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

8397

2009-2010 Regular Sessions

I N A S S E M B L Y

May 19, 2009

Introduced by M. of A. GOTTFRIED -- (at request of the Department of Health) -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the social services law, in relation to prenatal care programs and services; and to repeal certain provisions of the public health law relating thereto

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

Section 1. Sections 2520, 2521, 2523, 2524, 2525, 2526, 2527, 2528 and 2529 of the public health law are REPEALED.

S 2. Section 2522 of the public health law, as amended by chapter 584 of the laws of 1989, is amended to read as follows:

S 2522. Programs; powers of the commissioner. [1. Comprehensive prenatal care services available under the prenatal care assistance program include:

(a) prenatal risk assessment;

(b) prenatal care visits;

(c) laboratory services;

(d) health education for both parents regarding prenatal nutrition and other aspects of prenatal care, alcohol and tobacco use, substance abuse, use of medication, labor and delivery, family planning to prevent future unintended pregnancies, breast feeding, infant care and parenting;

(e) referral for pediatric care;

(f) referral for nutrition services including screening, education, counseling, follow-up and provision of services under the women, infants and children's program and the supplemental nutrition assistance program;

(g) mental health and related social services including screening and counseling;

(h) transportation services for prenatal care services;

(i) labor and delivery services;

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

LBD07246-03-9

(j) post-partum services including family planning services;
(k) inpatient care, specialty physician and clinic services which are necessary to assure a healthy delivery and recovery;
(l) dental services;
(m) emergency room services;
(n) home care; and
(o) pharmaceuticals.
2. The commissioner shall provide for the development of prenatal care assistance programs in those areas of the state that lack prenatal care services for low-income pregnant women or where eligible service recipients are unserved or underserved.
3. If the prenatal care service provider is a physician or nurse midwife practicing on an individual or group basis and is unable to directly provide the services enumerated in subdivision one of this section, payment may be provided to such physician or nurse midwife for those services that will be provided by such physician or nurse midwife. Payment may be provided to a public or private not-for-profit agency or organization for those services not provided by the physician or nurse midwife. The prenatal care service provider and the agency or organization receiving payment under this subdivision shall develop linkages to coordinate services provided to an eligible service recipient.
4. The] IN ORDER TO PROMOTE COMPREHENSIVE PRENATAL CARE, THE commissioner is [also] authorized to provide funds, including the awarding of grants to NOT-FOR-PROFIT COMMUNITY-BASED ORGANIZATIONS, LOCAL HEALTH DEPARTMENTS, public education organizations AND SUCH OTHER ORGANIZATIONS AS MAY BE DESIGNATED BY THE COMMISSIONER, for public AND PROVIDER education[,] AND outreach [and], HOME VISITING, referral OF PREGNANT WOMEN to prenatal care service providers, AND IMPROVEMENT OF REGIONAL SYSTEMS OF PERINATAL CARE. This education, outreach [and], HOME VISITING, referral AND SYSTEMS IMPROVEMENT may include, BUT IS NOT LIMITED TO:
(a) public education concerning availability of prenatal services;
(b) promotion of community awareness of the benefits of [pre-conception] PRECONCEPTION health and early and [continued] CONTINUOUS prenatal care;
(c) outreach and direct recruitment of service recipients AND PROVIDERS;
(d) REFERRALS AND LINKAGE TO ORGANIZATIONS PROVIDING ASSISTANCE WITH APPLICATIONS FOR MEDICAL ASSISTANCE AND ENROLLMENT IN MEDICAID MANAGED CARE PROGRAMS;
(E) referrals and linkage with HOME VISITING AND other community services; [and
(e)] (F) follow-up of patient participation in prenatal care [assistance programs] SERVICES; AND
(G) IDENTIFICATION OF REGIONAL PERINATAL HEALTH CARE SYSTEM BARRIERS AND LIMITATIONS THAT LEAD TO POOR PERINATAL OUTCOMES AND DEVELOPMENT OF STRATEGIES TO ADDRESS SUCH BARRIERS AND LIMITATIONS.
[5. The commissioner is authorized to seek and obtain the cooperation and assistance of federal and state agencies, including the United States departments of agriculture and health and human services, and New York state divisions of alcohol and alcohol abuse and substance abuse services and the department of social services.
6. The commissioner is authorized to set standards for prenatal care service providers including, but not limited to, quality of care assurances. The commissioner is authorized to inquire into services provided, and providers and organizations shall furnish the department such reports, records and information as it may require to effectuate the

