STATE OF NEW YORK

2931--A

2023-2024 Regular Sessions

IN SENATE

January 25, 2023

Introduced by Sens. RIVERA, ADDABBO, ASHBY, GALLIVAN, HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the social services law, in relation to enacting the New York home care first act

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

Section 1. This act shall be known and may be cited as the "New York home care first act".

§ 2. Section 3600 of the public health law, as added by chapter 895 of the laws of 1977, is amended to read as follows:

§ 3600. Declaration of legislative findings and intent. The legislature hereby finds and declares that the provision of high quality home care services to residents of New York state is a priority concern. [~~Expanding~~] **Ensuring the availability of** these services [~~to make them available~~] throughout the state as a [~~viable~~] **core** part of the health care system [~~and as an~~] **for individuals' needs, including as an** alternative to institutional care should be a primary focus of the state's actions.

Home health care has [~~only recently~~] **long** been recognized [~~legislatively~~] as an integral part of the health care delivery system and has proven to have an important and valuable role in patient care. The certified home health **and licensed home care services** agencies **and programs** render a coordinated array of services to patients in their homes[~~,~~] **and communities. These home care services agencies partner with health care professionals, hospitals, health plans, county public health departments and mental health providers in the provision of primary, preventive, public health, pre-acute, post-acute and long-term care,**

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

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thereby avoiding prolonged institutionalization, concomitant high costs and associated adverse social and medical implications.

The legislature intends that there be a public commitment to the appropriate provision and [~~expansion~~] accessibility of services rendered to the residents of the state by [~~certified~~] home [~~health~~] care services agencies, [~~to~~] including financial and programmatic support for: the maintenance of a consistently high level of services by all home care services agencies[~~, to~~] and workforce; the recruitment, training, compensation and retention of a capable and committed workforce; the integration of home care provider roles in the state's strategic primary, preventive, public health and health care delivery planning and programming; the central collection and public accessibility of information concerning all organized home care services[~~,~~]; and [~~to~~] the adequate regulation and coordination of existing home care services.

§ 3. The public health law is amended by adding a new section 3603 to read as follows:

§ 3603. Home care policy; implementation. 1. The commissioner shall make regulations, issue guidance and take actions reasonably necessary, including coordinating with other state agencies, to promote the policy under this article including, but not be limited to:

(a) information and referral guidance to be made available to hospitals and nursing home discharge planners, health care professionals, ambulatory surgical centers, mental health providers, county public health departments and other applicable health care settings, to assist in the consideration and referral of patients for home care services as a primary or adjunctive service option. The information and guidance shall also be made available for the purpose of assisting providers' and practitioners' responsibilities under subdivision eleven of section three hundred sixty-five-a (relating to eligibility for home care services) of the social services law;

(b) the development of a comprehensive public education program about home care services, including but not limited to: (i) a dedicated portion of the department's website that describes and distinguishes home care provider types offered or authorized by any state agency; (ii) the types of services typically available by provider and program type including home and community based waiver programs and consumer directed personal assistance programs; (iii) home care third party benefits provided under the insurance law for individual, small group and large group non-public coverages, Medicaid, Medicare, and other state-supported public programs; (iv) the contact information by which consumers may access home care services; and (v) the name and location of home care service agencies throughout the state;

(c) the integration of home care provider roles in the state's strategic primary, preventive, public health and health care delivery planning and programming; and

(d) the inclusion of home care service providers in department programs that provide support and funding for health care capital, infrastructure, including electronic medical records and interoperability, as well as direct point of service clinical technology, and workforce development.

2. In implementing this section, the commissioner shall seek the input of representatives of home care providers, hospitals and nursing homes, health care professionals, health plans and insurers, consumers and their family members and caregivers, and home care workers (including labor organizations).

