

4361

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

Introduced by M. of A. BRENNAN, DINOWITZ, GOTTFRIED, ORTIZ, J. RIVERA, PEOPLES, PHEFFER, CASTRO, CAHILL, JAFFEE, CHRISTENSEN -- Multi-Sponsored by -- M. of A. GALEF, GREENE, JACOBS, JOHN, LUPARDO, McENENY, MENG, SWEENEY -- read once and referred 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

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

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

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

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

49 (B) PAYMENT FOR UP TO NINETY DAYS OF CARE FOR SERVICES PROVIDED UNDER
50 THE MEDICAL ASSISTANCE PROGRAM SHALL BE MADE FOR AN APPLICANT PRESUMED
51 ELIGIBLE FOR MEDICAL ASSISTANCE FOR CARE, SERVICES AND SUPPLIES RELATED
52 TO THE TREATMENT OF A MENTAL ILLNESS PURSUANT TO PARAGRAPH (B) OF SUBDI-
53 VISION ONE OF THIS SECTION, PROVIDED HOWEVER, THAT SUCH PAYMENT SHALL
54 NOT EXCEED ONE HUNDRED PERCENT OF THE RATE PAYABLE UNDER THIS TITLE FOR
55 SUCH CARE, SERVICES AND SUPPLIES.
56

1 (C) Notwithstanding any other provision of law, no federal financial
2 participation shall be claimed for services provided to a person while
3 presumed eligible for medical assistance under this program until such
4 person has been determined to be eligible for medical assistance by the
5 local social services district. During the period of presumed medical
6 assistance eligibility, payment for services provided persons presumed
7 eligible under this program shall be made from state funds. [Upon] (I)
8 IN THE CASE OF COSTS INCURRED FOR A PERSON PRESUMPTIVELY ELIGIBLE FOR
9 MEDICAL ASSISTANCE UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS
10 SECTION, UPON the final determination of eligibility by the local social
11 services district, payment shall be made for the balance of the cost of
12 such care and services provided to such applicant for such period of
13 eligibility and a retroactive adjustment shall be made by the department
14 OF HEALTH to appropriately reflect federal financial participation and
15 the local share of costs for the services provided during the period of
16 presumptive eligibility. Such federal and local financial participation
17 shall be the same as that which would have occurred if a final determi-
18 nation of eligibility for medical assistance had been made prior to the
19 provision of the services provided during the period of presumptive
20 eligibility. In instances where an individual who is presumed eligible
21 for medical assistance is subsequently determined to be ineligible, the
22 cost for services provided to such individual shall be reimbursed in
23 accordance with the provisions of section three hundred sixty-eight-a of
24 this article. Provided, however, if upon audit the department OF HEALTH
25 determines that there are subsequent determinations of ineligibility for
26 medical assistance in at least fifteen percent of the cases in which
27 presumptive eligibility has been granted in a local social services
28 district, payments for services provided to all persons presumed eligi-
29 ble and subsequently determined ineligible for medical assistance shall
30 be divided equally by the state and the district.

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

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

1 S 2. Subdivisions 1, 2 and 3 of section 364-i of the social services
2 law, as added by chapter 626 of the laws of 1987, are amended to read as
3 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, if the local
10 department of social services determines that the applicant meets each
11 of the following criteria: [(a)] (I) the applicant is receiving acute
12 care in such hospital; [(b)] (II) a physician certifies that such appli-
13 cant no longer requires acute hospital care, but still requires medical
14 care which can be provided by a certified home health agency or a long
15 term home health care program; [(c)] (III) the applicant or his repre-
16 sentative states that the applicant does not have insurance coverage for
17 the required medical care and that such care cannot be afforded; [(d)]
18 (IV) it reasonably appears that the applicant is otherwise eligible to
19 receive medical assistance; [(e)] (V) it reasonably appears that the
20 amount expended by the state and the local social services district for
21 medical assistance in a certified home health agency or long term home
22 health care program, during the period of presumed eligibility, would be
23 less than the amount the state and the local social services district
24 would expend for continued acute hospital care for such person; and
25 [(f)] (VI) such other determinative criteria as the commissioner OF
26 HEALTH shall provide by rule or regulation. If a person has been deter-
27 mined to be presumptively eligible for medical assistance, pursuant to
28 this subdivision, and is subsequently determined to be ineligible for
29 such assistance, the commissioner OF HEALTH, on behalf of the state and
30 the local social services district shall have the authority to recoup
31 from the individual the sums expended for such assistance during the
32 period of presumed eligibility.

