STATE OF NEW YORK

8497

IN ASSEMBLY

January 4, 2024

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law and a chapter of the laws of 2023 amending the public health law relating to establishing a four-year demonstration project and workgroup to reduce the use of temporary staffing agencies in residential healthcare facilities, as proposed in legislative bills numbers S. 6897 and A. 7328, in relation to a demonstration project to reduce the use of temporary staffing agencies in residential healthcare facilities

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

Section 1. Subparagraphs (ii) and (iii) of paragraph (c) of subdivision 1 of section 2828 of the public health law, as added by a chapter of the laws of 2023 amending the public health law relating to establishing a four-year demonstration project and workgroup to reduce the use of temporary staffing agencies in residential healthcare facilities, as proposed in legislative bills numbers S. 6897 and A. 7328, are amended to read as follows:

(ii) [~~The commissioner shall establish a four-year (January first, two thousand twenty-three -- December thirty-first, two thousand twenty-six) demonstration project to reduce the use of temporary staffing agencies. Any remittance or amounts owed to the state pursuant to subparagraph (i) of this paragraph, including, but not limited to, amounts owed relating to excess revenue, or the difference between the minimum spending requirement and the actual amount of spending on resident-facing staffing or direct care staffing, as the case may be, shall be reduced as follows for reporting periods beginning on January first, two thousand twenty-three and ending on December thirty-first, two thousand twenty-six, and, to the extent the demonstration project continues, years thereafter:~~

~~(A) a fifty percent reduction, if a residential healthcare facility which has a fifty percent or lower use of resident-facing staffing contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified~~

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

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~~nurse aids, has reduced its use of such contracted agency services by at least thirty percent during any year in which such remittance or amounts owed to the state are payable, as measured by subparagraph (iii) of this paragraph.~~

~~(B) a twenty-five percent reduction, if a residential healthcare facility which has a fifty percent or lower use of resident-facing staffing contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides, has reduced its use of such contracted agency services by at least twenty percent, but less than thirty percent, during any year in which such remittance or amounts owed to the state are payable, as measured by subparagraph (iii) of this paragraph.~~

~~(iii) In measuring temporary staffing agency usage for purposes of determining the reductions provided for in clauses (A) and (B) of subparagraph (ii) of this paragraph, the following measuring periods shall apply: in two thousand twenty-three, the fourth calendar quarter of two thousand twenty-two shall be compared to the fourth calendar quarter of two thousand twenty-three; for two thousand twenty-four and years thereafter, the average of the four calendar quarters of the previous year shall be compared to the average of the four calendar quarters of the current year. Temporary staffing shall be measured using the publicly available U.S. Centers for Medicare and Medicaid Services (CMS) Payroll Based Journal (PBJ) facility-reported data.~~] **Notwithstanding the requirements prescribed by subparagraph (i) of this paragraph, the provisions of a demonstration project established pursuant to a chapter of the laws of two thousand twenty-three that amended this subparagraph shall apply to those residential health care facilities who qualify for such demonstration project.**

§ 2. Paragraph (a) of subdivision 2 of section 2828 of the public health law, as amended by a chapter of the laws of 2023 amending the public health law relating to establishing a four-year demonstration project and workgroup to reduce the use of temporary staffing agencies in residential healthcare facilities, as proposed in legislative bills numbers S. 6897 and A. 7328, is amended to read as follows:

(a) "Revenue" shall mean the total operating revenue from or on behalf of residents of the residential health care facility, government payers, or third-party payers, to pay for a resident's occupancy of the residential health care facility, resident care, and the operation of the residential health care facility as reported in the residential health care facility cost reports submitted to the department; provided, however, that revenue shall exclude:

(i) the capital portion of the Medicaid reimbursement rate;

(ii) funding received as reimbursement for the assessment under subparagraph (vi) of paragraph (b) of subdivision two of section twenty-eight hundred seven-d of this article, as reconciled pursuant to paragraph (c) of subdivision ten of section twenty-eight hundred seven-d of this article; **and**

(iii) any grant funds from the federal government for reimbursement of COVID-19 pandemic-related expenses, including but not limited to funds received from the federal emergency management agency or health resources and services administration[~~;~~

~~(iv) for the first year of the demonstration project established pursuant to subparagraph (ii) of paragraph (c) of subdivision one of this section, all revenue, other than total Medicaid operating revenue, if, in the fourth quarter of two thousand twenty-three, a residential health care facility uses ten percent or less of its resident-facing~~

~~staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides;~~

~~(v) for the second year of the demonstration project established pursuant to subparagraph (ii) of paragraph (c) of subdivision one of this section, all revenue, other than total Medicaid operating revenue, if, in two thousand twenty-four, a residential health care facility uses nine percent or less of its resident-facing staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aids; and~~

~~(vi) for the third and fourth years, respectively, and, to the extent the demonstration project continues, years thereafter, respectively, of the demonstration project established pursuant to subparagraph (ii) of paragraph (c) of subdivision one of this section, all revenue, other than total Medicaid operating revenue, if, in two thousand twenty-five and two thousand twenty-six, respectively, and, to the extent the demonstration project continues, years thereafter, respectively, a residential health care facility uses eight percent or less of its resident-facing staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides~~].