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

11. Home care services. If an individual eligible for services under this title is determined under this article, by a health care professional, to be medically eligible for admission to a general hospital for services other than acute or emergency services, or to a nursing home, or the individual is being cared for in a general hospital or nursing home and desires to receive care at home, and home care services would be reasonably appropriate for the individual, the individual shall be informed orally and in writing of the availability of home care services available in the person's county of residence. If the individual consents, an appropriate health care professional may refer the person for a comprehensive assessment for home care services under this title. Where the individual lacks capacity to make health care decisions, the notice shall be made to, and consent may be made by, a person authorized to make health care decisions for the individual.

§ 5. Subdivision 3 and paragraphs (a) and (b) of subdivision 3-c of section 3614 of the public health law, subdivision 3 as amended by chapter 622 of the laws of 1988, paragraphs (a) and (b) of subdivision 3-c as added by section 63-b of part C of chapter 58 of the laws of 2007, are amended and three new subdivisions 1-a, 9-a and 15 are added to read as follows:

1-a. Rates for home care services agencies and home care services under this section shall be reasonable and reasonably related to the cost of efficiently providing the services and assuring an adequate and accessible supply of the services (including workforce recruitment, training, compensation, retention and sufficiency); taking into consideration the elements of cost, geographical differentials in the elements of cost considered, economic factors in the area in which the services are to be delivered.

3. Prior to the approval of [~~such~~] **the** rates, the commissioner shall determine and certify to the state director of the budget that the proposed rate schedules for payments for certified home health agency services or services provided by long term home health care programs or AIDS home care programs [~~are reasonably related to the costs of the efficient production of such services. In making such certification, the commissioner shall take into consideration the elements of cost, geographical differentials in the elements of cost considered, economic factors in the area in which the certified home health agency, provider of a long term home health care program or provider of an AIDS home care program is located, costs of certified home health agencies, providers of long term home health care programs or providers of AIDS home care programs of comparable size, and the need for incentives to improve services and institute economies~~] **meet the requirements of this section**.

(a) [~~Demonstration rates~~] **Rates** of payment or fees shall be established **in compliance with this section** for telehealth services provided by a certified home health agency, a long term home health care program or AIDS home care program, or for telehealth services by a licensed home care services agency under contract with such an agency or program, in order to ensure the availability of technology-based patient monitoring, communication and health management. Reimbursement for telehealth services provided [~~pursuant to~~] **under** this section shall be provided [~~only in connection with Federal Food and Drug Administration-approved and interoperable devices, and incorporated as part of the patient's plan of care~~] **for telehealth services described in this section, as well as telehealth as defined in article twenty-nine-G of this chapter**. The

commissioner shall seek federal financial participation with regard to this [~~demonstration~~] initiative. Such reimbursement shall be provided as either a separate rate from, or as a specified payment under, the methodology under subdivision thirteen of this section.

(b) The purposes of [~~such~~] the services shall be to assist in the effective monitoring and management of patients whose medical, functional and/or environmental needs can be appropriately and cost-effectively met at home through the application of telehealth intervention. Reimbursement provided [~~pursuant to~~] under this subdivision shall be for services to patients with conditions or clinical circumstances associated with the need for frequent monitoring, [~~and/or~~] the need for frequent physician, skilled nursing or acute care services, [~~and~~] where the provision of telehealth services can appropriately reduce the need for on-site or in-office visits or acute or long term care facility admissions, or where the telehealth services appropriately allow for a home care service by means of telehealth technology instead of an in-person visit by the home care services agency. [~~Such~~] The conditions and clinical circumstances shall include, but not be limited to, congestive heart failure, diabetes, chronic pulmonary obstructive disease, wound care, polypharmacy, mental or behavioral problems limiting self-management, and technology-dependent care such as continuous oxygen, ventilator care, total parenteral nutrition or enteral feeding.

9-a. (a) Notwithstanding any inconsistent provision of this section, effective for annual periods beginning July first, two thousand twenty-four, the commissioner shall, subject to the availability of federal financial participation and upon approval of the state director of the budget, further adjust medical assistance rates of payment for home care services agencies and home care services, including home care services provided by entities qualifying under subdivision nine of this section, targeted for increased salary and benefits for home health aides, personal care aides and consumer directed personal assistants, as well as for recruitment, training and retention of direct care workers for services in shortage areas and by shortage disciplines which may include nurses, therapists, social workers, home health aides and personal care aides. The commissioner shall be further authorized, upon approval of the state director of the budget, to utilize state funds, as available, including federal COVID-19 relief funds allocated to New York, to distribute as direct funding to home care service provider entities for these purposes and personnel for services to medical assistance recipients.

