

4181

2011-2012 Regular Sessions

I N S E N A T E

March 22, 2011

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and
when printed to be committed to the Committee on Health

AN ACT to amend the social services law, in relation to requiring the
state to pay medicare part A premiums for persons eligible for medi-
care part A and medical assistance and to require local commissioners
of social services to appeal denial of medicare coverage before
approving medical assistance coverage for long term care

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 1 and 2 of section 364-i of the social
2 services law, as amended by chapter 693 of the laws of 1996, are amended
3 to read as follows:
4 1. An individual, upon application for medical assistance, shall be
5 presumed eligible for such assistance for a period of sixty days from
6 the date of transfer from a general hospital, as defined in section
7 twenty-eight hundred one of the public health law to a certified home
8 health agency [or long term home health care program], as defined in
9 section thirty-six hundred two of the public health law, or to a hospice
10 as defined in section four thousand two of the public health law, or to
11 a residential health care facility as defined in section twenty-eight
12 hundred one of the public health law, if the local department of social
13 services determines that the applicant meets each of the following
14 criteria: (a) the applicant is receiving acute care in such hospital;
15 (b) a physician certifies that such applicant no longer requires acute
16 hospital care, but still requires medical care which can be provided by
17 a certified home health agency, [long term home health care program,]
18 hospice or residential health care facility; (c) the applicant or his OR
19 HER representative states that the applicant does not have insurance
20 coverage for the required medical care and that such care cannot be
21 afforded; (d) it reasonably appears that the applicant is otherwise
22 eligible to receive medical assistance; (e) it reasonably appears that

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD02537-01-1

1 the amount expended by the state and the local social services district
2 for medical assistance in a certified home health agency, [long term
3 home health care program,] hospice or residential health care facility,
4 during the period of presumed eligibility, would be less than the amount
5 the state and the local social services district would expend for
6 continued acute hospital care for such person; and (f) such other deter-
7 minative criteria as the commissioner shall provide by rule or regu-
8 lation. If a person has been determined to be presumptively eligible for
9 medical assistance, pursuant to this subdivision, and is subsequently
10 determined to be ineligible for such assistance, the commissioner, on
11 behalf of the state and the local social services district shall have
12 the authority to recoup from the individual the sums expended for such
13 assistance during the period of presumed eligibility.

14 2. Payment for up to sixty days of care for services provided under
15 the medical assistance program shall be made for an applicant presumed
16 eligible for medical assistance pursuant to subdivision one of this
17 section provided, however, that such payment shall not exceed sixty-five
18 percent of the rate payable under this title for services provided by a
19 certified home health agency, [long term home health care program,]
20 hospice or residential health care facility. Notwithstanding any other
21 provision of law, no federal financial participation shall be claimed
22 for services provided to a person while presumed eligible for medical
23 assistance under this program until such person has been determined to
24 be eligible for medical assistance by the local social services
25 district. During the period of presumed medical assistance eligibility,
26 payment for services provided persons presumed eligible under this
27 program shall be made from state funds. Upon the final determination of
28 eligibility by the local social services district, payment shall be made
29 for the balance of the cost of such care and services provided to such
30 applicant for such period of eligibility and a retroactive adjustment
31 shall be made by the department to appropriately reflect federal finan-
32 cial participation and the local share of costs for the services
33 provided during the period of presumptive eligibility. Such federal and
34 local financial participation shall be the same as that which would have
35 occurred if a final determination of eligibility for medical assistance
36 had been made prior to the provision of the services provided during the
37 period of presumptive eligibility. In instances where an individual who
38 is presumed eligible for medical assistance is subsequently determined
39 to be ineligible, the cost for services provided to such individual
40 shall be reimbursed in accordance with the provisions of section three
41 hundred sixty-eight-a of this [article] TITLE. Provided, however, if
42 upon audit the department determines that there are subsequent determi-
43 nations of ineligibility for medical assistance in at least fifteen
44 percent of the cases in which presumptive eligibility has been granted
45 in a local social services district, payments for services provided to
46 all persons presumed eligible and subsequently determined ineligible for
47 medical assistance shall be divided equally by the state and the
48 district.

49 S 2. Paragraph (d) of subdivision 2 of section 365-f of the social
50 services law, as added by chapter 81 of the laws of 1995, is amended to
51 read as follows:

52 (d) meets such other criteria, as may be established by the commis-
53 sioner, which are necessary to effectively implement the objectives of
54 this section. SUCH CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO, A
55 REQUIREMENT THAT ANY PERSON WHO IS ELIGIBLE FOR, OR REASONABLY APPEARS
56 TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS UNDER SUBCHAPTER XVIII

1 OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE REQUIRED TO APPLY FOR AND
2 FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY
3 THE COSTS OF THE PROGRAM. IF SUCH PERSON APPLIES FOR SUCH BENEFITS UNDER
4 SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S
5 APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH DENIAL OR
6 PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.
7 IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE
8 FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING RECEIPT THEREOF
9 IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION OR PERMIT THE
10 LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.

