

4639

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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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 ASSEM-  
BLY, 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 BURED IN ACCORDANCE WITH PARAGRAPH (D) OF THIS SUBDIVISION.  
18 S 3. This act shall take effect April 1, 2010.