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H.386

Introduced by Representatives Keenan of St. Albans City, Dakin of
Colchester, Fagan of Rutland City, Hooper of Montpelier,
Juskiewicz of Cambridge, Lanpher of Vergennes, Rosenquist of
Georgia, and Yacovone of Morristown

Referred to Committee on

Date:

Subject: Taxation; health; Medicaid; provider taxes; home health agencies

Statement of purpose of bill as introduced: This bill proposes to revise the
home health agency provider tax base, establish a cap on total home health
agency provider tax revenues, and create an annual inflationary increase for
home health agency Medicaid rates.

An act relating to home health agency provider taxes

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 33 V.S.A. § 900 is amended to read:~~

~~§ 900. DEFINITIONS~~

~~Unless otherwise required by the context, the words and phrases in this
chapter shall be defined as follows As used in this chapter.~~

1 ~~(7) "Home health agency" means an entity that has received a certificate~~
2 ~~of need from the State to provide home health services and is certified to~~
3 ~~provide services pursuant to 42 U.S.C. § 1395x(o).~~

4 Sec. 2. 33 V.S.A. § 904 is amended to read:

5 § 904. RATE SETTING

6 (a) The Director shall establish by rule procedures for determining
7 payment rates for care of State-assisted persons to nursing homes and to such
8 other providers as the Secretary shall direct, as well as for inflationary rate
9 increases to home health agencies. The Secretary shall have the authority to
10 establish rates that the Secretary deems sufficient to ensure that the quality
11 standards prescribed by section 7117 of this title are maintained, subject to the
12 provisions of section 906 of this title. Beginning in State fiscal year 2003, the
13 Medicaid budget for care of State-assisted persons in nursing homes shall
14 employ an annual inflation factor which is reasonable and which adequately
15 reflects economic conditions, in accordance with the provisions of Section 5.8
16 of the ~~regulations promulgated~~ rules adopted by the Division of Rate Setting
17 ("Methods, Standards, and Principles for Establishing Medicaid Payment
18 Rates for Long-Term Care Facilities").

19 (b) No payment shall be made to any nursing home, on account of any
20 State-assisted person, unless the nursing home is certified to participate in the
21 ~~State/federal medical assistance program and has in effect a provider~~

1 ~~agreement.~~

2 Sec. 3. 33 V.S.A. § 911 is added to read:

3 § 911. INFLATION FACTOR FOR HOME HEALTH AGENCIES

4 The rates for home health agencies shall be increased by an annual inflation
5 factor commensurate with the average statewide inflation factor applicable to
6 all nursing homes pursuant to this chapter. The Division shall calculate the
7 aggregate inflation factor applicable to nursing homes annually according to
8 the procedure adopted by rule and shall report it to the Department of Vermont
9 Health Access for application to home health agency rates beginning on July 1.

10 Sec. 4. 33 V.S.A. § 1951 is amended to read:

11 § 1951. DEFINITIONS

12 As used in this subchapter:

13 (1) "Assessment" means a tax levied on a health care
14 provider pursuant to this chapter.

15 (2)(A) "Core home health care and hospice services" means:

16 (i) those medically necessary skilled nursing, home health aide,
17 therapeutic, and personal care attendant services, provided exclusively in the
18 home by home health agencies. Core home health services do not include
19 private duty nursing, hospice, homemaker, or physician services, or services
20 provided under early periodic screening, diagnosis, and treatment (EPSDT),
21 traumatic brain injury (TBI), high technology programs, or services provided
22 ~~by a home for persons who are terminally ill as defined in subdivision 7102(3)~~

1 ~~of this title home health services provided by Medicare certified home health~~
2 agencies that are covered under Title XVIII (Medicare) or XIX (Medicaid) of
3 the Social Security Act;

4 (ii) services covered under the adult and pediatric High
5 Technology Home Care programs;

6 (iii) personal care, respite care, and companion care services
7 provided through the Choices for Care program contained within Vermont's
8 Global Commitment to Health Section 1115 Medicaid demonstration;

9 (iv) hospice services; and

10 (v) home health and hospice services covered under a health
11 insurance or other health benefit plan offered by a health insurer, as defined in
12 18 V.S.A. § 9402.