11 S 3. Subparagraph 1 of paragraph (b) of subdivision 2 of section 366
12 of the social services law, as amended by chapter 638 of the laws of
13 1993 and designated by chapter 170 of the laws of 1994, is amended to
14 read as follows:

15 (1) In establishing standards for determining eligibility for and
16 amount of such assistance, the department shall take into account only
17 such income and resources, in accordance with federal requirements, as
18 are available to the applicant or recipient and as would not be required
19 to be disregarded or set aside for future needs, and there shall be a
20 reasonable evaluation of any such income or resources. The department
21 shall not consider the availability of an option for an accelerated
22 payment of death benefits or special surrender value pursuant to para-
23 graph one of subsection (a) of section one thousand one hundred thirteen
24 of the insurance law, or an option to enter into a viatical settlement
25 pursuant to the provisions of article seventy-eight of the insurance
26 law, as an available resource in determining eligibility for an amount
27 of such assistance, provided, however, that the payment of such benefits
28 shall be considered in determining eligibility for and amount of such
29 assistance. There shall not be taken into consideration the financial
30 responsibility of any individual for any applicant or recipient of
31 assistance under this title unless such applicant or recipient is such
32 individual's spouse or such individual's child who is under twenty-one
33 years of age. In determining the eligibility of a child who is categori-
34 cally eligible as blind or disabled, as determined under regulations
35 prescribed by the social security act for medical assistance, the income
36 and resources of parents or spouses of parents are not considered avail-
37 able to that child if [she/he] HE OR SHE does not regularly share the
38 common household even if the child returns to the common household for
39 periodic visits. In the application of standards of eligibility with
40 respect to income, costs incurred for medical care, whether in the form
41 of insurance premiums or otherwise, shall be taken into account. Any
42 person who is eligible for, or reasonably appears to meet the criteria
43 of eligibility for, benefits under [title] SUBCHAPTER XVIII of the
44 federal social security act shall be required to apply for and fully
45 utilize such benefits in accordance with this chapter. IN THE CASE OF A
46 PERSON WHO IS RECEIVING OR SEEKING LONG TERM CARE, BENEFITS UNDER
47 SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE FULLY
48 UTILIZED IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY THE COSTS OF SUCH
49 LONG TERM CARE. IF SUCH PERSON APPLIES FOR SUCH BENEFITS UNDER SUBCHAP-
50 TER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S APPLICA-
51 TION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH DENIAL OR PERMIT
52 THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF. IF
53 SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL
54 SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING RECEIPT THEREOF IS
55 TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION OR PERMIT THE LOCAL
56 SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.

1 S 4. Subparagraph (v) of paragraph b of subdivision 6-a of section 366
2 of the social services law, as amended by chapter 627 of the laws of
3 2004, is amended to read as follows:

4 (v) meet such other criteria as may be established by the commissioner
5 of health as may be necessary to administer the provision of this subdivi-
6 sion in an equitable manner. SUCH CRITERIA SHALL INCLUDE, BUT NOT BE
7 LIMITED TO, A REQUIREMENT THAT ANY PERSON WHO IS ELIGIBLE FOR, OR
8 REASONABLY APPEARS TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS
9 UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE
10 REQUIRED TO APPLY FOR AND FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH
11 THIS CHAPTER TO DEFRAY THE COSTS OF THE PROGRAM. IF SUCH PERSON APPLIES
12 FOR SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY
13 ACT AND SUCH PERSON'S APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST
14 APPEAL SUCH DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO
15 ON HIS OR HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER
16 SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S
17 CONTINUING RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST APPEAL SUCH
18 TERMINATION OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS
19 OR HER BEHALF.

20 S 5. Subparagraph (viii) of paragraph b of subdivision 9 of section
21 366 of the social services law, as added by chapter 170 of the laws of
22 1994, is amended to read as follows:

23 (viii) meet such other criteria as may be established by the commis-
24 sioner of mental health, in conjunction with the commissioner, as may be
25 necessary to administer the provisions of this subdivision in an equita-
26 ble manner, including those criteria established pursuant to paragraph e
27 of this subdivision. SUCH CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO,
28 A REQUIREMENT THAT ANY PERSON WHO IS ELIGIBLE FOR, OR REASONABLY APPEARS
29 TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS UNDER SUBCHAPTER XVIII
30 OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE REQUIRED TO APPLY FOR AND
31 FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY
32 THE COSTS OF THE PROGRAM. IF SUCH PERSON APPLIES FOR SUCH BENEFITS UNDER
33 SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S
34 APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH DENIAL OR
35 PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.
36 IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE
37 FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING RECEIPT THEREOF
38 IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION OR PERMIT THE
39 LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.

