

6874

I N S E N A T E

February 18, 2010

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
23 the amount expended by the state and the local social services district
24 for medical assistance in a certified home health agency, [long term
25 home health care program,] hospice or residential health care facility,

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

LBD06787-02-0

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

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

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

49 (d) meets such other criteria, as may be established by the commis-
50 sioner, which are necessary to effectively implement the objectives of
51 this section. SUCH CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO, A
52 REQUIREMENT THAT ANY PERSON WHO IS ELIGIBLE FOR, OR REASONABLY APPEARS
53 TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS UNDER SUBCHAPTER XVIII
54 OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE REQUIRED TO APPLY FOR AND
55 FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY
56 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 3. Subparagraph 1 of paragraph (b) of subdivision 2 of section 366 of the social services law, as amended by chapter 638 of the laws of 1993 and designated by chapter 170 of the laws of 1994, is amended to read as follows:

(1) In establishing standards for determining eligibility for and amount of such assistance, the department shall take into account only such income and resources, in accordance with federal requirements, as are available to the applicant or recipient and as would not be required to be disregarded or set aside for future needs, and there shall be a reasonable evaluation of any such income or resources. The department shall not consider the availability of an option for an accelerated payment of death benefits or special surrender value pursuant to paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law, or an option to enter into a viatical settlement pursuant to the provisions of article seventy-eight of the insurance law, as an available resource in determining eligibility for an amount of such assistance, provided, however, that the payment of such benefits shall be considered in determining eligibility for and amount of such assistance. There shall not be taken into consideration the financial responsibility of any individual for any applicant or recipient of assistance under this title unless such applicant or recipient is such individual's spouse or such individual's child who is under twenty-one years of age. In determining the eligibility of a child who is categorically eligible as blind or disabled, as determined under regulations prescribed by the social security act for medical assistance, the income and resources of parents or spouses of parents are not considered available to that child if [she/he] HE OR SHE does not regularly share the common household even if the child returns to the common household for periodic visits. In the application of standards of eligibility with respect to income, costs incurred for medical care, whether in the form of insurance premiums or otherwise, shall be taken into account. Any person who is eligible for, or reasonably appears to meet the criteria of eligibility for, benefits under [title] SUBCHAPTER XVIII of the federal social security act shall be required to apply for and fully utilize such benefits in accordance with this chapter. IN THE CASE OF A PERSON WHO IS RECEIVING OR SEEKING LONG TERM CARE, BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE FULLY UTILIZED IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY THE COSTS OF SUCH LONG TERM CARE. 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 4. Subparagraph (v) of paragraph b of subdivision 6-a of section 366 of the social services law, as amended by chapter 627 of the laws of 2004, is amended to read as follows:

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

17 S 5. Subparagraph (viii) of paragraph b of subdivision 9 of section
18 366 of the social services law, as added by chapter 170 of the laws of
19 1994, is amended to read as follows:

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

37 S 6. The social services law is amended by adding a new section 366-i
38 to read as follows:

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

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

54 (E) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION OR OF
55 ANY OTHER LAW, FOR ANY PERSON WHO IS ELIGIBLE FOR MEDICAL ASSISTANCE AND

1 FOR MEDICARE UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT,
2 THE COST OF THE PREMIUM FOR MEDICARE PART A SHALL BE BORNE BY THE STATE.

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

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

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

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

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

47 2. Notwithstanding any inconsistent provision of this chapter or any
48 other law to the contrary, the partnership for long term care program
49 shall provide Medicaid extended coverage to a person receiving long term
50 care services if there is federal participation pursuant to such treat-
51 ment and such person: (a) is or was covered by an insurance policy or
52 certificate providing coverage for long term care which meets the appli-
53 cable minimum benefit standards of the superintendent of insurance and
54 other requirements for approval of participation under the program; and,
55 (b) has exhausted the coverage and benefits as required by the program.
56 ANY SUCH PERSON WHO IS RECEIVING MEDICAL ASSISTANCE AND WHO IS ELIGIBLE

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

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