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

8103

I N S E N A T E

June 8, 2010

Introduced by Sen. STACHOWSKI -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the elder law, in relation to establishing a senior care choices program in the office for the aging

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

Section 1. Section 214 of the elder law is amended by adding a new subdivision 8 to read as follows:

8. SENIOR CARE CHOICES PROGRAM. (A) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, THE DIRECTOR SHALL FILE, OR CAUSE TO BE FILED, WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS SUBDIVISION AN APPLICATION FOR A FEDERAL WAIVER PURSUANT TO SECTION 1115 OF THE FEDERAL SOCIAL SECURITY ACT, OR ANY SUCCESSOR THERETO, FOR A SENIOR CARE CHOICES PROGRAM, UNDER WHICH THE OFFICE SHALL AND IS HEREBY AUTHORIZED TO PROVIDE DIRECTLY OR BY CONTRACT A COORDINATED PLAN OF CARE AND SERVICES AT HOME TO SENIORS IN A SEAMLESS NETWORK THAT SHALL INCLUDE SERVICES PROVIDED BY AND THROUGH THE OFFICE AND ANY ADDITIONAL SERVICES AS MAY BE NECESSARY TO MAINTAIN SUCH PERSONS AT HOME AS AUTHORIZED IN THIS SUBDIVISION. EVERY STATE AGENCY IS HEREBY EMPOWERED AND DIRECTED TO COOPERATE WITH THE OFFICE AND TO COMPLY WITH ANY REQUEST FOR THE FILING OF SUCH WAIVER IF THE DIRECTOR SHALL LACK POWER AND AUTHORITY TO FILE SUCH A WAIVER. AS USED IN THIS SUBDIVISION, THE TERM "SENIOR" MEANS PERSONS WHO ARE AGED SIXTY AND OLDER WHO ARE MEDICALLY ELIGIBLE FOR PLACEMENT IN A LONG-TERM CARE FACILITY, AS SUCH TERM IS DEFINED IN SECTION TWENTY-ONE HUNDRED NINETY-ONE OF THE PUBLIC HEALTH LAW.

(1) THE SENIOR CARE CHOICES PROGRAM SHALL BE PROVIDED IN THE SENIOR'S HOME OR IN THE HOME OF A RESPONSIBLE RELATIVE OR OTHER RESPONSIBLE ADULT, AND, OTHER PROVISIONS OF THIS SECTION TO THE CONTRARY NOTWITHSTANDING, IF THE WAIVER GRANTED PURSUANT TO SECTION 1115 OF THE FEDERAL SOCIAL SECURITY ACT OR ANY SUCCESSOR THERETO SHALL SO PROVIDE, MAY ALSO BE PROVIDED IN ADULT CARE FACILITIES, OTHER THAN SHELTERS FOR ADULTS, CERTIFIED PURSUANT TO SECTION FOUR HUNDRED SIXTY-B OF THE SOCIAL SERVICES LAW, PROVIDED THAT THE SENIOR MEETS THE ADMISSION AND CONTINUED STAY CRITERIA FOR SUCH FACILITY, EXCEPT THAT SERVICES PROVIDED BY THE

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

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PROGRAM SHALL NOT DUPLICATE OR REPLACE THOSE WHICH THE FACILITY IS REQUIRED BY LAW OR REGULATION TO PROVIDE.

(2) IN FILING SUCH WAIVER FOR THE OPERATION OF THE PROGRAM, THE OFFICE SHALL SEEK TO PROVIDE SERVICES PURSUANT TO THE PRINCIPLE THAT SENIORS HAVE THE PRIMARY AUTHORITY TO MAKE CHOICES THAT WORK BEST FOR THEM, REGARDLESS OF THE NATURE OR EXTENT OF THEIR DISABILITY OR THE SOURCE OF PAYMENT FOR SERVICES. IN DESIGNING THE PROGRAM AND PROVIDING SERVICES, THE OFFICE IS AUTHORIZED TO WAIVE ANY PROVISION OF THE SOCIAL SERVICES LAW OR THE PUBLIC HEALTH LAW, OR ANY RULE OR REGULATION PROMULGATED THEREUNDER, WHICH IN THE JUDGMENT OF THE OFFICE RESTRICTS ITS ABILITY TO PROVIDE SERVICES AS REQUIRED BY THIS SUBDIVISION, SO LONG AS SUCH WAIVER IS CONSISTENT WITH ANY FEDERAL WAIVER GRANTED PURSUANT TO SECTION 1115 OF THE FEDERAL SOCIAL SECURITY ACT OR ANY SUCCESSOR THERETO.

(3) THE OFFICE SHALL SEEK TO EXPAND SOURCE OF PAYMENT FOR THE PROGRAM, INCLUDING SEEKING PAYMENTS FROM VOLUNTARY AND WILLING PRIVATE SOURCES, INSURANCE PLANS, CHARITIES AND FOUNDATIONS, AND INDIVIDUALS.

(4) THE OFFICE IS HEREBY EMPOWERED TO PROVIDE OR CONTRACT FOR THE PROVISION OF SUCH SENIOR CARE CHOICES PROGRAM IN ANY COUNTY WITHIN THE STATE. THE OFFICE SHALL SEEK TO COORDINATE SERVICES WITH ANY CURRENT PROVIDER OF SERVICES. NO STATE AGENCY SHALL IMPOSE A LIMITATION ON THE NUMBER OF ELIGIBLE INDIVIDUALS SERVED IN THIS PROGRAM. THE OFFICE SHALL NOT BE SUBJECT TO AUDIT, ASSESSMENT, SUSPENSION, SANCTION, OR REPORT BY A STATE AGENCY FOR A PROGRAM CONDUCTED PURSUANT TO THE AUTHORITY OF THIS SUBDIVISION, EXCEPT THAT IT SHALL BE SUBJECT TO AUDIT BY THE OFFICE OF THE STATE COMPTROLLER TO THE EXTENT THAT SUCH PROGRAMS WOULD HAVE BEEN SUBJECT TO AUDIT BUT FOR THIS PARAGRAPH.