13 (B) The term "core home health and hospice services" shall not
14 include any other service provided by a home health agency, including:

15 (i) private duty nursing;

16 (ii) case management services;

17 (iii) homemaker services;

18 (iv) the Flexible Choices or Assistive Devices options under the
19 Choices for Care program contained within Vermont's Global Commitment to
20 Health Section 1115 Medicaid demonstration;

21 (v) adult day services,

- 1 ~~(vi) group directed attendant care services;~~
- 2 ~~(vii) primary care services;~~
- 3 ~~(viii) nursing home room and board when a hospice patient is in a~~
4 ~~nursing home;~~
- 5 ~~(ix) health clinics, including occupational health, travel, and flu~~
6 ~~clinics;~~
- 7 ~~(x) services provided to children under the early and periodic~~
8 ~~screening, diagnostic, and treatment Medicaid benefit;~~
- 9 ~~(xi) services provided pursuant to the Money Follows the Person~~
10 ~~demonstration project;~~
- 11 ~~(xii) services provided pursuant to the Traumatic Brain Injury~~
12 ~~Program; or~~
- 13 ~~(xiii) maternal-child wellness services, including services~~
14 ~~provided through the Nurse Family Partnership program.~~

15 * * *

16 (10) “Net ~~operating~~ patient revenues” means a provider’s gross charges
17 less any deductions for bad debts, charity care, contractual allowances, and
18 other payer discounts as reported on its audited financial statement.

19 * * *

20 Sec. 5. 33 V.S.A. § 1955a is amended to read:

21 ~~§ 1955a. HOME HEALTH AGENCY ASSESSMENT~~

1 ~~(a)(1) Beginning October 1, 2011, each Each home health agency's~~
2 ~~assessment shall be ~~19.30~~ 3.63 percent of its net operating patient revenues~~
3 ~~from core home health care and hospice services, excluding revenues for~~
4 ~~services provided under Title XVIII of the federal Social Security Act;~~
5 ~~provided, however, that each home health agency's annual assessment shall be~~
6 ~~limited to no more than six percent of its annual net patient revenue provided~~
7 ~~exclusively in Vermont homes. The total amount of revenue to be generated~~
8 ~~by the assessment across all home health agencies shall not exceed a maximum~~
9 ~~of \$4,788,000.00 in any given year. If total revenue from the home health~~
10 ~~agency assessment is projected to exceed \$4,788,000.00, the Commissioner~~
11 ~~shall reduce the assessment percentage for all home health agencies for that~~
12 ~~year by a uniform amount in order to remain below the \$4,788,000.00 revenue~~
13 ~~cap.~~

14 (2) The amount of the tax shall be determined by the Commissioner
15 based on the home health agency's most recent audited financial statements at
16 the time of submission, a copy of which shall be provided on or before May 1
17 of each year to the Department.

18 (3) For providers who begin operations as a home health agency after
19 January 1, 2005, the tax shall be assessed as follows:

20 (4)(A) Until such time as the home health agency submits audited
21 ~~financial statements for its first full year of operation as a home health agency,~~

1 ~~the Commissioner, in consultation with the home health agency, shall annually~~
2 estimate the amount of tax payable and shall prescribe a schedule for interim
3 payments.

4 ~~(2)(B)~~ At such time as the full-year audited financial statement is filed,
5 the final assessment shall be determined, and the home health agency shall pay
6 any underpayment or the Department shall refund any overpayment. The
7 assessment for the State fiscal year in which a provider commences operations
8 as a home health agency shall be prorated for the proportion of the State fiscal
9 year in which the new home health agency was in operation.

10 * * *

11 Sec. 6. 2016 Acts and Resolves No. 134, Sec. 32 is amended to read:

12 Sec. 32. HOME HEALTH AGENCY ASSESSMENT FOR FISCAL
13 ~~YEARS YEAR 2017 AND 2018~~

14 Notwithstanding any provision of 33 V.S.A. § 1955a(a) to the contrary, for
15 fiscal years year 2017 and 2018 only, the amount of the home health agency
16 assessment under 33 V.S.A. § 1955a for each home health agency shall be 3.63
17 percent of its annual net patient revenue.

18 Sec. 7. EFFECTIVE DATES

19 (a) Secs. 1–3 (rate setting) shall take effect on passage and shall apply to
20 home health agency rates on and after July 1, 2018.

