

4639

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to the medical assistance presumptive eligibility program

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

1 Section 1. Subdivisions 1, 2 and 3 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. (A) An individual, upon application for medical assistance, shall
5 be 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)] (I) the applicant is receiving acute care in such hospi-
15 tal; [(b)] (II) a physician certifies that such applicant no longer
16 requires acute hospital care, but still requires medical care which can
17 be provided by a certified home health agency, long term home health
18 care program, hospice or residential health care facility; [(c)] (III)
19 the applicant or his representative states that the applicant does not
20 have insurance coverage for the required medical care and that such care
21 cannot be afforded; [(d)] (IV) it reasonably appears that the applicant
22 is otherwise eligible to receive medical assistance; [(e)] (V) it
23 reasonably appears that the amount expended by the state and the local
24 social services district for medical assistance in a certified home
25 health agency, long term home health care program, hospice or residen-

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

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1 tial health care facility, during the period of presumed eligibility,
2 would be less than the amount the state and the local social services
3 district would expend for continued acute hospital care for such person;
4 and [(f)] (VI) such other determinative criteria as the commissioner OF
5 HEALTH shall provide by rule or regulation. If a person has been deter-
6 mined to be presumptively eligible for medical assistance, pursuant to
7 this subdivision, and is subsequently determined to be ineligible for
8 such assistance, the commissioner OF HEALTH, on behalf of the state and
9 the local social services district shall have the authority to recoup
10 from the individual the sums expended for such assistance during the
11 period of presumed eligibility.

12 (B) AN INDIVIDUAL, UPON APPLICATION FOR MEDICAL ASSISTANCE, SHALL BE
13 PRESUMED ELIGIBLE FOR SUCH ASSISTANCE FOR CARE, SERVICES AND SUPPLIES
14 RELATED TO THE TREATMENT OF A MENTAL ILLNESS FOR A PERIOD OF NINETY DAYS
15 FROM THE DATE OF DISCHARGE FROM A HOSPITAL, AS DEFINED IN SECTION 1.03
16 OF THE MENTAL HYGIENE LAW, A CORRECTIONAL FACILITY AS DEFINED IN PARA-
17 GRAPH (A) OF SUBDIVISION FOUR OF SECTION TWO OF THE CORRECTION LAW OR A
18 LOCAL CORRECTIONAL FACILITY AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION
19 SIXTEEN OF SECTION TWO OF THE CORRECTION LAW, IF THE LOCAL DEPARTMENT OF
20 SOCIAL SERVICES DETERMINES THAT THE APPLICANT MEETS EACH OF THE FOLLOW-
21 ING CRITERIA: (I) THE APPLICANT IS SEVERELY AND PERSISTENTLY MENTALLY
22 ILL; (II) A PHYSICIAN CERTIFIES THAT SUCH APPLICANT REQUIRES MEDICAL
23 CARE TO TREAT SUCH MENTAL ILLNESS; (III) THE APPLICANT OR HIS REPRESENTATIVE STATES THAT THE APPLICANT DOES NOT HAVE INSURANCE COVERAGE FOR
24 THE REQUIRED MEDICAL CARE AND THAT SUCH CARE CANNOT BE AFFORDED; (IV) IT
25 REASONABLY APPEARS THAT THE APPLICANT IS OTHERWISE ELIGIBLE TO RECEIVE
26 MEDICAL ASSISTANCE; (V) IT REASONABLY APPEARS THAT THE AMOUNT EXPENDED
27 BY THE STATE AND THE LOCAL SOCIAL SERVICES DISTRICT FOR MEDICAL ASSIST-
28 ANCE FOR TREATMENT OF A MENTAL ILLNESS DURING THE PERIOD OF PRESUMED
29 ELIGIBILITY, WOULD BE LESS THAN THE AMOUNT THE STATE AND THE LOCAL
30 SOCIAL SERVICES DISTRICT WOULD EXPEND FOR CONTINUED OR FUTURE ACUTE
31 HOSPITAL CARE FOR SUCH PERSON; AND (VI) SUCH OTHER DETERMINATIVE CRITE-
32 RIA AS THE COMMISSIONER OF HEALTH SHALL PROVIDE BY RULE OR REGULATION.
33 IF A PERSON HAS BEEN DETERMINED TO BE PRESUMPTIVELY ELIGIBLE FOR MEDICAL
34 ASSISTANCE, PURSUANT TO THIS SUBDIVISION, AND IS SUBSEQUENTLY DETERMINED
35 TO BE INELIGIBLE FOR SUCH ASSISTANCE, THE COMMISSIONER OF HEALTH, ON
36 BEHALF OF THE STATE AND THE LOCAL SOCIAL SERVICES DISTRICT SHALL HAVE
37 THE AUTHORITY TO RECOUP FROM THE INDIVIDUAL THE SUMS EXPENDED FOR SUCH
38 ASSISTANCE DURING THE PERIOD OF PRESUMED ELIGIBILITY.