(B) IF A SENIOR DEEMED BY HIS OR HER PHYSICIAN ABLE TO REMAIN IN HIS OR HER OWN HOME OR THE HOME OF A RESPONSIBLE RELATIVE OR OTHER RESPONSIBLE ADULT IF THE NECESSARY SERVICES ARE PROVIDED APPLIES FOR ADMISSION TO THE PROGRAM, THE OFFICE IN CONSULTATION WITH THE LOCAL SOCIAL SERVICES COMMISSIONER SHALL ORDER AN ASSESSMENT TO BE PERFORMED USING THE ASSESSMENT INSTRUMENT DEVELOPED PURSUANT TO THE PROVISION OF SECTION THIRTY-SIX HUNDRED SIXTEEN OF THE PUBLIC HEALTH LAW, AND IN ADDITION AN ASSESSMENT OF THE INFORMAL CAREGIVING NETWORK AND SUPPORTS CAPABLE OF PROVIDING SOCIAL AND NON-MEDICAL SERVICES TO THE SENIOR. IF THE RESULTS OF THE ASSESSMENT INDICATE THAT THE SENIOR CAN RECEIVE THE APPROPRIATE LEVEL OF CARE AT HOME OR IN THE HOME OF SUCH RESPONSIBLE RELATIVE OR OTHER RESPONSIBLE ADULT, AND THAT THE SENIOR CAN BE APPROPRIATELY SUPPORTED BY FAMILY, INTIMATES, FRIENDS, AND COMMUNITY, THE OFFICE SHALL, AFTER CONSULTING WITH THOSE WHO PERFORMED THE ASSESSMENT, PREPARE FOR THAT SENIOR A PLAN FOR THE PROVISION OF SERVICES THAT MAY INCLUDE ANY SERVICE THAT WOULD BE RENDERED IN A NURSING HOME PLUS SUCH ADDITIONAL SERVICES AS THE OFFICE IS AUTHORIZED TO PROVIDE DIRECTLY OR THROUGH CONTRACT PURSUANT TO THE PROVISIONS OF THE WAIVER AUTHORIZED BY THIS SUBDIVISION. CONTINUED PROVISION OF SERVICES PURSUANT TO THIS SUBDIVISION SHALL BE CONTINGENT ON ADDITIONAL ASSESSMENTS PERFORMED EVERY ONE HUNDRED TWENTY DAYS. AT THE TIME OF THE INITIAL ASSESSMENT, AND AT THE TIME OF EACH SUBSEQUENT ASSESSMENT (OR MORE OFTEN IF THE SENIOR'S NEEDS REQUIRE), THE OFFICE SHALL ESTABLISH A MONTHLY BUDGET FOR PAYMENT FOR THE SERVICES PROVIDED UNDER SUCH PLAN. TOTAL ANNUAL EXPENDITURES FOR MEDICAL ASSISTANCE SERVICES MADE PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW FOR ALL SUCH SENIORS WITHIN THE SOCIAL SERVICES DISTRICT WITHIN WHICH SUCH SENIORS RESIDE SHALL NOT EXCEED SIXTY-FIVE PERCENT OF THE AVERAGE OF THE ANNUAL RATES PAYABLE UNDER SUCH TITLE FOR NURSING HOME SERVICES WITHIN THE SOCIAL SERVICES DISTRICT IN WHICH SUCH SENIORS RESIDE, SUCH AMOUNT TO BE DETERMINED BY

MULTIPLYING THE TOTAL NUMBER OF SENIORS WITHIN THE PROGRAM IN ANY YEAR BY THE AVERAGE OF THE ANNUAL RATES PAYABLE FOR SUCH NURSING HOME SERVICES.

(C) SERVICES PROVIDED UNDER THE SENIOR CARE CHOICES PROGRAM INCLUDE SERVICES PROVIDED BY THE OFFICE, AND PROVIDED PURSUANT TO THE WAIVER, INCLUDING BUT NOT LIMITED TO SUCH LONG TERM CARE SERVICES AS CARE, TREATMENT, MAINTENANCE, AND SERVICES PROVIDED IN A NURSING FACILITY LICENSED UNDER ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, OR PROVIDED BY A HOME CARE SERVICES AGENCY, CERTIFIED HOME HEALTH AGENCY OR LONG TERM HOME HEALTH CARE PROGRAM, AS DEFINED IN SECTION THIRTY-SIX HUNDRED TWO OF THE PUBLIC HEALTH LAW, OR PROVIDED BY AN ADULT DAY HEALTH CARE PROGRAM IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT OF HEALTH, OR PROVIDED BY A PERSONAL CARE PROVIDER LICENSED OR REGULATED BY ANY OTHER STATE OR LOCAL AGENCY, AND SUCH OTHER SERVICES FOR WHICH MEDICAL ASSISTANCE IS OR OTHERWISE WOULD BE AVAILABLE PURSUANT TO THE SOCIAL SERVICES LAW INCLUDING THOSE WHICH ARE DESIGNATED AS LONG TERM CARE SERVICES IN LAW OR REGULATIONS OF THE DEPARTMENT OF HEALTH, CONSUMER DIRECTED PERSONAL ASSISTANCE SERVICES, AND SUCH OTHER SERVICES AS HOME MODIFICATION, TELEHEALTH, PHARMACY REVIEW, AND PALLIATIVE CARE.

S 2. This act shall take effect immediately.