(b) Rate adjustments and direct payments made under this subdivision may also be provided to pilot test the impact on recruitment and retention of allowing funds to be used for critical supports and incentives for direct care personnel, including transportation, education, training, child day care, career ladder, peer support, and other supports which the commissioner may determine.

(c) On or before October first, two thousand twenty-five, the commissioner shall report to the governor and legislature on the effectiveness of this section in recruitment and retention of direct care home care personnel, and in addressing community need, and shall make recommendations for the continuation or modification of the program. The commissioner shall seek the input of representatives of the providers, plans, consumers and workers in examining and reporting on the program.

15. Subject to the availability of federal financial participation and approval of the state director of the budget, for home care services provided on and after July first, two thousand twenty-four, the commis-

sioner shall adjust Medicaid rates of payment for home care service agencies to address increases in reimbursement as may be required by implementation of amendments to this article and subdivision eleven of section three hundred sixty-five-a of the social services law made by the chapter of the laws of two thousand twenty-three that added this subdivision.

§ 6. Subdivision 8 of section 4403-f of the public health law, as amended by section 21 of part B of chapter 59 of the laws of 2016, is amended to read as follows:

8. Payment rates for managed long term care plan enrollees eligible for medical assistance. The commissioner shall establish payment rates for services provided to enrollees eligible under title XIX of the federal social security act. Such payment rates shall be subject to approval by the director of the division of the budget and shall reflect savings to both state and local governments when compared to costs which would be incurred by such program if enrollees were to receive comparable health and long term care services on a fee-for-service basis in the geographic region in which such services are proposed to be provided. Payment rates shall be risk-adjusted to take into account the characteristics of enrollees, or proposed enrollees, including, but not limited to: frailty, disability level, health and functional status, age, gender, the nature of services provided to such enrollees, and other factors as determined by the commissioner. The risk adjusted premiums may also be combined with disincentives or requirements designed to mitigate any incentives to obtain higher payment categories. In setting such payment rates, the commissioner shall consider costs borne by the managed care program to ensure actuarially sound and adequate rates of payment to ensure quality of care shall comply with all applicable laws and regulations, state and federal, including [~~regulations as to~~], but not limited to, those relating to wages, labor and actuarial soundness [~~for medicaid managed care~~]. For premiums effective on and after April first, two thousand twenty-four, the commissioner shall further consider increases to premiums to address cost and reimbursement adjustments required by the department's implementation of the amendments to article thirty-six of this chapter and section three hundred sixty-five-a of the social services law made by the chapter of the laws of two thousand twenty-three that amended this subdivision.

§ 7. The superintendent of financial services, in consultation with the commissioner of health, and representatives of state-licensed health insurers, home care service agencies and consumers (including family members of consumers), labor organizations representing home care service workers, and respective statewide associations or organizations, shall examine the terms of coverage for home care services as specified in articles 32 and 43 of the insurance law and, on or before December 1, 2024, report to the legislature and governor on the following:

a. The extent to which these coverage terms, including coverage exclusions as well as riders that permit the purchase of expanded coverage, are aligned with state of the art medical and health system practice for providing in-home care;

b. The extent to which state incentives for purchase of home care service coverage, including expanded coverage, may be cost-beneficial to recipients, to the health care system, and state medical assistance program specifically; and

c. Recommendations for modifications of articles 32 and 43 of the insurance law, and such other laws, including the public health law, workers' compensation law, social services law, mental hygiene law and

elder law, as would align the terms of home care coverage with state of the art medical and health system practices.

§ 8. This act shall take effect immediately; provided, however, that the amendments to subdivision 8 of section 4403-f of the public health law made by section six of this act shall be subject to the repeal of such section and shall be deemed repealed therewith.