 subdivision 7 as amended by section 41-b of part H of chapter 59 of the  
4 laws of 2011, subparagraph (i) of paragraph (g) of subdivision 7 as  
5 amended by section 1 of part GGG of chapter 59 of the laws of 2017,  
6 subparagraph (iii) of paragraph (g) of subdivision 7 as amended by  
7 section 54 of part A of chapter 56 of the laws of 2013, subparagraph  
8 (iv) of paragraph (g) of subdivision 7 as amended by section 22 of part  
9 MM of chapter 56 of the laws of 2020 and subdivision 8 as amended by  
10 section 21 of part B of chapter 59 of the laws of 2016, are amended to  
11 read as follows:

12 (ii) Notwithstanding any inconsistent provision of the social services  
13 law to the contrary, the commissioner shall, pursuant to regulation,  
14 determine whether and the extent to which the applicable provisions of  
15 the social services law or regulations relating to approvals and author-  
16 izations of, and utilization limitations on, health and long term care  
17 services reimbursed pursuant to title XIX of the federal social security  
18 act, including, but not limited to, fiscal assessment requirements, are  
19 inconsistent with the flexibility necessary for the efficient adminis-  
20 tration of managed long term care plans and such regulations shall  
21 provide that such provisions shall not be applicable to enrollees or  
22 managed long term care plans, provided that such determinations are  
23 consistent with applicable federal law and regulation, and subject to  
24 the provisions of [~~subdivision~~ subdivisions eight and eleven of section  
25 three hundred sixty-five-a and paragraph (c) of subdivision eighteen of  
26 section three hundred sixty-four-j of the social services law.

27 (g) (i) Managed long term care plans and demonstrations may enroll  
28 eligible persons in the plan or demonstration upon the completion of a  
29 comprehensive assessment [~~that shall include, but not be limited to, an~~  
30 ~~evaluation of the medical, social, cognitive, and environmental needs~~]  
31 of each prospective enrollee in such program consistent with section  
32 three hundred sixty-five-a of the social services law. This assessment  
33 shall also serve as the basis for the development and provision of an  
34 appropriate plan of care for the enrollee. Upon approval of federal  
35 waivers pursuant to paragraph (b) of this subdivision which require  
36 medical assistance recipients who require community-based long term care  
37 services to enroll in a plan, and upon approval of the commissioner, a  
38 plan may enroll an applicant who is currently receiving home and commu-  
39 nity-based services and complete the comprehensive assessment within  
40 thirty days of enrollment provided that the plan continues to cover  
41 transitional care until such time as the assessment is completed.

42 (ii) The assessment shall be completed by a representative of the  
43 managed long term care plan or demonstration, in consultation with the  
44 prospective enrollee's health care practitioner as necessary. The  
45 commissioner shall prescribe the forms on which the assessment shall be  
46 made.

47 (iii) The enrollment application shall be submitted by the managed  
48 long term care plan or demonstration to the entity designated by the  
49 department prior to the commencement of services under the managed long  
50 term care plan or demonstration. Enrollments conducted by a plan or  
51 demonstration shall be subject to review and audit by the department or  
52 a contractor selected pursuant to paragraph (d) of this subdivision.

53 (iv) Continued enrollment in a managed long term care plan or demon-  
54 stration paid for by government funds shall be based upon a comprehen-  
55 sive assessment [~~of the medical, social and environmental needs~~]  
56 recipient of the services consistent with section three hundred sixty-

1 five-a of this social services law. Such assessment shall be performed  
2 at least annually by the managed long term care plan serving the enrol-  
3 lee. The commissioner shall prescribe the forms on which the assessment  
4 will be made.

5 8. Payment rates for managed long term care plan enrollees eligible  
6 for medical assistance. The commissioner shall establish payment rates  
7 for services provided to enrollees eligible under title XIX of the  
8 federal social security act. Such payment rates shall be subject to  
9 approval by the director of the division of the budget and shall reflect  
10 savings to both state and local governments when compared to costs which  
11 would be incurred by such program if enrollees were to receive compara-  
12 ble health and long term care services on a fee-for-service basis in the  
13 geographic region in which such services are proposed to be provided.  
14 Payment rates shall be risk-adjusted to take into account the character-  
15 istics of enrollees, or proposed enrollees, including, but not limited  
16 to: frailty, disability level, health and functional status, age,  
17 gender, the nature of services provided to such enrollees, and other  
18 factors as determined by the commissioner. The risk adjusted premiums  
19 may also be combined with disincentives or requirements designed to  
20 mitigate any incentives to obtain higher payment categories. In setting  
21 such payment rates, the commissioner shall consider costs borne by the  
22 managed care program to ensure actuarially sound and adequate rates of  
23 payment to ensure quality of care and shall comply with all applicable  
24 laws and regulations, state and federal, including [~~regulations as to~~],  
25 but not limited to, those relating to wages, labor and actuarial sound-  
26 ness [~~for medicaid managed care~~].

27 § 4. Subparagraph (i) of paragraph (g) of subdivision 7 of section  
28 4403-f of the public health law, as added by section 65-c of part A of  
29 chapter 57 of the laws of 2006 and such paragraph as relettered by  
30 section 20 of part C of chapter 58 of the laws of 2007, is amended to  
31 read as follows:

32 (i) Managed long term care plans and demonstrations may enroll eligi-  
33 ble persons in the plan or demonstration upon the completion of a  
34 comprehensive assessment [~~that shall include, but not be limited to, an~~  
35 ~~evaluation of the medical, social and environmental needs~~] of each  
36 prospective enrollee in such program consistent with section three  
37 hundred sixty-five-a of the social services law. This assessment shall  
38 also serve as the basis for the development and provision of an appro-  
39 priate plan of care for the prospective enrollee.

40 § 5. This act shall take effect immediately; provided that sections  
41 two and three of this act shall take effect April 1, 2022; and provided,  
42 further that:

43 a. the amendments to section 364-j of the social services law made by  
44 section two of this act shall not affect the repeal of such section and  
45 shall be deemed repealed therewith;

46 b. the amendments to section 4403-f of the public health law made by  
47 section three of this act shall not affect the repeal of such section  
48 and shall be deemed repealed therewith; and

49 c. the amendments to subparagraph (i) of paragraph (g) of subdivision  
50 7 of section 4403-f of the public health law made by section three of  
51 this act shall not affect the expiration and reversion of such subpara-  
52 graph, pursuant to subdivision (i) of section 111 of part H of chapter  
53 59 of the laws of 2011, as amended, when upon such date the provisions  
54 of section four of this act shall take effect.