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:

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

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

§ 904. RATE SETTING

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

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

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

§ 911. INFLATION FACTOR FOR HOME HEALTH AGENCIES

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

Sec. 4. 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 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 Medicaid 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 Medicaid 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.

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

§ 1955a. HOME HEALTH AGENCY ASSESSMENT

(a)(1) Beginning October 1, 2011, each home health agency’s assessment shall be 3.63 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 homes. The total amount of revenue to be generated by the assessment across all home health agencies shall not exceed a maximum of $4,788,000.00 in any given year. If total revenue from the home health agency assessment is projected to exceed $4,788,000.00, the Commissioner shall reduce the assessment percentage for all home health agencies for that year by a uniform amount in order to remain below the $4,788,000.00 revenue cap.

(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:

(1) 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) 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. 6. 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 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. 7. EFFECTIVE DATES

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

(b) Secs. 4 and 5 (provider tax) and 6 (FY 2017 tax rate) shall take effect on July 1, 2017.

(c) This section shall take effect on passage.