provisions of this title and section seven of the Prenatal Care Act of 1987. All information concerning service recipients shall be kept confidential, except as otherwise provided in this title and section seven of the Prenatal Care Act of 1987. All information concerning applicants for or recipients of medical assistance shall be kept confidential as required by subdivision three of section three hundred sixty-nine of the social services law.]

S 3. Subparagraph 1 of paragraph (o) of subdivision 4 of section 366 of the social services law, as amended by section 3 of part D of chapter 57 of the laws of 2000, is amended to read as follows:

(1) Pregnant women who are not otherwise eligible for medical assistance [are eligible for services provided under the prenatal care assistance program established pursuant to title two of article twenty-five of the public health law if the income of the family that includes the pregnant woman does not exceed] AND WHOSE FAMILIES HAVE: (I) SUBJECT TO THE APPROVAL OF THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES, GROSS INCOME NOT IN EXCESS OF TWO HUNDRED THIRTY PERCENT OF THE FEDERAL POVERTY LINE (AS DEFINED AND ANNUALLY REVISED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES) FOR FAMILIES OF THE SAME SIZE, OR (II) IN THE ABSENCE OF SUCH APPROVAL, NET INCOMES EQUAL TO OR LESS THAN two hundred percent of the [comparable] federal [income official] poverty line (as defined and annually revised by the United States department of health and human services) for families of the same size, SHALL BE ELIGIBLE FOR COVERAGE OF PRENATAL CARE SERVICES AS PROVIDED IN SUBPARAGRAPH THREE OF THIS PARAGRAPH.

S 4. Subdivision 6 of section 365-a of the social services law, as amended by chapter 16 of the laws of 2002, is amended to read as follows:

6. Any inconsistent provision of law notwithstanding, medical assistance shall also include payment for medical care, services or supplies furnished to eligible pregnant women [under the prenatal care assistance program established pursuant to title two of article twenty-five of the public health law] PURSUANT TO PARAGRAPH (O) OF SUBDIVISION FOUR OF SECTION THREE HUNDRED SIXTY-SIX AND SUBDIVISION SIX OF SECTION THREE HUNDRED SIXTY-FOUR-I OF THIS TITLE, to the extent that and for so long as federal financial participation is available therefor; provided, however, that nothing in this section shall be deemed to affect payment for such medical care, services or supplies if federal financial participation is not available for such care, services and supplies solely by reason of the immigration status of the otherwise eligible pregnant woman.

S 5. The social services law is amended by adding a new section 365-k to read as follows:

S 365-K. PROVISION OF PRENATAL CARE SERVICES. 1. THE COMMISSIONER SHALL ESTABLISH STANDARDS AND GUIDELINES FOR THE PROVISION OF PRENATAL CARE SERVICES UNDER THE MEDICAL ASSISTANCE PROGRAM. IN ESTABLISHING SUCH STANDARDS AND GUIDELINES, THE COMMISSIONER SHALL CONSIDER GENERALLY ACCEPTED STANDARDS OF PROFESSIONAL PRACTICE, INCLUDING, BUT NOT LIMITED TO, STANDARDS ISSUED BY THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS AND THE AMERICAN ACADEMY OF PEDIATRICS, AND SHALL CONSULT WITH PRENATAL CARE PROVIDERS AND OTHER INTERESTED PARTIES.