40 S 6. The social services law is amended by adding a new section 366-j
41 to read as follows:

42 S 366-J. LONG TERM CARE; OTHER CASES. IN ALL CASES NOT OTHERWISE
43 PROVIDED FOR IN THIS TITLE OF A PERSON WHO IS RECEIVING OR SEEKING LONG
44 TERM CARE, BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURI-
45 TY ACT SHALL BE FULLY UTILIZED IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY
46 THE COSTS OF SUCH LONG TERM CARE. IF SUCH PERSON APPLIES FOR SUCH BENE-
47 FITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH
48 PERSON'S APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH
49 DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR
50 HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER
51 XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING
52 RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION
53 OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER
54 BEHALF.

55 S 7. Subdivision 3 of section 367-a of the social services law is
56 amended by adding a new paragraph (e) to read as follows:

(E) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION OR OF ANY OTHER LAW, FOR ANY PERSON WHO IS ELIGIBLE FOR MEDICAL ASSISTANCE AND FOR MEDICARE UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT, THE COST OF THE PREMIUM FOR MEDICARE PART A SHALL BE BORNE BY THE STATE.

S 8. Subdivision 7 of section 367-c of the social services law, as added by chapter 895 of the laws of 1977 and renumbered by chapter 854 of the laws of 1987, is amended to read as follows:

7. No social services district shall make payments pursuant to [title] SUBCHAPTER XIX of the federal Social Security Act for benefits available under [title] SUBCHAPTER XVIII of such act without documentation that [title] SUBCHAPTER XVIII claims have been filed and denied. UPON SUCH DENIAL, SUCH PERSON MUST APPEAL SUCH DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.

S 9. Subdivision 3 of section 367-e of the social services law, as added by chapter 622 of the laws of 1988, is amended to read as follows:

3. The commissioner shall apply for any waivers, including home and community based services waivers pursuant to section nineteen hundred fifteen-c of the social security act, necessary to implement AIDS home care programs. Notwithstanding any inconsistent provision of law but subject to expenditure limitations of this section, the commissioner, subject to the approval of the state director of the budget, may authorize the utilization of medical assistance funds to pay for services provided by AIDS home care programs in addition to those services included in the medical assistance program under section three hundred sixty-five-a of this [chapter] TITLE, so long as federal financial participation is available for such services. Expenditures made under this subdivision shall be deemed payments for medical assistance for needy persons and shall be subject to reimbursement by the state in accordance with the provisions of section three hundred sixty-eight-a of this [chapter] TITLE. ANY PERSON WHO IS ELIGIBLE FOR, OR REASONABLY APPEARS TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE REQUIRED TO APPLY FOR AND FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY THE COSTS OF THE PROGRAM. IF SUCH PERSON APPLIES FOR SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.

S 10. Subdivision 2 of section 367-f of the social services law, as added by chapter 659 of the laws of 1997, is amended to read as follows:

2. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the partnership for long term care program shall provide Medicaid extended coverage to a person receiving long term care services if there is federal participation pursuant to such treatment and such person: (a) is or was covered by an insurance policy or certificate providing coverage for long term care which meets the applicable minimum benefit standards of the superintendent of insurance and other requirements for approval of participation under the program; and,

1 (b) has exhausted the coverage and benefits as required by the program.
2 ANY SUCH PERSON WHO IS RECEIVING MEDICAL ASSISTANCE AND WHO IS ELIGIBLE
3 FOR, OR REASONABLY APPEARS TO MEET THE CRITERIA OF ELIGIBILITY FOR,
4 BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL
5 BE REQUIRED TO APPLY FOR AND FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE
6 WITH THIS CHAPTER TO DEFRAY THE COSTS OF THE PROGRAM. IF SUCH PERSON
7 APPLIES FOR SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL
8 SECURITY ACT AND SUCH PERSON'S APPLICATION THEREFOR IS DENIED, SUCH
9 PERSON MUST APPEAL SUCH DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFI-
10 CIAL TO DO SO ON HIS OR HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENE-
11 FITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH
12 PERSON'S CONTINUING RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST
13 APPEAL SUCH TERMINATION OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO
14 DO SO ON HIS OR HER BEHALF.

15 S 11. This act shall take effect on the one hundred twentieth day
16 after it shall have become a law; provided that the commissioner of
17 health is authorized to promulgate any and all rules and regulations and
18 take any other measures necessary to implement this act on its effective
19 date on or before such date.