§ 3614-b. Licensed home care services agencies assessments. 1. Licensed home care services agencies are charged assessments, subject to the provisions of subdivision thirteen of this section, 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 licensed home care services agencies to the commissioner or his designee.

2. (a) The assessment shall be six-tenths of one percent of such licensed home care services agency's gross receipts received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-two; 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.

(b) Notwithstanding any contrary provisions of this section or any other contrary provision of law or regulation, the assessment shall be thirty-five hundredths of one percent of each such licensed home care services agency's gross receipts received from all personal 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 assessment pursuant to this section shall include, but not be limited to, all moneys received for or on account of home care services provided pursuant to a license issued by the commissioner in accordance with the provisions of section thirty-six hundred five of this article, provided, however, subject to the provisions of subdivision twelve of this section that income received from grants, charitable contributions, donations and bequests and governmental deficit financing shall not be included, and further, that moneys received on which an assessment is paid by a hospital pursuant to section twenty-eight hundred seven-d of this chapter, home care provider pursuant to section thirty-six hundred fourteen-a of this article,

personal care services provider pursuant to section three hundred sixty-seven-i of the social services law or provider of services pursuant to section 43.04 or 43.06 of the mental hygiene law shall not be included.

4. The commissioner is authorized to contract with the article forty-three insurance law plans, or if not available such other administrators as the commissioner shall designate, to receive and distribute licensed home care services agency assessment funds. 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, shall be paid from the assessment funds.

5. Estimated payments by or on behalf of licensed home care services agencies to the commissioner or his or her 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 the 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 moneys received by a licensed home care services agency or evidence of moneys received by such agency for that month, the commissioner may estimate the amount due from such agency and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for the 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 licensed home care services agency or evidence of moneys received by such agency 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 agency and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of a licensed home care services agency'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 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 agency 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 article forty-four of this chapter shall pay the commissioner, or his designee, such amount withheld on behalf of the licensed home care services agency.

(d) The commissioner shall provide a licensed home care services agency 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 a licensed home care services agency 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 agency, within sixty days of notice of an amount due, may request a public hearing. If a hearing is requested, the commissioner shall provide the licensed home care services agency with 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 an agency.

7. (a) Every licensed home care services agency shall submit reports on a cash basis of actual gross receipts received from all patient care services and other operating income for each month as follows: for the quarter year ending June thirtieth, nineteen hundred ninety-two and for each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of such period.

(b) Every licensed home care services agency shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all patient care services and other 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 licensed home care services agencies for the 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 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 the 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 underpayment 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 for such 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 licensed home care services agency of an estimated payment shall be applied to any other payment due from the agency pursuant to this section, or, if no payment is due, at the election of the agency shall be applied to future estimated payments or refunded to the agency. 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 or fees pursuant to this chapter or the social services law.

11. The aggregate limit on the assessment for certified home health agencies, long term home health care programs, licensed home care services agencies and personal care services providers established pursuant to paragraph (c) of subdivision eleven of section thirty-six hundred fourteen-a of this article for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be deemed to reflect the amount of one million three hundred thousand dollars for the assessment pursuant to subdivision two of this section for such period. In the event, in accordance with subdivision thirteen of this section, the assessments

pursuant to subdivision two of this section are not implemented, such aggregate limit shall be reduced by one million three hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight.

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 that the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, then 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 licensed home care services agency pays the retroactive amount due within ninety days of notice from the commissioner to the agency 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 agency.

13. This section shall be of no force and effect upon either: (a) a waiver is granted pursuant to federal law and regulation; or (b) consistent with federal law and regulation, a waiver is not required by the secretary of the department of health and human services for the exclusion of the home care services agencies assessed pursuant to this section from such assessment; in order for the assessments pursuant to section thirty-six hundred fourteen-a of this article and section three

hundred sixty-seven-i of the social services law to be qualified as a broad-based health care related tax for purposes of the revenues received by the state pursuant to section thirty-six hundred fourteen-a of this article and section three hundred sixty-seven-i of the social services law not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner shall not collect the assessments under this section, 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 pursuant to section thirty-six hundred fourteen-a of this chapter or section three hundred sixty-seven-i of the social services law do not so qualify based on the exclusion of licensed home care services agencies from assessments, then 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 licensed home care services agency pays the retroactive amount due within ninety days of notice from the commissioner to the agency that the 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 agency.