S T A T E O F N E W Y O R K

6431

I N S E N A T E

January 7, 2010

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law, in relation to providing drug rehabilitative services to parents of a newborn who tests positive for alcohol and/or controlled substances; to amend the public health law, in relation to providing for testing of newborns for alcohol or controlled substances; and to amend the family court act, in relation to the admissibility of laboratory tests showing usage of a controlled substance and referring certain alcohol and substance abusers to drug treatment court

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

Section 1. Subdivision 2 of section 422 of the social services law is amended by adding a new paragraph (d) to read as follows:

(D) WHENEVER A TELEPHONE CALL OR REPORT HAS BEEN RECEIVED BY THE STATE CENTRAL REGISTER ABOUT A CASE OF SUSPECTED CHILD ABUSE OR MALTREATMENT FROM AN ATTENDING PHYSICIAN BECAUSE A NEWBORN HAS TESTED POSITIVE FOR ALCOHOL AND/OR FOR A CONTROLLED SUBSTANCE AS DEFINED IN SECTION THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW AND THAT SUCH POSITIVE TOXICOLOGY WAS CONFIRMED BY A SECOND TEST, THE LOCAL DISTRICT SHALL CONDUCT AN INVESTIGATION OF THE SUBJECT OF THE REPORT. FURTHERMORE, THE LOCAL DISTRICT SHALL INVESTIGATE THE HOME IN WHICH THE NEWBORN IS TO RESIDE WITH THE CUSTODIAL PARENT IN ORDER TO ASSESS WHETHER SUCH LIVING ARRANGEMENTS WILL IMPAIR THE CHILD OR PLACE THE CHILD AT IMMINENT RISK OF IMPAIRMENT PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION FOUR HUNDRED TWELVE OF THIS TITLE AND SUBDIVISION (F) OF SECTION ONE THOUSAND TWELVE OF THE FAMILY COURT ACT. THE LOCAL SOCIAL SERVICES COMMISSIONER SHALL IN WRITING INFORM THE SUBJECT OF SUCH CENTRAL REGISTER REPORT ABOUT THE AVAILABILITY OF DRUG AND/OR ALCOHOL SUBSTANCE ABUSE TREATMENT PROGRAMS, AND INTENSIVE CAREGIVER REHABILITATION SERVICES THAT MAY BE PROVIDED. THE LOCAL SOCIAL SERVICES DISTRICT OR THE HOSPITAL, AS DEFINED IN ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, MAY, IF APPROPRIATE, MAKE ARRANGEMENTS FOR THE ADMISSION OF THE CARETAKER PARENT AND CHILD OR CHILDREN INTO A RESIDENTIAL TREATMENT

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

LBD00068-04-0

PROGRAM OR INTO AN OUT-PATIENT TREATMENT PROGRAM PURSUANT TO SECTION FOUR HUNDRED NINE-A OF THIS ARTICLE. THE SUBJECT OF A REPORT PURSUANT TO THIS SECTION SHALL BE INFORMED IN WRITING BY THE LOCAL COMMISSIONER OF SOCIAL SERVICES OF THE POSSIBLE CIVIL CONSEQUENCES OF FAILING TO PARTICIPATE AND COMPLY WITH THE REQUIREMENTS OF A SUBSTANCE ABUSE TREATMENT PROGRAM.

S 2. Paragraph (a) of subdivision 5 of section 409-a of the social services law, as added by chapter 610 of the laws of 1979 and as designated by chapter 731 of the laws of 1989, such subdivision as renumbered by chapter 465 of the laws of 1987, is amended to read as follows:

(a) Regulations of the department, promulgated pursuant to and not inconsistent with this section, shall contain program standards including, but not limited to: specification of services to be classified as preventive services, WHICH SHALL INCLUDE SUBSTANCE ABUSE TREATMENT SERVICES PROVIDED TO A PREGNANT WOMAN OR A CARETAKER PERSON; appropriate circumstances and conditions for the provision of particular services; appropriate providers and recipients of such services; and time limits, as may be appropriate, for the provision of particular services. The department shall, subject to the approval of the director of the budget, establish reimbursement or charge limitations for particular services or groups of services to be provided. The department shall also promulgate regulations to prevent social services districts from overutilizing particular forms or types of preventive services and to encourage districts to provide balanced preventive services programs based on the identified needs of children and families residing in such districts.