2. FOR PURPOSES OF THIS TITLE, "PRENATAL CARE PROVIDER" MEANS A MEDICAL CARE FACILITY OR PUBLIC OR PRIVATE NOT-FOR-PROFIT AGENCY OR ORGANIZATION, PHYSICIAN, LICENSED NURSE PRACTITIONER, OR LICENSED MIDWIFE PRACTICING ON AN INDIVIDUAL OR GROUP BASIS OR MANAGED CARE PLAN THAT CONTRACTS WITH PRENATAL PROVIDERS.

S 6. Section 364-i of the social services law, as amended by chapter 693 of the laws of 1996, is amended by adding a new subdivision 6 to read as follows:

6. PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN. (A) A PREGNANT WOMAN SHALL BE PRESUMED TO BE ELIGIBLE FOR COVERAGE OF SERVICES DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION BEGINNING ON THE DATE THAT A QUALIFIED PROVIDER, AS DEFINED IN REGULATIONS OF THE DEPARTMENT, DETERMINES, ON THE BASIS OF PRELIMINARY INFORMATION, THAT THE PREGNANT WOMAN'S FAMILY HAS: (I) SUBJECT TO THE APPROVAL OF THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES, GROSS INCOME THAT DOES NOT EXCEED TWO HUNDRED THIRTY PERCENT OF THE FEDERAL POVERTY LINE (AS DEFINED AND ANNUALLY REVISED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES) FOR A FAMILY OF THE SAME SIZE, OR (II) IN THE ABSENCE OF SUCH APPROVAL, NET INCOME THAT DOES NOT EXCEED TWO HUNDRED PERCENT OF THE FEDERAL POVERTY LINE (AS DEFINED AND ANNUALLY REVISED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES) FOR A FAMILY OF THE SAME SIZE.

(B) SUCH PRESUMPTIVE ELIGIBILITY SHALL CONTINUE THROUGH THE EARLIER OF: THE DAY ON WHICH ELIGIBILITY IS DETERMINED PURSUANT TO THIS TITLE; OR THE LAST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE QUALIFIED PROVIDER MAKES A PRELIMINARY DETERMINATION, IN THE CASE OF A PREGNANT WOMAN WHO DOES NOT FILE AN APPLICATION FOR MEDICAL ASSISTANCE ON OR BEFORE SUCH DAY.

(C) A PRESUMPTIVELY ELIGIBLE PREGNANT WOMAN IS ELIGIBLE FOR COVERAGE OF:

(I) ALL MEDICAL CARE, SERVICES, AND SUPPLIES AVAILABLE UNDER THE MEDICAL ASSISTANCE PROGRAM, EXCLUDING INPATIENT SERVICES AND INSTITUTIONAL LONG TERM CARE, IF THE WOMAN'S FAMILY HAS: (A) SUBJECT TO THE APPROVAL OF THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES, GROSS INCOME THAT DOES NOT EXCEED ONE HUNDRED TWENTY PERCENT OF THE FEDERAL POVERTY LINE (AS DEFINED AND ANNUALLY REVISED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES) FOR A FAMILY OF THE SAME SIZE, OR (B) IN THE ABSENCE OF SUCH APPROVAL, NET INCOME THAT DOES NOT EXCEED ONE HUNDRED PERCENT OF THE FEDERAL POVERTY LINE (AS DEFINED AND ANNUALLY REVISED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES) FOR A FAMILY OF THE SAME SIZE; OR

(II) PRENATAL CARE SERVICES IF THE WOMAN'S FAMILY HAS: (A) SUBJECT TO THE APPROVAL OF THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES, GROSS INCOME THAT EXCEEDS ONE HUNDRED TWENTY PERCENT OF THE FEDERAL POVERTY LINE (AS DEFINED AND ANNUALLY REVISED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES) FOR FAMILIES OF THE SAME SIZE, BUT DOES NOT EXCEED TWO HUNDRED THIRTY PERCENT OF SUCH FEDERAL POVERTY LINE, OR (B) IN THE ABSENCE OF SUCH APPROVAL, NET INCOME THAT EXCEEDS ONE HUNDRED PERCENT BUT DOES NOT EXCEED TWO HUNDRED PERCENT OF THE FEDERAL POVERTY LINE (AS DEFINED AND ANNUALLY REVISED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES) FOR A FAMILY OF THE SAME SIZE.

