STATE OF NEW YORK

3193--B

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sens. MANNION, HINCHEY, KENNEDY, LANZA, PALUMBO -- read twice and ordered printed, and when printed to be committed to the Committee on Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Disabilities 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 mental hygiene law, in relation to reimbursement for residential habilitation services

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

Section 1. Paragraph (ii) of subdivision (c) of section 43.02 of the mental hygiene law, as amended by section 3 of part OO of chapter 58 of the laws of 2015, is amended and a new subdivision (d) is added to read as follows:

(ii) methodologies used in the establishment of the schedules of rates or fees pursuant to this section provided, however, that **in accordance with subdivision (d) of this section,** the commissioner of health shall adopt rules and regulations including methodologies developed by [~~him or her~~] **such commissioner** for services provided by any facility or program licensed, operated or approved by the office for people with developmental disabilities; provided, however, that such rules and regulations shall be subject to the approval of the office for people with developmental disabilities and shall take into account the policies and goals of such office.

(d) (i) For purposes of this subdivision, the following terms shall have the following meanings:

(1) "Retainer days" are days of medical leave or an associated day where any other institutional or in-patient medical payment is made for providing residential habilitation services to a person eligible for

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

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medical assistance pursuant to title eleven of article five of the social services law.

(2) "Service days" are days when residential habilitation services are provided in a community residence under the home and community-based waiver operated by the office for people with developmental disabilities and pursuant to regulations promulgated by the commissioner of the office for people with developmental disabilities to a person who is either present in the community residence or is absent from the community residence and residential habilitation services are performed by staff. Such services shall include habilitation services, protective oversight services, supervision services, nursing supervision of direct care staff and coordination of a person's health care needs, the coordination of necessary medical appointments, follow-up reports from medical appointments, follow-up and interface with hospital staff regarding emergency room visits and other hospitalizations, services and supplies related to program-related transportation, nutrition services directly related to habilitation services and psychology services that support a person's need for behavioral supports in a service setting.

(3) "Therapy days" are days when a person eligible for medical assistance pursuant to title eleven of article five of the social services law is away from a supervised community residence and is not otherwise receiving services from paid residential habilitation staff and the absence is for the purpose of visiting with family or friends, or a vacation. The therapy day must be described in the person's plan of care to be eligible for payment and the person may not receive another Medicaid-funded residential or in-patient service on that day.

(4) "Occupancy adjustment" is an adjustment to the calculated daily rate of an agency which provides residential habilitation services in a supervised community residence to account for vacancy days.

(5) "Vacancy days" are days for which the provider is unable to bill for Medicaid due to a person residing in a community residence having moved from one residential site to another, or due to the death of the individual.

(ii) Notwithstanding any inconsistent provision of this section, or any other law or regulation to the contrary and subject to the availability of federal financial participation, for any reimbursement for residential habilitation services provided in a supervised community residence according to a daily unit of service as promulgated by the commissioner of health:

(1) retainer days shall be reimbursed at one hundred percent the daily rate as determined pursuant to regulations promulgated by the commissioner of health, provided, however a provider is limited to being paid fourteen retainer days per rate year, multiplied by certified capacity;

(2) therapy days shall be reimbursed at one hundred percent the daily rate as determined pursuant to regulations promulgated by the commissioner of health, provided, however, a provider is limited to being paid ninety-six therapy days per rate year per person; and

(3) for the rate periods beginning July first, two thousand twenty-two, providers shall receive an occupancy adjustment to the operating component of their rate, as the operating component of their rate is determined pursuant to regulations promulgated by the commissioner of health, for vacancy days. The occupancy adjustment percentage shall be calculated by dividing the sum of a provider's rate period reported retainer days, service days and therapy days by one hundred percent of the provider's certified capacity. The certified capacity of the provider is calculated by taking into account capacity changes throughout the

year, multiplied by one hundred percent of the year's days. The adjustment will begin on July first, two thousand twenty-two and shall be recalculated on an annual basis based on the most current and complete twelve months of experience. The occupancy adjustment will be the lower of the provider's actual occupancy adjustment percentage or five percent.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2025.