33 (B) AN INDIVIDUAL, UPON APPLICATION FOR MEDICAL ASSISTANCE, SHALL BE
34 PRESUMED ELIGIBLE FOR SUCH ASSISTANCE FOR CARE, SERVICES AND SUPPLIES
35 RELATED TO THE TREATMENT OF A MENTAL ILLNESS FOR A PERIOD OF NINETY DAYS
36 FROM THE DATE OF DISCHARGE FROM A HOSPITAL, AS DEFINED IN SECTION 1.03
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41 SOCIAL SERVICES DETERMINES THAT THE APPLICANT MEETS EACH OF THE FOLLOW-
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44 CARE TO TREAT SUCH MENTAL ILLNESS; (III) THE APPLICANT OR HIS REPRESENTATIVE
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46 THE REQUIRED MEDICAL CARE AND THAT SUCH CARE CANNOT BE AFFORDED; (IV) IT
47 REASONABLY APPEARS THAT THE APPLICANT IS OTHERWISE ELIGIBLE TO RECEIVE
48 MEDICAL ASSISTANCE; (V) IT REASONABLY APPEARS THAT THE AMOUNT EXPENDED
49 BY THE STATE AND THE LOCAL SOCIAL SERVICES DISTRICT FOR MEDICAL ASSIST-
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51 ELIGIBILITY, WOULD BE LESS THAN THE AMOUNT THE STATE AND THE LOCAL
52 SOCIAL SERVICES DISTRICT WOULD EXPEND FOR CONTINUED OR FUTURE ACUTE
53 HOSPITAL CARE FOR SUCH PERSON; AND (VI) SUCH OTHER DETERMINATIVE CRITE-
54 RIA AS THE COMMISSIONER OF HEALTH SHALL PROVIDE BY RULE OR REGULATION.
55 IF A PERSON HAS BEEN DETERMINED TO BE PRESUMPTIVELY ELIGIBLE FOR MEDICAL
56 ASSISTANCE, PURSUANT TO THIS SUBDIVISION, AND IS SUBSEQUENTLY DETERMINED

1 TO BE INELIGIBLE FOR SUCH ASSISTANCE, THE COMMISSIONER OF HEALTH, ON
2 BEHALF OF THE STATE AND THE LOCAL SOCIAL SERVICES DISTRICT SHALL HAVE
3 THE AUTHORITY TO RECOUP FROM THE INDIVIDUAL THE SUMS EXPENDED FOR SUCH
4 ASSISTANCE DURING THE PERIOD OF PRESUMED ELIGIBILITY.

5 2. (A) Payment for up to sixty days of care for services provided
6 under the medical assistance program shall be made for an applicant
7 presumed eligible for medical assistance pursuant to PARAGRAPH (A) OF
8 subdivision one of this section provided, however, that such payment
9 shall not exceed sixty-five percent of the rate payable under this title
10 for services provided by a certified home health agency or a long term
11 home health care program.

12 (B) PAYMENT FOR UP TO NINETY DAYS OF CARE FOR SERVICES PROVIDED UNDER
13 THE MEDICAL ASSISTANCE PROGRAM SHALL BE MADE FOR AN APPLICANT PRESUMED
14 ELIGIBLE FOR MEDICAL ASSISTANCE FOR CARE, SERVICES AND SUPPLIES RELATED
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16 VISION ONE OF THIS SECTION, PROVIDED HOWEVER, THAT SUCH PAYMENT SHALL
17 NOT EXCEED ONE HUNDRED PERCENT OF THE RATE PAYABLE UNDER THIS TITLE FOR
18 SUCH CARE, SERVICES AND SUPPLIES.

19 (C) Notwithstanding any other provision of law, no federal financial
20 participation shall be claimed for services provided to a person while
21 presumed eligible for medical assistance under this program until such
22 person has been determined to be eligible for medical assistance by the
23 local social services district. During the period of presumed medical
24 assistance eligibility, payment for services provided persons presumed
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27 MEDICAL ASSISTANCE UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS
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29 services district, payment shall be made for the balance of the cost of
30 such care and services provided to such applicant for such period of
31 eligibility and a retroactive adjustment shall be made by the department
32 OF HEALTH to appropriately reflect federal financial participation and
33 the local share of costs for the services provided during the period of
34 presumptive eligibility. Such federal and local financial participation
35 shall be the same as that which would have occurred if a final determi-
36 nation of eligibility for medical assistance had been made prior to the
37 provision of the services provided during the period of presumptive
38 eligibility. In instances where an individual who is presumed eligible
39 for medical assistance is subsequently determined to be ineligible, the
40 cost for services provided to such individual shall be reimbursed in
41 accordance with the provisions of section three hundred sixty-eight-a of
42 this article. Provided, however, if upon audit the department OF HEALTH
43 determines that there are subsequent determinations of ineligibility for
44 medical assistance in at least fifteen percent of the cases in which
45 presumptive eligibility has been granted in a local social services
46 district, payments for services provided to all persons presumed eligi-
47 ble and subsequently determined ineligible for medical assistance shall
48 be divided equally by the state and the district.