S 3. Section 423 of the social services law is amended by adding a new subdivision 7 to read as follows:

7. (A) SUBJECT TO THE AMOUNTS ANNUALLY APPROPRIATED SPECIFICALLY THEREFOR, THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES IS AUTHORIZED TO AWARD GRANTS TO NOT-FOR-PROFIT ORGANIZATIONS WHICH MAY, TO THE EXTENT PRACTICABLE, BE COMMUNITY-BASED AND/OR CONSORTIA OF ORGANIZATIONS WITH COMMUNITY ADVISORY BOARDS. SUCH ORGANIZATIONS SHALL CREATE OR ENHANCE CAREGIVER REHABILITATION SERVICES THAT PROVIDE AN ALCOHOL OR SUBSTANCE ABUSING PREGNANT WOMAN OR A CARETAKER PERSON WITH RESIDENTIAL AND/OR OUT-PATIENT TREATMENT SERVICES, INCLUDING COUNSELING, PARENTING SKILLS AND INTENSIVE CASE MONITORING. CAREGIVER REHABILITATION SERVICES MAY PROVIDE SUCH ELIGIBLE PERSONS WITH AN OPPORTUNITY TO RECEIVE INTENSIVE REHABILITATION TREATMENT AND INTENSIVE CASE MANAGEMENT SPECIALLY TAILORED TO ACCOMMODATE THE NEEDS OF EXPECTANT MOTHERS AND CAREGIVERS WITH CHILDREN.

(B) LOCAL SOCIAL SERVICES DISTRICTS SHALL MAKE THE PROVISION OF SUBSTANCE ABUSE TREATMENT SERVICES TO A PREGNANT WOMAN OR A CARETAKER PERSON A PRIORITY WHENEVER SUCH PERSON IS THE SUBJECT OF A REPORT TO THE CENTRAL REGISTER PURSUANT TO SECTION FOUR HUNDRED TWENTY-TWO OF THIS TITLE. SUCH SUBSTANCE ABUSE TREATMENT PROGRAMS SHALL BE CALLED INTENSIVE CAREGIVER REHABILITATION SERVICES. THE INTENSIVE CAREGIVER REHABILITATION SERVICES PROGRAM MAY BE PROVIDED TO ELIGIBLE PERSONS PURSUANT TO THIS SECTION IN ORDER TO PERMIT A CHILD TO BE PLACED WITH THE CHILD'S PARENT IN A RESIDENTIAL PROGRAM THAT PROVIDES TREATMENT AND OTHER NECESSARY SERVICES FOR PARENTS AND CHILDREN, INCLUDING COUNSELING, PARENTING SERVICES AND INTENSIVE CASE MONITORING WHEN:

(I) THE PARENT OR CAREGIVER IS ATTEMPTING TO OVERCOME A SUBSTANCE ABUSE PROBLEM AND IS COMPLYING WITH AN APPROVED TREATMENT PLAN;

(II) THE SAFETY OF THE CHILD CAN BE ASSURED;

(III) THE RANGE OF SERVICES PROVIDED BY THE PROGRAM IS DESIGNED TO APPROPRIATELY ADDRESS THE NEEDS OF THE PARENT AND CHILD; AND

(IV) THE GOAL OF THE CASE PLAN FOR THE CHILD IS EITHER TO PREVENT AN OUT OF HOME PLACEMENT OR TO TRY TO REUNIFY THE CHILD WITH THE FAMILY. OUT-PATIENT SERVICES SHALL ALSO BE MADE AVAILABLE BY THE LOCAL SOCIAL SERVICES DISTRICT TO THOSE PREGNANT WOMEN AND CAREGIVERS WHOSE CIRCUMSTANCES PREVENT THEM FROM ENROLLING IN A RESIDENTIAL TREATMENT PROGRAM BUT WHO ARE SEEKING INTENSIVE CAREGIVER REHABILITATION SERVICES IN AN EFFORT TO ELIMINATE THEIR ADDICTION WHILE PRESERVING THEIR FAMILIES.

(C) THE INTENSIVE CAREGIVER REHABILITATION SERVICES PROGRAM SHALL HAVE A CASEWORKER TO CLIENT RATIO WHICH SHALL NOT EXCEED THE STAFFING LEVEL WHICH IS DEEMED TO BE APPROPRIATE BY THE OFFICE OF CHILDREN AND FAMILY SERVICES. INTENSIVE TREATMENT SERVICES SHALL BE PROVIDED TO ELIGIBLE FAMILIES FOR NOT MORE THAN FORTY-FIVE DAYS FOR A RESIDENTIAL BASIS AND NO MORE THAN NINETY DAYS FOR AN OUT-PATIENT BASIS; AND, WEEKLY FOLLOW-UP SERVICES SHALL BE PROVIDED FOR A PERIOD OF NOT MORE THAN SIX MONTHS AS DETERMINED ON A CASE-BY-CASE BASIS. PROVIDED, HOWEVER, THAT SUCH INTENSIVE TREATMENT SERVICES, BOTH RESIDENTIAL AND OUT-PATIENT, AND THE WEEKLY FOLLOW-UP SERVICES MAY BE EXTENDED AS NEEDED ON A CASE-BY-CASE BASIS FOR UP TO ONE YEAR.