40 2. (A) Payment for up to sixty days of care for services provided
41 under the medical assistance program shall be made for an applicant
42 presumed eligible for medical assistance pursuant to PARAGRAPH (A) OF
43 subdivision one of this section provided, however, that such payment
44 shall not exceed sixty-five percent of the rate payable under this title
45 for services provided by a certified home health agency, long term home
46 health care program, hospice or residential health care facility.

47 (B) PAYMENT FOR UP TO NINETY DAYS OF CARE FOR SERVICES PROVIDED UNDER
48 THE MEDICAL ASSISTANCE PROGRAM SHALL BE MADE FOR AN APPLICANT PRESUMED
49 ELIGIBLE FOR MEDICAL ASSISTANCE FOR CARE, SERVICES AND SUPPLIES RELATED
50 TO THE TREATMENT OF A MENTAL ILLNESS PURSUANT TO PARAGRAPH (B) OF SUBDI-
51 VISION ONE OF THIS SECTION, PROVIDED HOWEVER, THAT SUCH PAYMENT SHALL
52 NOT EXCEED ONE HUNDRED PERCENT OF THE RATE PAYABLE UNDER THIS TITLE FOR
53 SUCH CARE, SERVICES AND SUPPLIES.

54 (C) Notwithstanding any other provision of law, no federal financial
55 participation shall be claimed for services provided to a person while
56 presumed eligible for medical assistance under this program until such

1 person has been determined to be eligible for medical assistance by the
2 local social services district. During the period of presumed medical
3 assistance eligibility, payment for services provided persons presumed
4 eligible under this program shall be made from state funds. [Upon] (I)
5 IN THE CASE OF COSTS INCURRED FOR A PERSON PRESUMPTIVELY ELIGIBLE FOR
6 MEDICAL ASSISTANCE UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS
7 SECTION, UPON the final determination of eligibility by the local social
8 services district, payment shall be made for the balance of the cost of
9 such care and services provided to such applicant for such period of
10 eligibility and a retroactive adjustment shall be made by the department
11 OF HEALTH to appropriately reflect federal financial participation and
12 the local share of costs for the services provided during the period of
13 presumptive eligibility. Such federal and local financial participation
14 shall be the same as that which would have occurred if a final determi-
15 nation of eligibility for medical assistance had been made prior to the
16 provision of the services provided during the period of presumptive
17 eligibility. In instances where an individual who is presumed eligible
18 for medical assistance is subsequently determined to be ineligible, the
19 cost for services provided to such individual shall be reimbursed in
20 accordance with the provisions of section three hundred sixty-eight-a of
21 this article. Provided, however, if upon audit the department OF HEALTH
22 determines that there are subsequent determinations of ineligibility for
23 medical assistance in at least fifteen percent of the cases in which
24 presumptive eligibility has been granted in a local social services
25 district, payments for services provided to all persons presumed eligi-
26 ble and subsequently determined ineligible for medical assistance shall
27 be divided equally by the state and the district.

