

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

2280--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 14, 2011

Introduced by M. of A. SCHIMMINGER, GABRYSZAK -- Multi-Sponsored by --
M. of A. GIGLIO, LAVINE, MAGEE, REILLY -- read once and referred to
the Committee on Health -- recommitted to the Committee on Health in
accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill
amended, ordered reprinted as amended and recommitted to said commit-
tee

AN ACT to amend the social services law, in relation to authorizing the
commissioner of health to apply for a medicaid reform demonstration
waiver

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

1 Section 1. Section 366 of the social services law is amended by adding
2 a new subdivision 6-b to read as follows:
3 6-B. A. THE COMMISSIONER OF HEALTH SHALL APPLY FOR A MEDICAID REFORM
4 DEMONSTRATION WAIVER PURSUANT TO SECTION ELEVEN HUNDRED FIFTEEN OF THE
5 FEDERAL SOCIAL SECURITY ACT IN ORDER TO CREATE AN INITIATIVE TO PROVIDE
6 FOR A MORE EFFICIENT AND EFFECTIVE MEDICAID SERVICES DELIVERY SYSTEM IN
7 NEW YORK THAT EMPOWERS MEDICAID PATIENTS, BRIDGES PUBLIC AND PRIVATE
8 COVERAGE, IMPROVES PATIENT OUTCOMES AND STABILIZES PROGRAM COSTS.
9 B. THE DEMONSTRATION WAIVER SHALL INCLUDE, BUT SHALL NOT BE LIMITED
10 TO, THE FOLLOWING COMPONENTS:
11 (I) A RISK ADJUSTED CAPITATED MANAGED CARE PILOT PROGRAM FOR RECIPI-
12 ENTS CURRENTLY SERVED IN MEDICAID-FEE-FOR SERVICE OR MEDICAID MANAGED
13 CARE THAT PROVIDES BENEFIT PLANS THAT MORE CLOSELY RESEMBLE PRIVATE
14 PLANS YET ARE ACTUARIALLY EQUIVALENT TO THE CURRENT MEDICAID BENEFIT
15 PACKAGE. RISK ADJUSTED CAPITATION RATES SHALL BE SEPARATED INTO THREE
16 COMPONENTS TO COVER COMPREHENSIVE CARE, CATASTROPHIC CARE AND ENHANCED
17 SERVICES AND MAY PHASE-IN FINANCIAL RISK FOR APPROVED PROVIDERS. HEALTH
18 PLANS SHALL PROVIDE COMPREHENSIVE CARE WHICH SHALL COVER ALL EXPENSES
19 UNTIL A PREDETERMINED THRESHOLD OF EXPENSES IS REACHED AT WHICH TIME THE
20 CATASTROPHIC COMPONENT SHALL TAKE OVER. HEALTH PLANS MAY CHOOSE TO

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

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1 ASSUME THE CATASTROPHIC RISK FOR TARGET POPULATIONS THEY SERVE. THE
2 CATASTROPHIC COMPONENT SHALL ENCOURAGE PROVIDER NETWORKS TO IDENTIFY
3 RECIPIENTS WITH UNDIAGNOSED CHRONIC ILLNESS AND ENSURE PROPER DISEASE
4 MANAGEMENT OF THE ENROLLEES CONDITION. THE ENHANCED SERVICES COMPONENT
5 SHALL ENCOURAGE ENROLLEES TO ENGAGE IN APPROVED HEALTH ACTIVITIES BY
6 INCLUDING THE FLEXIBILITY FOR HEALTH SPENDING ACCOUNTS. PLANS SHALL BE
7 ENCOURAGED TO ESTABLISH CUSTOMIZED BENEFIT PACKAGES TARGETED TO SPECIFIC
8 SPECIAL NEEDS POPULATIONS THAT SHALL FOSTER ENROLLEE CHOICE AND ENABLE
9 ENROLLEES TO ACCESS HEALTH CARE SERVICES THEY NEED. THE PACKAGES MAY
10 VARY THE AMOUNT, DURATION AND SCOPE OF SOME TRADITIONAL MEDICAID
11 SERVICES, PROVIDED THE MANDATORY MEDICAID SERVICES ARE INCLUDED, THE
12 BENEFITS ARE ACTUARIALLY EQUIVALENT TO THE VALUE OF TRADITIONAL MEDICAID
13 SERVICES, AND THEY PASS A SUFFICIENCY TEST TO ENSURE THE PACKAGE IS
14 SUFFICIENT TO MEET THE MEDICAL NEEDS OF THE TARGET POPULATION. THESE
15 BENEFIT PACKAGES SHALL BE PRIOR APPROVED BY THE COMMISSIONER OF HEALTH.
16 PARTICIPATION SHALL BE MANDATORY IN DEMONSTRATION AREAS FOR ALL MEDICAID
17 POPULATIONS NOT SPECIFICALLY EXCLUDED BY THE COMMISSIONER OF HEALTH.
18 THOSE NOT REQUIRED TO PARTICIPATE SHALL BE PROVIDED THE OPTION TO VOLUN-
19 TARILY PARTICIPATE IN THE DEMONSTRATION WAIVER;

