

2591

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. ENGLEBRIGHT, GABRYSZAK -- Multi-Sponsored by --
M. of A. PHEFFER -- read once and referred to the Committee on Aging

AN ACT to amend the elder law, in relation to establishing a senior care
choices program in the office for the aging

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

1 Section 1. Section 214 of the elder law is amended by adding a new
2 subdivision 8 to read as follows:
3 8. SENIOR CARE CHOICES PROGRAM. (A) NOTWITHSTANDING ANY OTHER LAW TO
4 THE CONTRARY, THE DIRECTOR SHALL FILE, OR CAUSE TO BE FILED, WITHIN ONE
5 HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS SUBDIVISION AN APPLI-
6 CATION FOR A FEDERAL WAIVER PURSUANT TO SECTION 1115 OF THE FEDERAL
7 SOCIAL SECURITY ACT, OR ANY SUCCESSOR THERETO, FOR A SENIOR CARE CHOICES
8 PROGRAM, UNDER WHICH THE OFFICE SHALL AND IS HEREBY AUTHORIZED TO
9 PROVIDE DIRECTLY OR BY CONTRACT A COORDINATED PLAN OF CARE AND SERVICES
10 AT HOME TO SENIORS IN A SEAMLESS NETWORK THAT SHALL INCLUDE SERVICES
11 PROVIDED BY AND THROUGH THE OFFICE AND ANY ADDITIONAL SERVICES AS MAY BE
12 NECESSARY TO MAINTAIN SUCH PERSONS AT HOME AS AUTHORIZED IN THIS SUBDI-
13 VISION. EVERY STATE AGENCY IS HEREBY EMPOWERED AND DIRECTED TO COOPERATE
14 WITH THE OFFICE AND TO COMPLY WITH ANY REQUEST FOR THE FILING OF SUCH
15 WAIVER IF THE DIRECTOR SHALL LACK POWER AND AUTHORITY TO FILE SUCH A
16 WAIVER. AS USED IN THIS SUBDIVISION, THE TERM "SENIOR" MEANS PERSONS WHO
17 ARE AGED SIXTY AND OLDER WHO ARE MEDICALLY ELIGIBLE FOR PLACEMENT IN A
18 LONG-TERM CARE FACILITY, AS SUCH TERM IS DEFINED IN SECTION TWENTY-ONE
19 HUNDRED NINETY-ONE OF THE PUBLIC HEALTH LAW.
20 (1) THE SENIOR CARE CHOICES PROGRAM SHALL BE PROVIDED IN THE SENIOR'S
21 HOME OR IN THE HOME OF A RESPONSIBLE RELATIVE OR OTHER RESPONSIBLE
22 ADULT, AND, OTHER PROVISIONS OF THIS SECTION TO THE CONTRARY NOTWITH-
23 STANDING, IF THE WAIVER GRANTED PURSUANT TO SECTION 1115 OF THE FEDERAL
24 SOCIAL SECURITY ACT OR ANY SUCCESSOR THERETO SHALL SO PROVIDE, MAY ALSO
25 BE PROVIDED IN ADULT CARE FACILITIES, OTHER THAN SHELTERS FOR ADULTS,

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

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1 CERTIFIED PURSUANT TO SECTION FOUR HUNDRED SIXTY-B OF THE SOCIAL
2 SERVICES LAW, PROVIDED THAT THE SENIOR MEETS THE ADMISSION AND CONTINUED
3 STAY CRITERIA FOR SUCH FACILITY, EXCEPT THAT SERVICES PROVIDED BY THE
4 PROGRAM SHALL NOT DUPLICATE OR REPLACE THOSE WHICH THE FACILITY IS
5 REQUIRED BY LAW OR REGULATION TO PROVIDE.

