§ 3614-a. Home care provider assessments. 1. Certified home health agencies and providers of long term home health care programs are charged assessments on their gross receipts received from all patient care services and other operating income on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. Such assessments shall be submitted by or on behalf of certified home health agencies or providers of long term home health care programs to the commissioner or his designee.

2. (a) (i) For certified home health agencies the assessment shall be six-tenths of one percent of each certified home health agency's gross receipts received from all patient care services and other operating income on a cash basis beginning January first, nineteen hundred ninety-one for home care services; provided, however, that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be two-tenths of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(ii) For certified home health agencies there shall be an additional assessment which shall be three-tenths of one percent of each certified home health agency's gross receipts received from all patient care services and other operating income on a cash basis. The assessment year shall be April first, nineteen hundred ninety-two to March thirty-first, nineteen hundred ninety-three. The agencies shall file the assessment return with any balance due or any refund claimed by May first, nineteen hundred ninety-three. The agencies shall make estimated payments on a monthly basis starting August fifteenth, nineteen hundred ninety-two and continuing on the fifteenth of each month through March fifteenth, nineteen hundred ninety-three. Each estimated payment shall equal one-eighth of the total estimated for the assessment year. If the total of estimated payments is less than ninety-five percent of the actual payment due, the agency shall pay a penalty of fifteen percent of the difference due for each month in addition to the amount due.

(iii) For certified home health agencies, an additional assessment shall be three-tenths of one percent of each certified home health agency's gross receipts received from all patient care services and

other operating income on a cash basis during the period April first, nineteen hundred ninety-three through June thirtieth, nineteen hundred ninety-four for home care services.

(b) (i) For providers of long term home health care programs the assessment shall be six-tenths of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis beginning January first, nineteen hundred ninety-one for long term home health care services; provided, however, that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be two-tenths of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(ii) For providers of long term home health programs there shall be an additional assessment which shall be three-tenths of one percent of each provider of long term home health care's gross receipts received from all patient care services and other operating income on a cash basis. The assessment year shall be April first, nineteen hundred ninety-two to March thirty-first, nineteen hundred ninety-three. The providers shall file the assessment return with any balance due or any refund claimed by May first, nineteen hundred ninety-three. The providers shall make estimated payments on a monthly basis starting August fifteenth, nineteen hundred ninety-two and continuing on the fifteenth of each month through March fifteenth, nineteen hundred ninety-three. Each estimated payment shall equal one-eighth of the total estimated for the assessment year. If the total of estimated payments is less than ninety-five percent of the actual payment due, the provider shall pay a penalty of fifteen percent of the difference due for each month in addition to the amount due.

(iii) For providers of long term home health care programs, an additional assessment shall be three tenths of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis during the period April first, nineteen hundred ninety-three through June thirtieth nineteenth hundred ninety-four for long term home health care services.

(c) Notwithstanding any contrary provisions of this section or any other contrary provision of law or regulation, for certified home health

agencies and for providers of long term home health care programs the assessment shall be thirty-five hundredths of one percent of each agency's or provider's gross receipts received from all home health care services and other operating income on a cash basis for periods on and after April first, two thousand nine.

3. Gross receipts received from all patient care services and other operating income for purposes of the assessments pursuant to this section shall include, but not be limited to:

(a) for certified home health agencies, all monies received for or on account of home care services, including personal care services, excluding subject to the provisions of subdivision twelve of this section the component of rates of payment related to the allowance provided in accordance with subdivision five of section thirty-six hundred fourteen of this article;

(b) for providers of long term home health care programs, all monies received for or on account of long term home health care services, including personal care services;

(c) provided, however, that subject to the provisions of subdivision twelve of this section income received from grants, charitable contributions, donations and bequests and governmental deficit financing shall not be included.

4. The commissioner is authorized to contract with the article forty-three insurance law plans, or such other administrators as the commissioner shall designate, to receive and distribute home care provider assessment funds and personal care services provider assessment funds assessed pursuant to section three hundred sixty-seven-i of the social services law. In the event contracts with the article forty-three insurance law plans or other commissioner's designees are effectuated, the commissioner shall conduct annual audits of the receipt and distribution of the assessment funds. The reasonable costs and expenses of an administrator as approved by the commissioner, not to exceed for personnel services on an annual basis two hundred thousand dollars for all assessments established pursuant to this section and the personal care services provider assessment established pursuant to section three hundred sixty-seven-i of the social services law, shall be paid from the

assessment funds.

5. Estimated payments by or on behalf of certified home health agencies and providers of long term home health care programs to the commissioner or his designee of funds due from the assessments pursuant to subdivision two of this section shall be made on a monthly basis. Estimated payments shall be due on or before the fifteenth day following the end of a calendar month to which an assessment applies.