S 4. The public health law is amended by adding a new section 2500-k to read as follows:

S 2500-K. ALCOHOL AND SUBSTANCE ABUSE; SCREENING AND/OR TESTING OF NEWBORNS. 1. THE COMMISSIONER SHALL ESTABLISH A PROGRAM FOR THE SCREENING AND/OR TESTING OF NEWBORNS FOR EXPOSURE TO ALCOHOL AND/OR A CONTROLLED SUBSTANCE, INCLUDING EXPOSURE WHICH RESULTS FROM THE ABUSE OF PRESCRIPTION DRUGS.

2. THE COMMISSIONER SHALL, NO LATER THAN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, PROMULGATE RULES AND REGULATIONS TO ESTABLISH A HOSPITAL PROTOCOL TO IMPLEMENT THE PROGRAM ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION. SUCH PROTOCOL SHALL INCLUDE THE ADMINISTRATION OF SCREENING, TESTING, REVIEW PROCESSES, COUNSELING AND REFERRALS FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT. SUCH PROTOCOLS SHALL DETAIL THE PRESENTING OF MEDICAL CONDITIONS, CRITERIA OR SYMPTOMS WHICH REQUIRE THE RESPONSIBLE PHYSICIAN OR BIRTH ATTENDANT TO SCREEN, TEST AND INITIATE A REVIEW PROCESS FOR EXPOSURE TO ALCOHOL AND/OR A CONTROLLED SUBSTANCE AS DEFINED IN SECTION THIRTY-THREE HUNDRED SIX OF THIS CHAPTER. SUCH PROTOCOLS SHALL NOT RELY ON THE EXPECTANT MOTHER'S AGE, RACE, MARITAL STATUS, SOURCE OF INCOME, RESIDENCE, INSURANCE PROVIDER, EDUCATIONAL LEVEL, OCCUPATION, PLACE OF EMPLOYMENT OR PROFESSION WHEN DETERMINING WHETHER OR NOT TO TEST A NEWBORN FOR EXPOSURE TO ALCOHOL AND/OR A CONTROLLED SUBSTANCE. SUCH PROTOCOL SHALL REQUIRE THAT: (A) EACH SCREENING FOR ALCOHOL AND/OR DRUGS BE SUBJECTED TO A SECOND CONFIRMATORY TEST BEFORE AN INCIDENT REPORT MAY BE FILED WITH THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT PURSUANT TO PARAGRAPH (D) OF SUBDIVISION TWO OF SECTION FOUR HUNDRED TWENTY-TWO OF THE SOCIAL SERVICES LAW; (B) THAT A MEDICAL REVIEW OFFICER INTERVIEW THE EXPECTANT OR POSTPARTUM WOMAN RELATIVE TO A POSITIVE TOXICOLOGY REPORT ON HER NEWBORN; AND (C) EACH HOSPITAL COLLECT BLIND DATA ON THE SCREENING, TESTING AND TREATMENT REFERRALS, WHEN APPROPRIATE, TO FAMILIES OF NEWBORNS.

3. COMMENCING ON THE FIRST OF JANUARY NEXT SUCCEEDING THE DATE ON WHICH RULES AND REGULATIONS HAVE BEEN FILED WITH THE SECRETARY OF STATE TO IMPLEMENT THIS SECTION, THE COMMISSIONER SHALL BIENNIALLY PREPARE A REPORT NO LATER THAN THE FIFTEENTH OF DECEMBER OF EACH YEAR. SUCH REPORT SHALL EVALUATE THE EFFECTIVENESS OF THE ALCOHOL AND DRUG SCREENING AND TESTING POLICY AND PROTOCOL ESTABLISHED BY THIS SUBDIVISION. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: THE NUMBER OF