6 (2) IN FILING SUCH WAIVER FOR THE OPERATION OF THE PROGRAM, THE OFFICE
7 SHALL SEEK TO PROVIDE SERVICES PURSUANT TO THE PRINCIPLE THAT SENIORS
8 HAVE THE PRIMARY AUTHORITY TO MAKE CHOICES THAT WORK BEST FOR THEM,
9 REGARDLESS OF THE NATURE OR EXTENT OF THEIR DISABILITY OR THE SOURCE OF
10 PAYMENT FOR SERVICES. IN DESIGNING THE PROGRAM AND PROVIDING SERVICES,
11 THE OFFICE IS AUTHORIZED TO WAIVE ANY PROVISION OF THE SOCIAL SERVICES
12 LAW OR THE PUBLIC HEALTH LAW, OR ANY RULE OR REGULATION PROMULGATED
13 THEREUNDER, WHICH IN THE JUDGMENT OF THE OFFICE RESTRICTS ITS ABILITY TO
14 PROVIDE SERVICES AS REQUIRED BY THIS SUBDIVISION, SO LONG AS SUCH WAIVER
15 IS CONSISTENT WITH ANY FEDERAL WAIVER GRANTED PURSUANT TO SECTION 1115
16 OF THE FEDERAL SOCIAL SECURITY ACT OR ANY SUCCESSOR THERETO.

17 (3) THE OFFICE SHALL SEEK TO EXPAND SOURCE OF PAYMENT FOR THE PROGRAM,
18 INCLUDING SEEKING PAYMENTS FROM VOLUNTARY AND WILLING PRIVATE SOURCES,
19 INSURANCE PLANS, CHARITIES AND FOUNDATIONS, AND INDIVIDUALS.

20 (4) THE OFFICE IS HEREBY EMPOWERED TO PROVIDE OR CONTRACT FOR THE
21 PROVISION OF SUCH SENIOR CARE CHOICES PROGRAM IN ANY COUNTY WITHIN THE
22 STATE. THE OFFICE SHALL SEEK TO COORDINATE SERVICES WITH ANY CURRENT
23 PROVIDER OF SERVICES. NO STATE AGENCY SHALL IMPOSE A LIMITATION ON THE
24 NUMBER OF ELIGIBLE INDIVIDUALS SERVED IN THIS PROGRAM. THE OFFICE SHALL
25 NOT BE SUBJECT TO AUDIT, ASSESSMENT, SUSPENSION, SANCTION, OR REPORT BY
26 A STATE AGENCY FOR A PROGRAM CONDUCTED PURSUANT TO THE AUTHORITY OF THIS
27 SUBDIVISION, EXCEPT THAT IT SHALL BE SUBJECT TO AUDIT BY THE OFFICE OF
28 THE STATE COMPTROLLER TO THE EXTENT THAT SUCH PROGRAMS WOULD HAVE BEEN
29 SUBJECT TO AUDIT BUT FOR THIS PARAGRAPH.

30 (B) IF A SENIOR DEEMED BY HIS OR HER PHYSICIAN ABLE TO REMAIN IN HIS
31 OR HER OWN HOME OR THE HOME OF A RESPONSIBLE RELATIVE OR OTHER RESPONSIBLE
32 ADULT IF THE NECESSARY SERVICES ARE PROVIDED APPLIES FOR ADMISSION
33 TO THE PROGRAM, THE OFFICE IN CONSULTATION WITH THE LOCAL SOCIAL
34 SERVICES COMMISSIONER SHALL ORDER AN ASSESSMENT TO BE PERFORMED USING
35 THE ASSESSMENT INSTRUMENT DEVELOPED PURSUANT TO THE PROVISION OF SECTION
36 THIRTY-SIX HUNDRED SIXTEEN OF THE PUBLIC HEALTH LAW, AND IN ADDITION AN
37 ASSESSMENT OF THE INFORMAL CAREGIVING NETWORK AND SUPPORTS CAPABLE OF
38 PROVIDING SOCIAL AND NON-MEDICAL SERVICES TO THE SENIOR. IF THE RESULTS
39 OF THE ASSESSMENT INDICATE THAT THE SENIOR CAN RECEIVE THE APPROPRIATE
40 LEVEL OF CARE AT HOME OR IN THE HOME OF SUCH RESPONSIBLE RELATIVE OR
41 OTHER RESPONSIBLE ADULT, AND THAT THE SENIOR CAN BE APPROPRIATELY
42 SUPPORTED BY FAMILY, INTIMATES, FRIENDS, AND COMMUNITY, THE OFFICE
43 SHALL, AFTER CONSULTING WITH THOSE WHO PERFORMED THE ASSESSMENT, PREPARE
44 FOR THAT SENIOR A PLAN FOR THE PROVISION OF SERVICES THAT MAY INCLUDE
45 ANY SERVICE THAT WOULD BE RENDERED IN A NURSING HOME PLUS SUCH ADDI-
46 TIONAL SERVICES AS THE OFFICE IS AUTHORIZED TO PROVIDE DIRECTLY OR
47 THROUGH CONTRACT PURSUANT TO THE PROVISIONS OF THE WAIVER AUTHORIZED BY
48 THIS SUBDIVISION. CONTINUED PROVISION OF SERVICES PURSUANT TO THIS
49 SUBDIVISION SHALL BE CONTINGENT ON ADDITIONAL ASSESSMENTS PERFORMED
50 EVERY ONE HUNDRED TWENTY DAYS. AT THE TIME OF THE INITIAL ASSESSMENT,
51 AND AT THE TIME OF EACH SUBSEQUENT ASSESSMENT (OR MORE OFTEN IF THE
52 SENIOR'S NEEDS REQUIRE), THE OFFICE SHALL ESTABLISH A MONTHLY BUDGET FOR
53 PAYMENT FOR THE SERVICES PROVIDED UNDER SUCH PLAN. TOTAL ANNUAL EXPEND-
54 ITURES FOR MEDICAL ASSISTANCE SERVICES MADE PURSUANT TO TITLE ELEVEN OF
55 ARTICLE FIVE OF THE SOCIAL SERVICES LAW FOR ALL SUCH SENIORS WITHIN THE
56 SOCIAL SERVICES DISTRICT WITHIN WHICH SUCH SENIORS RESIDE SHALL NOT