49 (II) IN THE CASE OF COSTS INCURRED FOR A PERSON PRESUMPTIVELY ELIGIBLE
50 FOR MEDICAL ASSISTANCE UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS
51 SECTION UPON THE FINAL DETERMINATION OF ELIGIBILITY BY THE LOCAL SOCIAL
52 SERVICES DISTRICT, PAYMENT SHALL BE MADE FOR THE BALANCE OF THE COST OF
53 SUCH CARE AND SERVICES PROVIDED TO SUCH APPLICANT FOR SUCH PERIOD OF
54 ELIGIBILITY AND A RETROACTIVE ADJUSTMENT SHALL BE MADE BY THE DEPARTMENT
55 OF HEALTH TO APPROPRIATELY REFLECT FEDERAL FINANCIAL PARTICIPATION AND
56 THE LOCAL SHARE OF COSTS FOR THE SERVICES PROVIDED DURING THE PERIOD OF

1 PRESUMPTIVE ELIGIBILITY. SUCH FEDERAL FINANCIAL PARTICIPATION SHALL BE
2 THE SAME AS THAT WHICH WOULD HAVE OCCURRED IF A FINAL DETERMINATION OF
3 ELIGIBILITY FOR MEDICAL ASSISTANCE HAD BEEN MADE PRIOR TO THE PROVISION
4 OF THE SERVICES PROVIDED DURING THE PERIOD OF PRESUMPTIVE ELIGIBILITY.
5 THERE SHALL BE NO LOCAL SHARE IN THE COSTS OF SUCH ASSISTANCE DURING THE
6 PRESUMPTIVE ELIGIBILITY PERIOD; PROVIDED HOWEVER THAT IF UPON AUDIT THE
7 DEPARTMENT OF HEALTH DETERMINES THAT THERE ARE SUBSEQUENT DETERMINATIONS
8 OF INELIGIBILITY FOR MEDICAL ASSISTANCE IN AT LEAST FIFTEEN PERCENT OF
9 THE CASES IN WHICH PRESUMPTIVE ELIGIBILITY HAS BEEN GRANTED IN A LOCAL
10 SOCIAL SERVICES DISTRICT, PAYMENTS FOR SERVICES PROVIDED TO ALL PERSONS
11 PRESUMED ELIGIBLE AND SUBSEQUENTLY DETERMINED INELIGIBLE FOR MEDICAL
12 ASSISTANCE SHALL BE REIMBURSED IN ACCORDANCE WITH THE PROVISIONS OF
13 SECTION THREE HUNDRED SIXTY-EIGHT-A OF THIS ARTICLE.

14 3. On or before March thirty-first, [nineteen hundred eighty-nine] TWO
15 THOUSAND TEN, the department OF HEALTH shall submit to the governor and
16 the legislature an initial evaluation of the impact of the medical
17 assistance presumptive eligibility program, including recommendations
18 regarding possible modifications and on or before March thirty-first,
19 nineteen hundred ninety, the department shall submit to the governor and
20 legislature a second evaluation of the program, including further recom-
21 mendations for future modifications.

22 S 3. Subdivision 1 of section 368-a of the social services law is
23 amended by adding a new paragraph (z) to read as follows:

24 (Z) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, REIMBURSEMENT
25 BY THE STATE FOR PAYMENTS MADE, WHETHER BY THE DEPARTMENT OF HEALTH ON
26 BEHALF OF A LOCAL SOCIAL SERVICES DISTRICT PURSUANT TO SECTION THREE
27 HUNDRED SIXTY-SEVEN-B OF THIS TITLE OR BY A LOCAL SOCIAL SERVICES
28 DISTRICT DIRECTLY, FOR MEDICAL ASSISTANCE FURNISHED TO AN INDIVIDUAL
29 PRESUMED ELIGIBLE FOR MEDICAL ASSISTANCE UNDER PARAGRAPH (B) OF SUBDIVI-
30 SION ONE OF SECTION THREE HUNDRED SIXTY-FOUR-I OF THIS TITLE, DURING THE
31 PRESUMPTIVE ELIGIBILITY PERIOD, SHALL BE MADE FOR THE FULL AMOUNT
32 EXPENDED FOR SUCH ASSISTANCE, AFTER FIRST DEDUCTING THEREFROM ANY FEDER-
33 AL FUNDS PROPERLY RECEIVED OR TO BE RECEIVED ON ACCOUNT OF SUCH EXPENDI-
34 TURE; PROVIDED THAT IF UPON AUDIT THE DEPARTMENT OF HEALTH DETERMINES
35 THAT THERE ARE SUBSEQUENT DETERMINATIONS OF INELIGIBILITY FOR MEDICAL
36 ASSISTANCE IN AT LEAST FIFTEEN PERCENT OF THE CASES IN WHICH PRESUMPTIVE
37 ELIGIBILITY HAS BEEN GRANTED IN A LOCAL SOCIAL SERVICES DISTRICT,
38 PAYMENTS FOR SERVICES PROVIDED TO ALL PERSONS PRESUMED ELIGIBLE AND
39 SUBSEQUENTLY DETERMINED INELIGIBLE FOR MEDICAL ASSISTANCE SHALL BE REIM-
40 BURSED IN ACCORDANCE WITH PARAGRAPH (D) OF THIS SUBDIVISION.

41 S 4. This act shall take effect April 1, 2010; provided that the
42 amendments to subdivisions 1, 2 and 3 of section 364-i of the social
43 services law made by section one of this act shall be subject to the
44 expiration and reversion of such section pursuant to section 2 of chap-
45 ter 693 of the laws of 1996, as amended, when upon such date the
46 provisions of section two of this act shall take effect.