STATE OF NEW YORK

6963--A

2023-2024 Regular Sessions

IN SENATE

May 16, 2023

Introduced by Sens. RIVERA, MAY, CLEARE, COMRIE, GONZALEZ, MAYER, PARKER, SALAZAR, SKOUFIS, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to regional minimum hourly base reimbursement rates for home care aides

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

Section 1. Section 3614-f of the public health law is amended by adding eight new subdivisions 5, 6, 7, 8, 9, 10, 11 and 12 to read as follows:

5. (a) By the first of October next succeeding the effective date of this subdivision, the commissioner shall establish a regional minimum hourly base reimbursement rate for all providers employing workers subject to the minimum wage provisions established in subdivision two of this section. The regional minimum hourly base reimbursement rate shall be based on regions established by the commissioner, provided that for areas subject to section thirty-six hundred fourteen-c of this article, each area with a different prevailing rate of total compensation, as defined in that section, shall be its own region.

(b) For the purposes of this section, "regional minimum hourly base reimbursement rate" means a reimbursement rate that reflects:

(1) a direct care related payment which shall reflect the total direct care related costs for home care aides and other direct care related staff necessary to comply with federal and state statutory and regulatory requirements for such providers, and which shall include:

A. base hourly wage guaranteed home care aides pursuant to subdivision two of this section;

B. overtime costs;

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

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C. employee benefits, including both paid time off and supplemental benefits or benefits as determined by collective bargaining agreements;
D. federal insurance contributions act;
E. Medicare;
F. federal unemployment tax act;
G. worker wage parity as provided by section thirty-six hundred fourteen-c of this article, as applicable;
H. other payroll taxes;
I. fair labor standards act compliance;
J. New York state labor law compliance;
K. COVID-19 sick pay;
L. state unemployment insurance;
M. disability insurance;
N. workers' compensation;
O. travel time and travel reimbursement;
P. the metropolitan transportation authority tax; and
Q. related increases tied to base wages;
(2) a component to reflect operational expenses necessary to comply with federal and state statutory and regulatory requirements for such providers, and which shall include:
A. operational supervision and support, including but not limited to nursing staff, home health aide supervision and team support; and
B. other operational support, including but not limited to quality assurance and improvement programs, education and recruitment; and
(3) a component to reflect administrative and general operating expenses which shall include rent and facilities management and business support, including but not limited to information technology, human resources, legal, compliance, finance, management, margin and communications.
(c) The regional minimum hourly base rate cannot be less than the most current average fee for service county rates for level two personal care service for each region as posted by the department for personal care agencies or other providers delivering like services through other Medicaid programs.
(d) Once a regional minimum hourly base reimbursement rate has been established under this section, the commissioner shall thereafter annually adjust the regional hourly base reimbursement rate for each region by a trend factor to reflect and accommodate any additional labor law increases, changes or mandates.
6. For mainstream managed care and fully capitated Medicaid managed care products for those dually eligible for both Medicaid and Medicare, the commissioner shall submit any and all necessary applications for approvals and/or waivers to the federal centers for Medicare and Medicaid services to secure approval to establish regional minimum hourly base reimbursement rates and make state-directed payments through to providers for the purposes of supporting wage increases.
(a) If approved by the federal centers for Medicare and Medicaid services, directed payments shall be made to such providers of Medicaid services through contracts with managed care organizations where applicable, provided that the commissioner ensures that such directed payments are in accordance with the terms of this section.
(b) If the state directed payment is not approved, the provisions of subdivision seven of this section shall apply.
7. For partially capitated managed long term care plans, or where state directed payments pursuant to subdivision six of this section have not been approved, the department shall require plans to justify

contracts offering deviations from the regional minimum hourly base reimbursement rates in a report to the department. This report shall be sent to the department, with a copy to the provider prior to the finalizing of any contract, unless otherwise permitted by this section, within five working days of the contract being offered to a provider with rate deviations. Any report shall include a rationale for paying below the regional minimum hourly base reimbursement rate, and the impacted provider shall have the opportunity to respond to the report within thirty days of filing with the department. The department shall compile such reports and publish and post a summary of them semi-annually.

8. The commissioner shall establish actuarially sound regional reimbursement rate ranges for Medicaid managed care organizations in order to comply with this section. These ranges will reflect managed care adjustments including but not limited to: (a) managed care plan variations in utilizations from the regional utilization average; (b) the impact of risk adjustment; and (c) premium withholds. Rate ranges shall also account for quality incentives, volume, costs associated with value-based arrangements, and reimbursement for individuals with hard to serve needs.

9. Nothing in this section shall preclude providers employing home health aides covered under this section or payers from paying or contracting for services at rates higher than the regional minimum hourly base reimbursement rate if the parties mutually agree to such terms. Notwithstanding subdivision seven of this section, plans and providers can also mutually agree to enter into value-based contracts at a rate less than the regional minimum hourly base reimbursement rate.

10. The commissioner shall amend the model managed care contracts to reflect the requirements of this section. In addition, the commissioner shall post the managed care, certified and licensed home care services agencies and fiscal intermediaries cost report data in a simple understandable manner on the department's website by the fifteenth of February second succeeding the effective date of this subdivision and annually thereafter.

11. The commissioner shall publish and post regional minimum hourly base reimbursement rates annually, and shall take all necessary steps to advise commercial and government programs payers of home care services of the regional minimum hourly base reimbursement rates.

12. To ensure compliance with minimum wage increases, the comptroller shall have the authority to review the contracts entered into between a managed care organization and a licensed home care services agency, fiscal intermediary, or any agency subject to the provisions of this section to ensure that rates being offered are adequate and meet the department's actuarial standards. The comptroller, in consultation with the Medicaid inspector general, shall develop and promulgate a process to ensure such audits comply with state and federal law to protect proprietary information and contracts. In the event that the comptroller finds evidence that managed care organizations are not paying sufficient adequate rates, they will refer such instances to the department and the Medicaid fraud control unit for enforcement. If the department or the Medicaid fraud control unit chooses not to pursue action related to this referral, it shall inform, in writing, the comptroller's office as to the reasoning. Such reports, and the department's responses, shall be public information and made available on the comptroller's website.

§ 2. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect

the validity or effectiveness of any other provision of this act, or any other application of any provision of this act which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 3. This act shall take effect immediately.