(D) THE DEPARTMENT OF HEALTH SHALL PROVIDE QUALIFIED PROVIDERS WITH SUCH FORMS AS ARE NECESSARY FOR A PREGNANT WOMAN TO APPLY AND INFORMATION ON HOW TO ASSIST SUCH WOMEN IN COMPLETING AND FILING SUCH FORMS. A QUALIFIED PROVIDER THAT DETERMINES THAT A PREGNANT WOMAN IS PRESUMPTIVELY ELIGIBLE SHALL NOTIFY THE SOCIAL SERVICES DISTRICT IN WHICH THE PREGNANT WOMAN RESIDES OF THE DETERMINATION WITHIN FIVE WORKING DAYS AFTER THE DATE ON WHICH SUCH DETERMINATION IS MADE AND SHALL INFORM THE WOMAN AT THE TIME THE DETERMINATION IS MADE THAT SHE IS REQUIRED TO MAKE APPLICATION BY THE LAST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE DETERMINATION IS MADE.

(E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, PRENATAL CARE THAT IS FURNISHED TO A PREGNANT WOMAN DURING A PRESUMPTIVE ELIGIBILITY PERIOD BY A QUALIFIED PROVIDER SHALL BE DEEMED AS MEDICAL ASSISTANCE FOR PURPOSES OF PAYMENT AND STATE REIMBURSEMENT.

(F) FACILITIES LICENSED UNDER ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW PROVIDING PRENATAL CARE SERVICES SHALL PERFORM PRESUMPTIVE ELIGIBILITY DETERMINATIONS AND ASSIST WOMEN IN SUBMITTING APPROPRIATE DOCUMENTATION TO THE SOCIAL SERVICES DISTRICT AS REQUIRED BY THE COMMISSIONER; PROVIDED, HOWEVER, THAT A FACILITY MAY APPLY TO THE COMMISSIONER FOR EXEMPTION FROM THIS REQUIREMENT ON THE BASIS OF UNDUE HARDSHIP.

(G) ALL PRENATAL CARE SERVICE PROVIDERS MUST PROVIDE PRENATAL CARE SERVICES TO ELIGIBLE SERVICE RECIPIENTS DETERMINED PRESUMPTIVELY ELIGIBLE FOR MEDICAL ASSISTANCE BUT NOT YET ENROLLED IN THE MEDICAL ASSISTANCE PROGRAM, AND ASSIST WOMEN IN SUBMITTING APPROPRIATE DOCUMENTATION TO THE SOCIAL SERVICES DISTRICT AS REQUIRED BY THE COMMISSIONER.

S 7. Paragraph (b) of subdivision 8 of section 2803 of the public health law, as added by section 2 of part G of chapter 412 of the laws of 1999, is amended to read as follows:

(b) Notwithstanding any inconsistent provision of section twelve of this chapter or any other law, the commissioner may impose a civil penalty of up to three thousand five hundred dollars for each violation of the requirements of subdivision one of section three hundred sixty-six-g of the social services law or the rules and regulations promulgated pursuant to such section, pertaining to reporting to the department, or such other entity designated by the department, of each live birth to a woman receiving medical assistance [or services under the prenatal care assistance program under title two of article twenty-five of this chapter]. Any such civil penalties shall be assessed subject to the applicable provisions of sections twelve and twelve-a of this chapter.