6. (a) If an estimated payment made for a month to which an assessment applies is less than seventy percent of an amount the commissioner determines is due, based on evidence of prior period moneys received by a certified home health agency or provider of a long term home health care program or evidence of moneys received by such entity for that month, the commissioner may estimate the amount due from such entity and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for a month to which an assessment applies is less than ninety percent of an amount the commissioner determines is due, based on evidence of prior period moneys received by a certified home health agency or provider of a long term home health care program or evidence of moneys received by such certified home health agency or provider of a long term home health care program for that month, and at least two previous estimated payments within the preceding six months were less than ninety percent of the amount due, based on similar evidence, the commissioner may estimate the amount due from such entity and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of an entity's deficiency under this section, the comptroller or a fiscal intermediary designated by the director of the budget, or the commissioner of social services, or a corporation organized and operating in accordance with article forty-three of the insurance law, or an organization operating in accordance with article forty-four of this chapter shall withhold from the amount of any payment to be made by the state or by such article forty-three corporation or article forty-four organization to the entity the amount of the deficiency determined under paragraph (a)

or (b) of this subdivision or paragraph (e) of subdivision seven of this section. Upon withholding such amount, the comptroller or a designated fiscal intermediary, or the commissioner of social services, or corporation organized and operating in accordance with article forty-three of the insurance law or organization operating in accordance with article forty-four of this chapter shall pay the commissioner, or his designee, such amount withheld on behalf of the entity.

(d) The commissioner shall provide an entity with notice of any estimate of an amount due for an assessment pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section at least three days prior to collection of such amount by the commissioner. Such notice shall contain the financial basis for the commissioner's estimate.

(e) In the event the certified home health agency or provider of a long term home health care program objects to an estimate by the commissioner pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section of the amount due for an assessment, the entity, within sixty days of notice of an amount due, may request a public hearing. If a hearing is requested, the commissioner shall provide the entity an opportunity to be heard and to present evidence bearing on the amount due for an assessment within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later. An administrative hearing is not a prerequisite to seeking judicial relief.

(f) The commissioner may direct that a hearing be held without any request by the entity.

7. (a) Every certified home health agency or provider of a long term home health care program shall submit reports on a cash basis of actual gross receipts received from all patient care services and operating income for each month as follows:

(i) for the period January first, nineteen hundred ninety-one through January thirty-first, nineteen hundred ninety-one, the report shall be filed on or before March fifteenth, nineteen hundred ninety-one; and

(ii) for the quarter year ending March thirty-first, nineteen hundred ninety-one and for each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of such quarter.

(b) Every certified home health agency or provider of a long term home health care program shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all patient care services and operating income.

(c) The reports shall be in such form as may be prescribed by the commissioner to accurately disclose information required to implement this section.

(d) Final payments shall be due for all certified home health agencies or providers of long term home health care programs for assessments pursuant to subdivision two of this section upon the due date for submission of the applicable quarterly report.

(e) The commissioner may recoup deficiencies in final payments pursuant to paragraph (c) of subdivision six of this section.

8. (a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus four percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(b) If an estimated payment made for a month to which an assessment applies is less than seventy percent of the actual amount due for such month, a penalty shall be due and payable to the commissioner of five percent of the difference between the amount paid and the amount due for such month when the failure to pay is for a duration of not more than one month after the due date of the payment with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. A penalty may be collected by the commissioner pursuant to paragraph (c)

of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(c) Overpayment by a certified home health agency or provider of a long term home health care program of an estimated payment shall be applied to any other payment due from the entity pursuant to this section, or, if no payment is due, at the election of the entity shall be applied to future estimated payments or refunded to the entity. Interest shall be paid on overpayments from the date of overpayment to the date of crediting or refund at the rate determined in accordance with paragraph (a) of this subdivision if the overpayment was made at the direction of the commissioner. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

9. Funds accumulated, including income from invested funds, from the assessments specified in this section, including interest and penalties, shall be deposited by the commissioner and credited to the general fund.

10. Notwithstanding any inconsistent provision of law or regulation to the contrary, the assessments pursuant to this section shall not be an allowable cost in the determination of reimbursement rates pursuant to this article.

11. (c) The assessment shall not be collected in excess of twenty million four hundred thousand dollars from certified home health agencies and long term home health care programs pursuant to subdivision two of this section, licensed home care services agencies pursuant to subdivision two of section thirty-six hundred fourteen-b of this article and personal care services providers pursuant to subdivision two of section three hundred sixty-seven-i of the social services law for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected in excess of twenty million four hundred thousand dollars for the period April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded by the commissioner based on the ratio which a certified home health agency's, long term home health care program's, licensed home care services agency's or personal care services provider's assessment

for such period bears to the total of the assessments for such period paid by such providers of services.

12. Each exclusion of sources of gross receipts received from the assessments effective on or after April first, nineteen hundred ninety-two established pursuant to this section shall be contingent upon either: (a) qualification of the assessments for waiver pursuant to federal law and regulation; or (b) consistent with federal law and regulation, not requiring a waiver by the secretary of the department of health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of the revenues received by the state pursuant to the assessments not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner shall collect the assessments relying on such exclusions, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, the exclusion shall be deemed to have been null and void as of April first, nineteen hundred ninety-two, and the commissioner shall collect any retroactive amount due as a result, without interest or penalty provided the certified home health agency or provider of a long term home health care program pays the retroactive amount due within ninety days of notice from the commissioner of health to the provider of services that an exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner to the provider of services.