28 (II) IN THE CASE OF COSTS INCURRED FOR A PERSON PRESUMPTIVELY ELIGIBLE
29 FOR MEDICAL ASSISTANCE UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS
30 SECTION UPON THE FINAL DETERMINATION OF ELIGIBILITY BY THE LOCAL SOCIAL
31 SERVICES DISTRICT, PAYMENT SHALL BE MADE FOR THE BALANCE OF THE COST OF
32 SUCH CARE AND SERVICES PROVIDED TO SUCH APPLICANT FOR SUCH PERIOD OF
33 ELIGIBILITY AND A RETROACTIVE ADJUSTMENT SHALL BE MADE BY THE DEPARTMENT
34 OF HEALTH TO APPROPRIATELY REFLECT FEDERAL FINANCIAL PARTICIPATION AND
35 THE LOCAL SHARE OF COSTS FOR THE SERVICES PROVIDED DURING THE PERIOD OF
36 PRESUMPTIVE ELIGIBILITY. SUCH FEDERAL FINANCIAL PARTICIPATION SHALL BE
37 THE SAME AS THAT WHICH WOULD HAVE OCCURRED IF A FINAL DETERMINATION OF
38 ELIGIBILITY FOR MEDICAL ASSISTANCE HAD BEEN MADE PRIOR TO THE PROVISION
39 OF THE SERVICES PROVIDED DURING THE PERIOD OF PRESUMPTIVE ELIGIBILITY.
40 THERE SHALL BE NO LOCAL SHARE IN THE COSTS OF SUCH ASSISTANCE DURING THE
41 PRESUMPTIVE ELIGIBILITY PERIOD; PROVIDED HOWEVER THAT IF UPON AUDIT THE
42 DEPARTMENT OF HEALTH DETERMINES THAT THERE ARE SUBSEQUENT DETERMINATIONS
43 OF INELIGIBILITY FOR MEDICAL ASSISTANCE IN AT LEAST FIFTEEN PERCENT OF
44 THE CASES IN WHICH PRESUMPTIVE ELIGIBILITY HAS BEEN GRANTED IN A LOCAL
45 SOCIAL SERVICES DISTRICT, PAYMENTS FOR SERVICES PROVIDED TO ALL PERSONS
46 PRESUMED ELIGIBLE AND SUBSEQUENTLY DETERMINED INELIGIBLE FOR MEDICAL
47 ASSISTANCE SHALL BE REIMBURSED IN ACCORDANCE WITH THE PROVISIONS OF
48 SECTION THREE HUNDRED SIXTY-EIGHT-A OF THIS ARTICLE.

49 3. On or before March thirty-first, [nineteen hundred ninety-seven]
50 TWO THOUSAND ELEVEN, the department OF HEALTH shall submit to the gover-
51 nor and legislature an evaluation of the program, including the
52 program's effects on access, quality and cost of care, and any recommen-
53 dations for future modifications to improve the program.

54 S 2. Subdivision 1 of section 368-a of the social services law is
55 amended by adding a new paragraph (aa) to read as follows:

1 (AA) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, REIMBURSEMENT
2 BY THE STATE FOR PAYMENTS MADE, WHETHER BY THE DEPARTMENT OF HEALTH ON
3 BEHALF OF A LOCAL SOCIAL SERVICES DISTRICT PURSUANT TO SECTION THREE
4 HUNDRED SIXTY-SEVEN-B OF THIS TITLE OR BY A LOCAL SOCIAL SERVICES
5 DISTRICT DIRECTLY, FOR MEDICAL ASSISTANCE FURNISHED TO AN INDIVIDUAL
6 PRESUMED ELIGIBLE FOR MEDICAL ASSISTANCE UNDER PARAGRAPH (B) OF SUBDIVI-
7 SION ONE OF SECTION THREE HUNDRED SIXTY-FOUR-I OF THIS TITLE, DURING THE
8 PRESUMPTIVE ELIGIBILITY PERIOD, SHALL BE MADE FOR THE FULL AMOUNT
9 EXPENDED FOR SUCH ASSISTANCE, AFTER FIRST DEDUCTING THEREFROM ANY FEDER-
10 AL FUNDS PROPERLY RECEIVED OR TO BE RECEIVED ON ACCOUNT OF SUCH EXPENDI-
11 TURE; PROVIDED THAT IF UPON AUDIT THE DEPARTMENT OF HEALTH DETERMINES
12 THAT THERE ARE SUBSEQUENT DETERMINATIONS OF INELIGIBILITY FOR MEDICAL
13 ASSISTANCE IN AT LEAST FIFTEEN PERCENT OF THE CASES IN WHICH PRESUMPTIVE
14 ELIGIBILITY HAS BEEN GRANTED IN A LOCAL SOCIAL SERVICES DISTRICT,
15 PAYMENTS FOR SERVICES PROVIDED TO ALL PERSONS PRESUMED ELIGIBLE AND
16 SUBSEQUENTLY DETERMINED INELIGIBLE FOR MEDICAL ASSISTANCE SHALL BE REIM-
17 BURSED IN ACCORDANCE WITH PARAGRAPH (D) OF THIS SUBDIVISION.

18 S 3. This act shall take effect April 1, 2010.