

VETO MESSAGE - No. 148

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 10573-A, entitled:

"AN ACT relating to increasing availability under the adult day health care program; and providing for the repeal of such provisions upon expiration thereof"

NOT APPROVED

Adult Day Health Care (ADHC) programs serve individuals with physical or mental impairment who need health maintenance and restorative services to enhance their ability to remain in the community, instead of in nursing homes. Presently, there are over 170 ADHC providers approved to operate approximately 7,000 slots throughout the State. In 1998, the Department of Health (DOH) imposed a moratorium on the establishment of new slots for ADHC programs, in large part because a lack of admission standards allowed some ADHC programs to provide services to individuals who could have received care in more cost-effective settings, or did not need services at all.

This bill would establish a temporary demonstration program that would require the Commissioner of Health to authorize ADHC programs with less than 15 slots located in a county with a population of more than 64,400 and less than 65,500 to add up to 12 more slots, if there are individuals who are awaiting slots in such programs. According to the 2000 federal census (the measure referenced by the bill), only Herkimer County, with a population of 64,427, fits these criteria, and DOH advises that there is a single program in that county with less than 15 slots. However, there is some confusion because the sponsors' memorandum refers to programs in Otsego County.

In any event, it is clear this bill is designed to circumvent the moratorium imposed in 1998. However, I am advised by DOH that the agency recently commenced implementation of a statutory change requiring ADHC programs whose Medicaid reimbursement rates were based on estimated costs to convert to cost-based rates, which are based on a program's actual allowable costs in a previous year. This will help assure that rates are more rational and less prone to fraud, addressing the concerns that prompted the moratorium, and DOH is prepared to lift the moratorium effective January 1, 2009.

As noted, ADHC programs may serve as a more cost-effective alternative to nursing home care, but they still require the expenditure of Medicaid dollars, and programs should not be permitted to expand capacity unless there is an overall need for more capacity within the county. Accordingly, a request to expand ADHC capacity must be evaluated by DOH to ensure that there is a need for additional slots in the relevant county. Currently, DOH regulations define a formulaic need methodology that the agency believes is outdated and does not accurately reflect whether additional slots are needed in a particular county, and the agency intends either to update or eliminate the methodology. In the meantime, the regulations permit exceptions to the methodology, allowing authorization of additional slots in cases where all ADHC programs in a county

are operating at full capacity and there is evidence, such as a waiting list, of further need for ADHC services in the county. Accordingly, the ADHC program or programs that motivated this legislation should submit an application for additional slots to DOH for consideration after January 1, 2009.

The bill is disapproved.

(signed) DAVID A. PATERSON

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