

# STATE OF NEW YORK

7335--A

2023-2024 Regular Sessions

## IN ASSEMBLY

May 17, 2023

Introduced by M. of A. PAULIN, REYES, WEPRIN, L. ROSENTHAL, SHRESTHA, DINOWITZ, EPSTEIN, HEVESI, SIMON, STECK, ZINERMAN, GONZALEZ-ROJAS, GUNTHER, KELLES, SAYEGH, COLTON, McDONALD, SIMONE, SANTABARBARA, RAGA, STIRPE, BRABENEC, LEVENBERG, BROOK-KRASNY, LUCAS -- read once and referred to the Committee on Health -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Ways and Means -- 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:

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

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

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

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

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

LBD10383-06-4

- 1 A. base hourly wage guaranteed home care aides pursuant to subdivi-
- 2 sion two of this section;
- 3 B. overtime costs;
- 4 C. employee benefits, including both paid time off and supplemental
- 5 benefits or benefits as determined by collective bargaining agreements;
- 6 D. federal insurance contributions act;
- 7 E. Medicare;
- 8 F. federal unemployment tax act;
- 9 G. worker wage parity as provided by section thirty-six hundred four-
- 10 teen-c of this article, as applicable;
- 11 H. other payroll taxes;
- 12 I. fair labor standards act compliance;
- 13 J. New York state labor law compliance;
- 14 K. COVID-19 sick pay;
- 15 L. state unemployment insurance;
- 16 M. disability insurance;
- 17 N. workers' compensation;
- 18 O. travel time and travel reimbursement;
- 19 P. the metropolitan transportation authority tax; and
- 20 Q. related increases tied to base wages;

21 (2) a component to reflect operational expenses necessary to comply  
 22 with federal and state statutory and regulatory requirements for such  
 23 providers, and which shall include:

- 24 A. operational supervision and support, including but not limited to
- 25 nursing staff, home health aide supervision and team support; and
- 26 B. other operational support, including but not limited to quality
- 27 assurance and improvement programs, education and recruitment; and

28 (3) a component to reflect administrative and general operating  
 29 expenses which shall include rent and facilities management and business  
 30 support, including but not limited to information technology, human  
 31 resources, legal, compliance, finance, management, margin and communi-  
 32 cations.

33 (c) The regional minimum hourly base rate cannot be less than the most  
 34 current average fee for service county rates for level two personal care  
 35 service for each region as posted by the department for personal care  
 36 agencies or other providers delivering like services through other Medi-  
 37 caid programs.

38 (d) Once a regional minimum hourly base reimbursement rate has  
 39 been established under this section, the commissioner shall thereaft-  
 40 er annually adjust the regional hourly base reimbursement rate for  
 41 each region by a trend factor to reflect and accommodate any additional  
 42 labor law increases, changes or mandates.

43 6. For mainstream managed care and fully capitated Medicaid managed  
 44 care products for those dually eligible for both Medicaid and Medicare,  
 45 the commissioner shall submit any and all necessary applications for  
 46 approvals and/or waivers to the federal centers for Medicare and Medi-  
 47 caid services to secure approval to establish regional minimum hourly  
 48 base reimbursement rates and make state-directed payments through to  
 49 providers for the purposes of supporting wage increases.

50 (a) If approved by the federal centers for Medicare and Medicaid  
 51 services, directed payments shall be made to such providers of Medi-  
 52 caid services through contracts with managed care organizations where  
 53 applicable, provided that the commissioner ensures that such directed  
 54 payments are in accordance with the terms of this section.

55 (b) If the state directed payment is not approved, the provisions of  
 56 subdivision seven of this section shall apply.

1 7. For partially capitated managed long term care plans, or where  
2 state directed payments pursuant to subdivision six of this section have  
3 not been approved, the department shall require plans to justify  
4 contracts offering deviations from the regional minimum hourly base  
5 reimbursement rates in a report to the department. This report shall be  
6 sent to the department, with a copy to the provider prior to the final-  
7 izing of any contract, unless otherwise permitted by this section, with-  
8 in five working days of the contract being offered to a provider with  
9 rate deviations. Any report shall include a rationale for paying below  
10 the regional minimum hourly base reimbursement rate, and the impacted  
11 provider shall have the opportunity to respond to the report within  
12 thirty days of filing with the department. The department shall compile  
13 such reports and publish and post a summary of them semi-annually.

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

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

30 10. The commissioner shall amend the model managed care contracts to  
31 reflect the requirements of this section. In addition, the commissioner  
32 shall post the managed care, certified and licensed home care services  
33 agencies and fiscal intermediaries cost report data in a simple under-  
34 standable manner on the department's website by the fifteenth of Febru-  
35 ary second succeeding the effective date of this subdivision and annual-  
36 ly thereafter.

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

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

1 § 2. Severability. If any provision of this act, or any application of  
2 any provision of this act, is held to be invalid, or to violate or be  
3 inconsistent with any federal law or regulation, that shall not affect  
4 the validity or effectiveness of any other provision of this act, or any  
5 other application of any provision of this act which can be given effect  
6 without that provision or application; and to that end, the provisions  
7 and applications of this act are severable.

8 § 3. This act shall take effect immediately.