FY 2024 Executive Budget Amendments

Amendments to Senate S.4007; Assembly A.3007
(Health and Mental Hygiene Article VII Bill)

Part B, relating to the extension of various Medicaid and Public Health provisions and programs, is amended to:

- Make a technical amendment to the extend the effective date relating to hospital trend factors.

Part H, relating to the Basic Health Plan Program for New York State, is amended to:

- Make technical amendments to include the currently eligible Aliessa population under the 1332 waiver for the Basic Health Plan.

Part I, relating to long term care program (Managed Long Term Care) reforms, is amended to:

- Makes technical amendments to clarify the criteria for eligible MLTC plans.

Part J, relating to Managed Care reforms, is amended to:

- Include rural emergency hospitals within the definition of the term "hospital".

Part R, relating to Medicaid coverage of preventative health care services, is amended to:

- Clarify coverage for arthritis self-management training services.

- Require services to be ordered by a licensed health care professional who is affiliated with an organization delivering the program under Self-Management Resource Center licensure, or a successor national organization.

reimbursement and welfare reform, as amended by section 3 of part S of chapter 57 of the laws of 2021, is amended to read as follows:

5-a. Section sixty-four-a of this act shall be deemed to have been in full force and effect on and after April 1, 1995 through March 31, 1999 and on and after July 1, 1999 through March 31, 2000 and on and after April 1, 2000 through March 31, 2003 and on and after April 1, 2003 through March 31, 2007, and on and after April 1, 2007 through March 31, 2009, and on and after April 1, 2009 through March 31, 2011, and on and after April 1, 2011 through March 31, 2013, and on and after April 1, 2013 through March 31, 2015, and on and after April 1, 2015 through March 31, 2017 and on and after April 1, 2017 through March 31, 2019, and on and after April 1, 2019 through March 31, 2021, and on and after April 1, 2021 through March 31, 2023, and on and after April 1, 2023 through March 31, 2027;

§ 31. Section 64-b of chapter 81 of the laws of 1995, amending the public health law and other laws relating to medical reimbursement and welfare reform, as amended by section 4 of part S of chapter 57 of the laws of 2021, is amended to read as follows:

§ 64-b. Notwithstanding any inconsistent provision of law, the provisions of subdivision 7 of section 3614 of the public health law, as amended, shall remain and be in full force and effect on April 1, 1995 through March 31, 1999 and on July 1, 1999 through March 31, 2000 and on and after April 1, 2000 through March 31, 2003 and on and after April 1, 2003 through March 31, 2007, and on and after April 1, 2007 through March 31, 2009, and on and after April 1, 2009 through March 31, 2011, and on and after April 1, 2011 through March 31, 2013, and on and after April 1, 2013 through March 31, 2015, and on and after April 1, 2015 through March 31, 2017 and on and after April 1, 2017 through March 31, 2019, and on and after April 1, 2019 through March 31, 2021, and on and after April 1, 2021 through March 31, 2023, and on and after April 1, 2023 through March 31, 2027.

§ 32. Section 4-a of part A of chapter 56 of the laws of 2013, amending chapter 59 of the laws of 2011 amending the public health law and other laws relating to general hospital reimbursement for annual rates, as amended by section 5 of part S of chapter 57 of the laws of 2021, is amended to read as follows:

§ 4-a. Notwithstanding paragraph (c) of subdivision 10 of section 2807-c of the public health law, section 21 of chapter 1 of the laws of 1999, or any other contrary provision of law, in determining rates of payments by state governmental agencies effective for services provided on and after January 1, 2017 through March 31, [2023] ~~2024~~2025, for inpatient and outpatient services provided by general hospitals, for inpatient services and adult day health care outpatient services provided by residential health care facilities pursuant to article 28 of the public health law, except for residential health care facilities or units of such facilities providing services primarily to children under twenty-one years of age, for home health care services provided pursuant to article 36 of the public health law by certified home health agencies, long term home health care programs and AIDS home care programs, and for personal care services provided pursuant to section 365-a of the social services law, the commissioner of health shall apply no greater than zero trend factors attributable to the 2017, 2018, 2019, 2020, 2021, 2022 [and], 2023, 2024 and 2025 calendar years in accordance with paragraph (c) of subdivision 10 of section 2807-c of the public health law, provided, however, that such no greater than zero trend factors attributable to such 2017, 2018, 2019, 2020, 2021, 2022 [and], 2023, 2024 and

enrollment and premiums; its impact on the number of uninsured individuals in the state; its impact on the Medicaid global cap; and the demographics of the 1332 state innovation program enrollees including age and immigration status.

10. Severability. If the secretary of health and human services or the secretary of the treasury do not approve any provision of the application for a state innovation waiver, such decision shall in no way affect or impair any other provisions that the secretaries may approve under this section.

§ 4. The state finance law is amended by adding a new section 98-d to read as follows:

§ 98-d. 1332 state innovation program fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "1332 state innovation program fund".