21 ~~(b) Secs. 4 and 5 (provider tax) and 6 (FY 2017 tax rate) shall take effect~~

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~~on July 1, 2017.~~

~~(c) This section shall take effect on passage.~~

Sec. 1. 33 V.S.A. § 1951 is amended to read:

§ 1951. DEFINITIONS

As used in this subchapter:

(1) "Assessment" means a tax levied on a health care provider pursuant to this chapter.

(2)(A) "Core home health care and hospice services" means:

(i) those medically necessary, intermittent, skilled nursing, home health aide, therapeutic, and personal care attendant services, provided exclusively in the home by home health agencies. Core home health services do not include private duty nursing, hospice, homemaker, or physician services, or services provided under early periodic screening, diagnosis, and treatment (EPSDT), traumatic brain injury (TBI), high technology programs, or services provided by a home for persons who are terminally ill as defined in subdivision 7102(3) of this title home health services provided by Medicare-certified home health agencies that are covered under Title XVIII (Medicare) or XIX (Medicaid) of the Social Security Act;

(ii) services covered under the adult and pediatric High Technology Home Care programs;

(iii) personal care, respite care, and companion care services provided through the Choices for Care program contained within Vermont's

Global Commitment to Health Section 1115 demonstration;

(iv) hospice services; and

(v) home health and hospice services covered under a health insurance or other health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402.

(B) The term “core home health and hospice services” shall not include any other service provided by a home health agency, including:

(i) private duty nursing;

(ii) case management services;

(iii) homemaker services;

(iv) the Flexible Choices or Assistive Devices options under the Choices for Care program contained within Vermont’s Global Commitment to Health Section 1115 demonstration;

(v) adult day services;

(vi) group-directed attendant care services;

(vii) primary care services;

(viii) nursing home room and board when a hospice patient is in a nursing home;

(ix) health clinics, including occupational health, travel, and flu clinics;

(x) services provided to children under the early and periodic

screening, diagnostic, and treatment Medicaid benefit;

(xi) services provided pursuant to the Money Follows the Person demonstration project;

(xii) services provided pursuant to the Traumatic Brain Injury Program; or

(xiii) maternal-child wellness services, including services provided through the Nurse Family Partnership program.

* * *

(10) “Net operating patient revenues” means a provider’s gross charges less any deductions for bad debts, charity care, contractual allowances, and other payer discounts as reported on its audited financial statement.

* * *

Sec. 2. 33 V.S.A. § 1955a is amended to read:

§ 1955a. HOME HEALTH AGENCY ASSESSMENT

(a)(1) ~~Beginning October 1, 2011, each~~ Each home health agency’s assessment shall be ~~19.30~~ 4.17 percent of its net operating patient revenues from core home health care and hospice services, ~~excluding revenues for services provided under Title XVIII of the federal Social Security Act;~~ provided, however, that each home health agency’s annual assessment shall be limited to no more than six percent of its annual net patient revenue provided exclusively in Vermont

(2) The amount of the tax shall be determined by the Commissioner based on the home health agency's most recent audited financial statements at the time of submission, a copy of which shall be provided on or before May 1 of each year to the Department.

(3) For providers who begin operations as a home health agency after January 1, 2005, the tax shall be assessed as follows:

(+)(A) Until such time as the home health agency submits audited financial statements for its first full year of operation as a home health agency, the Commissioner, in consultation with the home health agency, shall annually estimate the amount of tax payable and shall prescribe a schedule for interim payments.

(2)(B) At such time as the full-year audited financial statement is filed, the final assessment shall be determined, and the home health agency shall pay any underpayment or the Department shall refund any overpayment. The assessment for the State fiscal year in which a provider commences operations as a home health agency shall be prorated for the proportion of the State fiscal year in which the new home health agency was in operation.

** * **

Sec. 3. 2016 Acts and Resolves No. 134, Sec. 32 is amended to read:

Sec. 32. HOME HEALTH AGENCY ASSESSMENT FOR FISCAL

YEARS YEAR 2017 AND 2018

Notwithstanding any provision of 33 V.S.A. § 1955a(a) to the contrary, for fiscal years year 2017 ~~and 2018~~ only, the amount of the home health agency assessment under 33 V.S.A. § 1955a for each home health agency shall be 3.63 percent of its annual net patient revenue.

Sec. 4. REPEAL

33 V.S.A. § 1955a is repealed on July 1, 2019.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2017.