S 8. Paragraph (e) of subdivision 16 of section 2807-c of the public health law, as amended by chapter 731 of the laws of 1993, is amended to read as follows:

(e) In order for a general hospital to be eligible for distribution of funds from the pools, such general hospital if it provides obstetrical care and services must agree to participate in a program approved by the department for the provision of prenatal care to persons eligible for medical assistance or medically indigent persons if requested by such a program. [The department shall write a standardized contract which may be used by an approved program for purposes of obtaining the participation of such hospitals in the program.] Nothing stated herein shall require a hospital to grant admitting privileges to a physician solely because such person is part of an approved program. The participation of hospitals in an approved program shall include, but not be limited to:

(i) arrangements with designated prenatal care providers for prebooking pregnant women for approximate delivery time, and provision of staff and facilities for the delivery and necessary postpartum care for women and infants involved in such programs;

(ii) a system for medical record transfer from a prenatal care provider to hospital staff participating in delivery and for the transfer of information regarding hospital delivery and care back to the prenatal care provider for postpartum follow-up; and

(iii) an agreement with designated prenatal care providers to accept the care of high risk patients on a referral basis and/or to provide special tests and procedures which are not ordinarily available to prenatal care clinics if such hospital is capable of caring for high risk patients and/or providing special tests and procedures.

S 9. Paragraph d of subdivision 2 of section 3607 of the public health law, as added by chapter 891 of the laws of 1990, is amended to read as follows:

d. Certified home health agencies which provide home care volunteer programs for maternal and child health shall establish provisions for referral and case coordination with providers of prenatal care [assistance] services [as defined in section twenty-five hundred twenty-one of this chapter].

S 10. Paragraph (h) of subdivision 8 of section 4403-c of the public health law, as added by chapter 649 of the laws of 1996, is amended to read as follows:

(h) direct provision of or arrangement for the provision of comprehensive prenatal care services to all pregnant participants [including all services enumerated in subdivision one of section twenty-five hundred twenty-two of this chapter] in accordance with standards adopted by the department of health [pursuant to such section] and with statute and regulations governing HIV testing of pregnant women and newborns;

S 11. Subparagraph (ii) of paragraph (b) of subdivision 3 of section 364-j of the social services law, as amended by section 13 of part C of chapter 58 of the laws of 2004, is amended to read as follows:

(ii) a pregnant woman with an established relationship, as defined by the commissioner of health, with a [comprehensive prenatal primary care provider, including a prenatal care assistance program as defined in title two of article twenty-five of the public health law] PROVIDER OF PRENATAL CARE SERVICES, that is not associated with a managed care provider in the participant's social services district, may defer participation in the managed care program while pregnant and for sixty days post-partum;

S 12. Paragraph (n) of subdivision 4 of section 364-j of the social services law, as added by chapter 649 of the laws of 1996, is amended to read as follows:

(n) A managed care provider shall provide or arrange, directly or indirectly (including by referral) for the provision of comprehensive prenatal care services to all pregnant participants [including all services enumerated in subdivision one of section twenty-five hundred twenty-two of the public health law] in accordance with standards adopted by the department of health [pursuant to such section].

S 13. Subdivisions 1 and 3 and paragraph (a) of subdivision 4 of section 366-g of the social services law, as added by section 1 of part G of chapter 412 of the laws of 1999, are amended to read as follows:

1. Each hospital licensed under article twenty-eight of the public health law shall report to the department of health, or such other entity designated by the department of health, in such format as the department of health shall provide, each live birth of a child to a woman receiving medical assistance[, or services under the prenatal care assistance program under title two of article twenty-five of the public health law,] on the date of the birth. Such reports shall be made within five business days of the birth and shall include data identifying the mother and child.

3. The commissioner of health shall establish a procedure to ensure that every child born to a mother who is receiving medical assistance[, or services under the prenatal care assistance program under title two of article twenty-five of the public health law,] on the date of the child's birth is automatically enrolled in the medical assistance program, assigned a client identification number, and issued an active medical assistance identification card, as soon as possible, but in no

event later than ten business days from the receipt of the report required pursuant to subdivision one of this section.