2. Such fund shall be kept separate and shall not be commingled with any other funds in the custody of the state comptroller and the commissioner of taxation and finance.

3. Such fund shall consist of moneys transferred from the federal government pursuant to 42 U.S.C. 18052 and an approved 1332 state innovation program waiver application for the purpose implementing the state plan under the 1332 state innovation program, established pursuant to section three hundred sixty-nine-ii of the social services law.

4. Upon federal approval, all moneys in such fund shall be used to implement and operate the 1332 state innovation program, pursuant to section three hundred sixty-nine-ii of the social services law, except to the extent that the provisions of such section conflict or are inconsistent with federal law, in which case the provisions of such federal law shall supersede such state law provisions.

§ 5. Subparagraph (1) of paragraph (g) of subdivision 1of section 366 of the social services law, as amended by section 43 of Part B of chapter 57 of the laws of 2015, is amended to read as follows:

(1) Applicants and recipients who are lawfully admitted for permanent residence, or who are permanently residing in the United States under color of law, or who are non-citizens in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15); who are MAGI eligible pursuant to paragraph (b) of this subdivision; and who would be ineligible for medical assistance coverage under subdivisions one and two of section three hundred sixty-five-a of this title solely due to their immigration status if the provisions of section one hundred twenty-two of this chapter were applied, shall only be eligible for assistance under this title if enrolled in a standard health plan offered by a basic health program established purusant to section three hundred sixty-nine-gg of this article or a standard health plan offered by a 1332 state innovation program established pursuant to section three hundred sixty-nine-ii of this article if such program is established and operating.

§ 6~~5~~. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 7~~6~~. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after January 1, 2023; provided that section three of this act shall be contingent upon the commissioner of health obtaining and maintaining all necessary approvals from the secretary of health and human services and the secretary of the

treasury based on an application for a waiver for state innovation pursuant to section 1332 of the patient protection and affordable care act (P.L. 111-148) and subdivision 25 of section 268-c of the public health law. The department of health shall notify the legislative bill drafting commission upon the occurrence of approval of the waiver program in order that the commission may maintain an accurate and timely data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

PART I

PART R

Section 1. Subdivision 2 of section 365-a of the social services law is amended by adding two new paragraphs (kk) and (ll) to read as follows:

(kk) care and services of nutritionists and dietitians certified pursuant to article one hundred fifty-seven of the education law acting within their scope of practice.

(ll) ~~arthritis self-management training services~~Chronic Disease Self-Management Program for persons diagnosed with ~~osteoarthritis~~ arthritis when such services are ordered by a physician, registered physician's assistant, registered nurse practitioner, or licensed midwife and provided by qualified educators, as determined by the commissioner of health, who is affiliated with an organization delivering the program under Self-Management Resource Center licensure, or a successor national organization provided, however, that the provisions of this paragraph shall not apply unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this paragraph. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

§ 2. Clause (A) of subparagraph (ii) of paragraph (f) of subdivision 2-a of section 2807 of the public health law, as amended by section 43 of part B of chapter 58 of the laws of 2010, is amended to read as follows:

(A) services provided in accordance with the provisions of paragraphs (q) [and], (r), and (ll) of subdivision two of section three hundred sixty-five-a of the social services law; and

§ 3. This act shall take effect July 1, 2023; provided, however, that paragraph (ll) of subdivision 2 of section 365-a of the social services law added by section one of this act and section two of this act, shall take effect October 1, 2023.

PART S

Section 1. Subdivision 1 of section 3001 of the public health law, as amended by chapter 804 of the laws of 1992, is amended to read as follows:

1. "Emergency medical service" means [initial emergency medical assistance including, but not limited to, the treatment of trauma, burns, respiratory, circulatory and obstetrical emergencies] a coordinated system of healthcare delivery that responds to the needs of sick and injured adults and children, by providing: essential care at the scene of an emergency, non-emergency, specialty need or public event; community education and prevention programs; mobile integrated healthcare programs; ground and air ambulance services; centralized access and emergency medical dispatch; training for emergency medical services practitioners; medical first response; mobile trauma care systems; mass casualty management; medical direction; or quality control and system evaluation procedures.

§ 2. Section 3002 of the public health law is amended by adding a new subdivision 1-a to read as follows:

1-a. The state emergency medical services council shall advise and assist the commissioner on such issues as the commissioner may require related to the provision of emergency medical service, specialty care, designated facility care, and disaster medical care. This shall include, but shall not be limited to, the recommendation, periodic

§ 5. Section 4403-f of the public health law is amended by adding a new subdivision 6-a to read as follows:

6-a. Performance standards and procurement. (a) On or before October first, two thousand twenty-four, each managed long term care plan that has been issued a certificate of authority pursuant to this section shall have demonstrated experience operating a managed long term care plan that continuously enrolled no fewer than twenty thousand enrollees ~~and/or demonstrated experience operating~~,or a Medicare Dual Eligible Special Needs Plan~~,~~ that has continuously enrolled no fewer than five thousand residents of this state in the immediately preceding calendar year, or an integrated Medicaid product offered by the department~~,~~ that has continuously enrolled no fewer than five thousand residents of this state in the immediately preceding calendar year. In addition, a managed long term care plan shall sufficiently demonstrate, in the sole discretion of the commissioner, success in the following performance categories:

(i) in addition to meeting the requirements of paragraph (j) of subdivision seven of this section, commitment to contracting with the minimum number of licensed home care service agencies needed to provide necessary personal care services to the greatest practicable number of enrollees, and with the minimum number of fiscal intermediaries needed to provide necessary consumer directed personal assistance services to the greatest practicable number of enrollees in accordance with section three hundred sixty-five-f of the social services law;

(ii) readiness to timely implement and adhere to maximum wait time criteria for key categories of service in accordance with laws, rules and regulations of the department or the center for medicare and medicaid services;

(iii) implementation of a community reinvestment plan that has been approved by the department and commits a percentage of the managed long term care plan's surplus to health related social needs and advancing health equity in the managed long term care plan's service area;

(iv) commitment to quality improvement;

(v) accessibility and geographic distribution of network providers, taking into account the needs of persons with disabilities and the differences between rural, suburban, and urban settings;

(vi) demonstrated cultural and language competencies specific to the population of participants;

(vii) breadth of service area across multiple regions;

(viii) ability to serve enrollees across the continuum of care, as demonstrated by the type and number of products the managed long term care operates or has applied to operate, including integrated care for participants who are dually eligible for medicaid and medicare, and those operated under title one-A of article twenty-five of this chapter and section three hundred sixty-nine-gg of the social services law;

(ix) value based care readiness and experience; and

(x) such other criteria as deemed appropriate by the commissioner.

(b) (i) Notwithstanding the provisions of paragraph (a) of this subdivision, if no sooner than October first, two thousand twenty-four the commissioner has determined, in their sole discretion, that an insufficient number of managed long term care plans have met the performance standards set forth in paragraph (a) of this subdivision, each managed long term care plan that has been issued a certificate of authority to cover a population of enrollees eligible for services under title XIX of the federal social security act shall be required to submit an application for continuance of its certification of authority to operate as a managed long term care plan under this section, and shall be subject to selection through a competitive bid process based on proposals submitted

ration may refer the claim to a mutually agreed upon independent third-party review agent within five business days from the end of the ninety-day period, for a determination. The determination of the independent third-party review agent shall be binding.

(B) The hospital and the insurer or organization or corporation shall designate one or more mutually agreed upon independent third-party review agents in the participating provider agreement. If the hospital and the insurer or organization or corporation are unable to reach agreement in the participating provider agreement on one or more independent third-party review agents, then the insurer or organization or corporation may select an independent third-party review agent that has been certified by the superintendent as an external appeal agent pursuant to article forty-nine of this chapter or as an independent dispute resolution entity pursuant to article six of the financial services law. If the independent third-party review agent determines that the services provided were not medically necessary, in whole or in part, the insurer or corporation or organization may recoup, offset, or otherwise require the hospital to refund any overpayment resulting from its determination consistent with subsection (b) of section three thousand two hundred twenty-four-b of this article within thirty days. The insurer or organization or corporation shall provide written notification to the hospital of such recoup or offset, which shall include: (i) the claim number; (ii) the amount of the overpayment; and (iii) the date of the joint committee determination.

(C) During the entirety of the review process, the hospital shall pend the imposition of any copayment, coinsurance or deductible until such time as there is a final determination as to whether the services in question were medically necessary. The hospital may thereafter bill the insured for the amount of the copayment, coinsurance or deductible for services determined to be medically necessary and shall hold the insured harmless for any other amounts, including amounts for services determined to be not medically necessary.

(4) Nothing in this subsection shall in any way be deemed to limit the ability of insurers or organizations or corporations and hospitals to agree to establish parameters for referral or review of medical records, including while the insured is in the hospital, or for insurers or organizations or corporations to require preauthorization for services that are not emergency services.

(5) For purposes of this subsection, "hospital" shall mean a general hospital as defined in section two thousand eight hundred one of the public health law and rural emergency hospitals as defined by 42 USC 1395x(kkk).

(6) Nothing in this subsection shall preclude an insurer or organization or corporation and a hospital from agreeing to other dispute resolution mechanisms, provided that the parties may not negotiate away the requirement that the insurer or organization or corporation pay the claim as billed by the hospital prior to reviewing such claim for medical necessity. When a hospital and an insurer or organization or corporation are parties to a participating provider agreement applicable to the inpatient hospital admission being reviewed by the joint committee, the definition of medical necessity set forth in such participating provider agreement shall apply for purposes of joint committee and independent third-party review.

§ 2. Subsection (b) of section 3224-a of the insurance law, as amended by chapter 694 of the laws of 2021, is amended to read as follows:

(b) In a case where the obligation of an insurer or an organization or corporation licensed or certified pursuant to article forty-three or