§ 3. Section 2 of a chapter of the laws of 2023 amending the public health law relating to establishing a four-year demonstration project and workgroup to reduce the use of temporary staffing agencies in residential healthcare facilities, as proposed in legislative bills numbers S. 6897 and A. 7328, is amended to read as follows:

§ 2. [~~Joint labor-management nursing home staffing workgroup. Beginning no later than July 1, 2025, the commissioner shall convene an eight-member labor-management nursing home staffing workgroup that shall review and assess the impact of the demonstration program. The workgroup shall consist of an equal number of nursing home operators and representatives of organized labor who represent nursing home staff. The four nursing home operator appointees shall consist of a proportionate representation of operators, including: (i) both for-profit and not-for-profit operators; and (ii) appointees from various regions of the state. In making such nursing home operator appointments, the commissioner shall seek recommendations from regional or statewide associations representing predominantly for-profit and not-for-profit nursing home operators. The commissioner and a representative of the office of long-term care ombudsman shall also be members of the workgroup as ex-officio, non-voting members.~~

~~The workgroup shall study, evaluate, and make recommendations with respect to the demonstration program, including whether or not to continue or modify the program. The workgroup shall also assess at least the following issues: (i) the impact of the demonstration program on reducing the use of staffing agencies; (ii) the impact of reduced staffing agencies on continued staffing shortages and meeting required staffing levels in various regions of the state; and (iii) the impact of reduced staffing agency employees on quality of care and nursing home operations. In conducting its duties the workgroup shall solicit input and recommendations from representatives of consumers, and persons with experience in nursing home data.~~

~~The workgroup shall prepare a report reflecting a majority of the voting members' recommendations no later than October 1, 2026.~~] 1. Notwithstanding the requirements of paragraph (c) of subdivision 1 and

paragraph (a) of subdivision 2 of section 2828 of the public health law, the commissioner of health shall establish a four-year (January 1, 2023 through December 31, 2026) demonstration project to reduce the use of temporary staffing agencies. Any remittance or amounts owed to the state pursuant to subparagraph (i) of paragraph (c) of subdivision 1 and paragraph (a) of subdivision 2 of section 2828 of the public health law, including, but not limited to, amounts owed relating to excess revenue, or the difference between the minimum spending requirement and the actual amount of spending on resident-facing staffing or direct care staffing, as the case may be, shall be reduced as follows for reporting periods beginning on January 1, 2023 and ending on December 31, 2026, and, to the extent the demonstration project continues, years thereafter:

(A) a fifty percent reduction, if a residential healthcare facility which has a fifty percent or lower use of resident-facing staffing contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides, has reduced its use of such contracted agency services by at least thirty percent during any year in which such remittance or amounts owed to the state are payable, as measured by paragraph (C) of this subdivision.

(B) a twenty-five percent reduction, if a residential healthcare facility which has a fifty percent or lower use of resident-facing staffing contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides, has reduced its use of such contracted agency services by at least twenty percent, but less than thirty percent, during any year in which such remittance or amounts owed to the state are payable, as measured by paragraph (C) of this subdivision.

(C) In measuring temporary staffing agency usage for purposes of determining the reductions provided for in this section, the following measuring periods shall apply: in 2023, the fourth calendar quarter of 2022 shall be compared to the fourth calendar quarter of 2023; for 2024 and years thereafter, the average of the 4 calendar quarters of the previous year shall be compared to the average of the four calendar quarters of the current year. Temporary staffing shall be measured using the publicly available U.S. Centers for Medicare and Medicaid Services (CMS) Payroll Based Journal (PBJ) facility reported data.

2. (A) For the first year of the demonstration project established pursuant to this section, the definition of "revenue" as defined in paragraph (a) of subdivision 2 of section 2828 of the public health law shall exclude all revenue, other than total Medicaid operating revenue, if, in the fourth quarter of 2023, a residential health care facility uses ten percent or less of its resident-facing staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides.

(B) For the second year of the demonstration project established pursuant to this section, all revenue, other than total Medicaid operating revenue, if, in 2024, a residential health care facility uses nine percent or less of its resident-facing staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides; and

(C) for the third and fourth years, respectively, and, to the extent the demonstration project continues, years thereafter, respectively, of the demonstration project established pursuant to this section, all

revenue, other than total Medicaid operating revenue, if, in 2025 and 2026 respectively, and, to the extent the demonstration project continues, years thereafter, respectively, a residential health care facility uses eight percent or less of its resident-facing staffing who are contracted out to a temporary staffing agency for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides.

3. For purposes of implementing the demonstration program, after a determination by the commissioner of health that a residential health care facility is not in compliance with paragraph (c) of subdivision 1 of section 2828 of the public health law, but prior to the remittance or payment of any funds by such facility, a residential health care facility shall submit documentation to the commissioner of health that it has met the provisions of the demonstration project. Such documentation shall be supported by a verification by a certified public accountant that, based on the PBJ facility reported data and other necessary supporting documentation, such facility is eligible for a reduction in payments pursuant to this section. Upon receipt of such documentation and verification, the commissioner will reduce any payments pursuant to this section.

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the public health law relating to establishing a four-year demonstration project and workgroup to reduce the use of temporary staffing agencies in residential healthcare facilities, as proposed in legislative bills numbers S. 6897 and A. 7328, takes effect.