1 EXCEED SIXTY-FIVE PERCENT OF THE AVERAGE OF THE ANNUAL RATES PAYABLE
2 UNDER SUCH TITLE FOR NURSING HOME SERVICES WITHIN THE SOCIAL SERVICES
3 DISTRICT IN WHICH SUCH SENIORS RESIDE, SUCH AMOUNT TO BE DETERMINED BY
4 MULTIPLYING THE TOTAL NUMBER OF SENIORS WITHIN THE PROGRAM IN ANY YEAR
5 BY THE AVERAGE OF THE ANNUAL RATES PAYABLE FOR SUCH NURSING HOME
6 SERVICES.

7 (C) SERVICES PROVIDED UNDER THE SENIOR CARE CHOICES PROGRAM INCLUDE
8 SERVICES PROVIDED BY THE OFFICE, AND PROVIDED PURSUANT TO THE WAIVER,
9 INCLUDING BUT NOT LIMITED TO SUCH LONG TERM CARE SERVICES AS CARE,
10 TREATMENT, MAINTENANCE, AND SERVICES PROVIDED IN A NURSING FACILITY
11 LICENSED UNDER ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, OR
12 PROVIDED BY A HOME CARE SERVICES AGENCY, CERTIFIED HOME HEALTH AGENCY OR
13 LONG TERM HOME HEALTH CARE PROGRAM, AS DEFINED IN SECTION THIRTY-SIX
14 HUNDRED TWO OF THE PUBLIC HEALTH LAW, OR PROVIDED BY AN ADULT DAY HEALTH
15 CARE PROGRAM IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT OF HEALTH,
16 OR PROVIDED BY A PERSONAL CARE PROVIDER LICENSED OR REGULATED BY ANY
17 OTHER STATE OR LOCAL AGENCY, AND SUCH OTHER SERVICES FOR WHICH MEDICAL
18 ASSISTANCE IS OR OTHERWISE WOULD BE AVAILABLE PURSUANT TO THE SOCIAL
19 SERVICES LAW INCLUDING THOSE WHICH ARE DESIGNATED AS LONG TERM CARE
20 SERVICES IN LAW OR REGULATIONS OF THE DEPARTMENT OF HEALTH, CONSUMER
21 DIRECTED PERSONAL ASSISTANCE SERVICES, AND SUCH OTHER SERVICES AS HOME
22 MODIFICATION, TELEHEALTH, PHARMACY REVIEW, AND PALLIATIVE CARE.

23 S 2. This act shall take effect immediately.