NEWBORNS SCREENED FOR EXPOSURE TO ALCOHOL OR A CONTROLLED SUBSTANCE BY AGE, RACE, COLOR, ETHNICITY, SOCIO-ECONOMIC STATUS, TYPE OF MEDICAL INSURANCE, AND ZIP CODE; THE NUMBER OF SCREENS WHICH RESULTED IN A POSITIVE TOXICOLOGY; THE NUMBER OF SCREENS WHICH WERE THEN SUBJECTED TO A SECOND CONFIRMATORY TEST; THE NUMBER OF FALSE POSITIVE TOXICOLOGY REPORTS; THE NUMBER OF PHYSICIAN REPORTS TO THE STATE CENTRAL REGISTER FOR CHILD ABUSE AND MALTREATMENT OF A POSITIVE TOXICOLOGY WHICH HAS BEEN CONFIRMED AND REVIEWED; THE NUMBER OF WOMEN ADMITTED TO AN INTENSIVE CAREGIVER REHABILITATIVE SERVICES PROGRAM AS A RESULT OF HOSPITAL INTERVENTION; THE NUMBER OF ALCOHOL AND DRUG SCREENS PERFORMED AT A HOSPITAL.

S 5. Paragraphs (vii) and (viii) of subdivision (a) of section 1046 of the family court act, paragraph (vii) as amended by chapter 432 of the laws of 1993 and paragraph (viii) as added by chapter 1015 of the laws of 1972, are amended and a new paragraph (ix) is added to read as follows:

(vii) neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, nor the rape crisis counselor-client privilege, as set forth in section forty-five hundred ten of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible[.]; AND

(viii) proof of the "impairment of emotional health" or "impairment of mental or emotional condition" as a result of the unwillingness or inability of the respondent to exercise a minimum degree of care toward a child may include competent opinion or expert testimony and may include proof that such impairment lessened during a period when the child was in the care, custody or supervision of a person or agency other than the respondent[.]; AND

(IX) THE RESULTS OF ANY LABORATORY TEST SHOWING THE USAGE OF A CONTROLLED SUBSTANCE BY, OR THE PRESENCE OF A CONTROLLED SUBSTANCE IN, A PARENT, CHILD OR OTHER PERSON SHALL BE ADMISSIBLE ONLY IF:

(A) SUCH TEST WAS CONDUCTED BY A LABORATORY THAT HAS MET THE REQUIREMENTS ESTABLISHED BY SECTION FIVE HUNDRED SEVENTY-FIVE OF THE PUBLIC HEALTH LAW; AND

(B) THE LABORATORY AND THE PERSON OR INSTITUTION COLLECTING THE SAMPLE HAS ESTABLISHED A CHAIN OF CUSTODY PROCEDURE FOR SAMPLE COLLECTING AND TESTING THAT WILL VERIFY THE IDENTITY OF EACH SAMPLE AND TEST RESULT; AND

(C) THE COLLECTING ENTITY DIVIDES THE SAMPLE COLLECTED, IF SUFFICIENT INTO TWO SEPARATE CONTAINERS AND PRESERVES ONE SAMPLE IN A SECURE FREEZER IN SUCH A WAY THAT IT CAN BE LATER TESTED FOR THE PRESENCE OF ALCOHOL OR CONTROLLED SUBSTANCES; AND

(D) THE SAMPLE IS RETESTED TO CONFIRM THE RESULTS OF THE FIRST TEST AND WHICH PROVIDES QUANTITATIVE DATA ABOUT THE DETECTED DRUG OR DRUG METABOLITES; AND

(E) THE RESULTS INCLUDE THE TYPE OF TESTS CONDUCTED, THE RESULTS OF EACH TEST, AND THE DETECTION LEVEL, MEANING THE CUTOFF OR MEASURE USED TO DISTINGUISH POSITIVE FROM NEGATIVE SAMPLES.

S 6. Section 1051 of the family court act is amended by adding a new subdivision (g) to read as follows:

(G) WHERE THE COURT MAKES A FINDING OF NEGLECT OR ABUSE AND FINDS THAT THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CHILD MISUSES A DRUG OR DRUGS OR ALCOHOLIC BEVERAGES, THE COURT MAY REFER THE CASE TO A PART OF THE COURT KNOWN AS THE "DRUG TREATMENT COURT". THE DRUG TREATMENT COURT MAY REQUIRE THAT THE RESPONDENT MEET WITH A CASE MANAGER, COMPLY WITH A TREATMENT PLAN, AND SUBMIT TO OVERSIGHT BY THE COURT, INCLUDING REGULAR DRUG TESTING. THE DRUG TREATMENT COURT SHALL PROVIDE FOR SPEEDY ENROLLMENT OF RESPONDENTS INTO APPROPRIATE TREATMENT PROGRAMS, FREQUENT AND CONSISTENT MONITORING OF RESPONDENTS INCLUDING REWARDING OF GOOD BEHAVIOR AND PENALIZING OF POOR BEHAVIOR, AND EXPEDITED DECISION MAKING.

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law.