(a) Consistent with the provisions of section three hundred sixty-six of this title, a child under the age of one year whose mother is receiving medical assistance[, or services under the prenatal care assistance program under title two of article twenty-five of the public health law], or whose mother was receiving [such assistance or services] MEDICAL ASSISTANCE on the date of the child's birth, who is presented to a medical assistance provider, as defined in section three hundred sixty-six-d of this title, for care, shall be deemed to be enrolled in the medical assistance program regardless of the issuance of a medical assistance identification card or client identification number to such child or other proof of the child's eligibility.

S 14. Paragraph (a) of subdivision 4 and subdivision 7 of section 374 of the social services law, paragraph (a) of subdivision 4 as amended by chapter 239 of the laws of 1954 and subdivision 7 as amended by chapter 655 of the laws of 1978, are amended to read as follows:

(a) No hospital or lying-in asylum whether incorporated or unincorporated where women or girls may be received, cared for or treated during pregnancy or during or after delivery except as hereinafter provided and no person licensed to carry on like work under the provisions of [sections twenty-five hundred twenty to twenty-five hundred twenty-three, inclusive,] ARTICLE TWENTY-EIGHT of the public health law shall be an authorized agency for placing out or boarding out children or place out any child in a foster home whether for adoption or otherwise either directly or indirectly or as agent or representative of the mother or parents of such child.

7. After receipt of notice from the state commissioner of health or the department of health of the city of New York, as the case may be, that an application has been received by such commissioner or department for a license or for the renewal of a license to conduct a maternity hospital or lying-in asylum, pursuant to the provisions of [sections twenty-five hundred twenty to twenty-five hundred twenty-three, inclusive,] ARTICLE TWENTY-EIGHT of the public health law, the department shall, after notice to the applicant and opportunity for him to be heard, certify in writing to such commissioner or city department that the department has reasonable cause to believe that the applicant is violating or has violated the provisions of this section, if such be the case. The department shall so certify within thirty days of the date it received notice, or within such additional period, not to exceed thirty days, as the department may request in writing addressed to the commissioner or administration giving notice.

S 15. Section 381 of the social services law, as amended by chapter 555 of the laws of 1978, is amended to read as follows:

S 381. Maternity homes; records and reports. Every hospital or lying-in asylum whether incorporated or unincorporated where women or girls may be received, cared for or treated during pregnancy or during or after delivery and every person licensed to carry on like work under the provisions of [sections twenty-five hundred twenty to twenty-five hundred twenty-three, inclusive,] ARTICLE TWENTY-EIGHT of the public health law shall keep a record showing the full and true name and address including street and number, if any, of every such woman or girl and of each child of such woman or girl received, admitted or born on the premises, the full and true names and addresses and the religious faith of the parents of every such child, the dates of reception, admission or birth and of discharge or departure of each such woman, girl or

child, the full and true names and addresses of the person or persons by whom any such child is removed or taken away, the amount paid for the care of any such woman, girl or child and the full and true names and addresses of the person or persons making such payment or payments; and shall keep such further record as may be required by regulations of the department. The department may, through its authorized agents and employees, at all reasonable times, inspect and examine such records and may require from such licensed person or from such hospital and its directors, officers, trustees, employees, manager, superintendent, owner or other person responsible for its operation, all information in their possession with reference to any such child not taken away or removed from such hospital by his parents or parent.

S 16. This act shall take effect immediately; provided that:

(a) the amendments to section 364-i of the social services law made by section six of this act shall not affect the expiration of such section pursuant to section 2 of chapter 693 of the laws of 1996, as amended, and shall be deemed to expire therewith;

(b) the amendments to subdivision eight of section 4403-c of the public health law made by section ten of this act shall be subject to the repeal of such section and shall be deemed repealed therewith;

(c) the amendments to subdivisions three and four of section 364-j of the social services law made by sections eleven and twelve, respectively, of this act shall be subject to the repeal of such section and shall be deemed repealed therewith; and

(d) effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.