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I N   S E N A T E

May 26, 2010

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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 the character  
and adequacy of Medicaid assistance and to repeal paragraph (n) of  
subdivision 2 of section 365-a of the social services law relating to  
the care and services of audiologists

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

1     Section 1. Paragraph (a) of subdivision 2 of section 365-a of the  
2     social services law, as amended by chapter 47 of the laws of 1996, is  
3     amended to read as follows:

4     (a) services of qualified physicians, [dentists, nurses, and private  
5     duty nursing services shall be further subject to the provisions of  
6     section three hundred sixty-seven-o of this chapter,] optometrists,  
7     NURSE MIDWIVES, NURSE PRACTITIONERS, and other related professional  
8     personnel;

9     S 2. Paragraph (f) of subdivision 2 of section 365-a of the social  
10    services law, as added by chapter 184 of the laws of 1969 and as relet-  
11    tered by chapter 478 of the laws of 1980, is amended to read as follows:

12    (f) preventive, prophylactic and other routine dental care, services  
13    and supplies ONLY WHEN PROVIDED IN A HOSPITAL OUTPATIENT OR CLINIC  
14    FACILITY REFERRED TO IN PARAGRAPH (C) OF THIS SUBDIVISION;

15    S 3. Paragraph (g) of subdivision 2 of section 365-a of the social  
16    services law, as amended by section 1 of part F of chapter 497 of the  
17    laws of 2008, is amended to read as follows:

18    (g) sickroom supplies, eyeglasses, AND prosthetic appliances [and  
19    dental prosthetic appliances] furnished in accordance with the regu-  
20    lations of the department, provided that the commissioner of health is  
21    authorized to implement a preferred diabetic supply program wherein the  
22    department of health will receive enhanced rebates from preferred  
23    manufacturers of glucometers and test strips, and may subject non-pre-  
24    ferred manufacturers' glucometers and test strips to prior authorization  
25    under section two hundred seventy-three of the public health law; drugs  
26    provided on an in-patient basis, those drugs contained on the list

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

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1 established by regulation of the commissioner of health pursuant to  
2 subdivision four of this section, and those drugs which may not be  
3 dispensed without a prescription as required by section sixty-eight  
4 hundred ten of the education law and which the commissioner of health  
5 shall determine to be reimbursable based upon such factors as the avail-  
6 ability of such drugs or alternatives at low cost if purchased by a  
7 medicaid recipient, or the essential nature of such drugs as described  
8 by such commissioner in regulations, provided, however, that such drugs,  
9 exclusive of long-term maintenance drugs, shall be dispensed in quanti-  
10 ties no greater than a thirty day supply or one hundred doses, whichever  
11 is greater; provided further that the commissioner of health is author-  
12 ized to require prior authorization for any refill of a prescription  
13 when less than seventy-five percent of the previously dispensed amount  
14 per fill should have been used were the product used as normally indi-  
15 cated, AND PROVIDED FURTHER THAT SUCH COMMISSIONER IS AUTHORIZED TO  
16 REQUIRE PRIOR APPROVAL OF ANY PRESCRIPTION DRUG THAT IS PRESCRIBED FOR A  
17 RESIDENT OF A NURSING HOME AND THAT IS NOT REIMBURSED AS PART OF THE  
18 NURSING HOME'S MEDICAID RATE; medical assistance shall not include any  
19 drug provided on other than an in-patient basis for which a recipient is  
20 charged or a claim is made in the case of a prescription drug, in excess  
21 of the maximum reimbursable amounts to be established by department  
22 regulations in accordance with standards established by the secretary of  
23 the United States department of health and human services, or, in the  
24 case of a drug not requiring a prescription, in excess of the maximum  
25 reimbursable amount established by the commissioner of health pursuant  
26 to paragraph (a) of subdivision four of this section;

27 S 4. Paragraph (l) of subdivision 2 of section 365-a of the social  
28 services law, as amended by chapter 81 of the laws of 1995, is amended  
29 to read as follows:

30 (l) care and services of podiatrists, CLINICAL PSYCHOLOGISTS, NURSES  
31 AND AUDIOLOGISTS, INCLUDING SUCH CARE AND SERVICES PROVIDED IN A HOSPI-  
32 TAL OUT-PATIENT OR CLINIC FACILITY REFERRED TO IN PARAGRAPH (C) OF THIS  
33 SUBDIVISION, AND DENTISTS, which care and services shall only be  
34 provided upon referral by a physician, nurse practitioner or certified  
35 nurse midwife in accordance with the program of early and periodic  
36 screening and diagnosis established pursuant to subdivision three of  
37 this section or to persons eligible for benefits under title XVIII of  
38 the federal social security act as qualified medicare beneficiaries in  
39 accordance with federal requirements therefor [and private duty nurses  
40 which care and services shall only be provided in accordance with regu-  
41 lations of the department of health; provided, however, that private  
42 duty nursing services shall not be restricted when such services are  
43 more appropriate and cost-effective than nursing services provided by a  
44 home health agency pursuant to section three hundred sixty-seven-l];

45 S 5. Paragraph (n) of subdivision 2 of section 365-a of the social  
46 services law, as added by chapter 556 of the laws of 1986, is REPEALED.

47 S 6. The commissioner of health is authorized to promulgate or adopt  
48 any rules or regulations necessary to implement the provisions of this  
49 act and any procedures, forms, or instructions necessary for such imple-  
50 mentation may be adopted and issued on or after the effective date of  
51 this act. Notwithstanding any inconsistent provision of the state admin-  
52 istrative procedure act or any other provision of law, rule or regu-  
53 lation, the commissioner of health and the superintendent of insurance  
54 and any appropriate council is authorized to adopt or amend or promul-  
55 gate on an emergency basis any regulation he or she or such council

1 determines necessary to implement any provision of this act on its  
2 effective date.  
3 S 7. This act shall take effect on the one hundred eightieth day after  
4 it shall have become a law.