20 (II) A CHOICE OF MANAGED CARE PROVIDER WHICH SHALL REST WITH THE INDI-
21 VIDUAL RECIPIENT, PROVIDED FAILURE TO CHOOSE SHALL RESULT IN AN AUTOMAT-
22 IC ASSIGNMENT. AFTER A LIMITED OPEN ENROLLMENT PERIOD, RECIPIENTS MAY BE
23 LOCKED IN A CAPITATED MANAGED CARE NETWORK FOR TWELVE MONTHS. A RECIPI-
24 ENT SHALL BE ALLOWED TO SELECT ANOTHER CAPITATED MANAGED CARE NETWORK
25 AFTER TWELVE MONTHS OF ENROLLMENT. HOWEVER, NOTHING SHALL PREVENT A
26 MEDICAID RECIPIENT FROM CHANGING PRIMARY CARE PROVIDERS WITHIN THE CAPI-
27 TATED MANAGED CARE NETWORK DURING THE TWELVE MONTH PERIOD;

28 (III) AN OPT-OUT PROVISION WHEREBY MEDICAID RECIPIENTS SHALL BE ABLE
29 TO USE THEIR MEDICAID PREMIUM TO PURCHASE HEALTH CARE COVERAGE THROUGH
30 AN EMPLOYER SPONSORED HEALTH INSURANCE PLAN INSTEAD OF THROUGH A MEDI-
31 CAID CERTIFIED PLAN;

32 (IV) AN ENHANCED BENEFIT PACKAGE UNDER WHICH MEDICAID RECIPIENTS WILL
33 RECEIVE FINANCIAL INCENTIVES AS A REWARD FOR HEALTHIER BEHAVIOR. FUNDS
34 SHALL BE DEPOSITED INTO A SPECIAL HEALTH SAVINGS ACCOUNT AND AVAILABLE
35 TO THE INDIVIDUAL TO OFFSET HEALTH CARE RELATED COSTS SUCH AS OVER THE
36 COUNTER MEDICINES, VITAMINS OR OTHER EXPENSES NOT COVERED UNDER THEIR
37 PLAN OR TO RETAIN FOR USE IN PURCHASING EMPLOYER PROVIDED INSURANCE;

38 (V) A MECHANISM TO REQUIRE CAPITATED MANAGED CARE PLANS TO REIMBURSE
39 QUALIFIED EMERGENCY SERVICE PROVIDERS, INCLUDING AMBULANCE SERVICES AND
40 EMERGENCY MEDICAL SERVICES, PROVIDED THE DEMONSTRATION SHALL INCLUDE A
41 PROVISION FOR CONTINUING FEE-FOR-SERVICE PAYMENTS FOR EMERGENCY SERVICES
42 FOR INDIVIDUALS WHO ARE SUBSEQUENTLY DETERMINED TO BE ELIGIBLE FOR MEDI-
43 CAID;

44 (VI) A CHOICE COUNSELING SYSTEM TO ASSIST RECIPIENTS IN SELECTING A
45 CAPITATED MANAGED CARE PLAN THAT BEST MEETS THEIR NEEDS, INCLUDING
46 INFORMATION ON BENEFITS PROVIDED, COST SHARING AND OTHER CONTRACT INFOR-
47 MATION. THE COMMISSIONER OF HEALTH SHALL PROHIBIT PLANS, THEIR EMPLOYEES
48 OR CONTRACTEES FROM RECRUITING RECIPIENTS, SEEKING ENROLLMENT THROUGH
49 INDUCEMENTS, OR PREJUDICING RECIPIENTS AGAINST OTHER CAPITATED PLANS;

50 (VII) A SYSTEM TO MONITOR THE PROVISIONS OF HEALTH CARE SERVICES IN
51 THE PILOT PROGRAM, INCLUDING UTILIZATION AND QUALITY OF CARE TO ENSURE
52 ACCESS TO MEDICALLY NECESSARY SERVICES;

53 (VIII) A GRIEVANCE RESOLUTION PROCESS FOR MEDICAID RECIPIENTS ENROLLED
54 IN THE PILOT PROGRAM INCLUDING AN EXPEDITED REVIEW IF THE LIFE OF A
55 MEDICAID RECIPIENT IS IN IMMINENT AND EMERGENT JEOPARDY;

1 (IX) A GRIEVANCE RESOLUTION PROCESS FOR HEALTH CARE PROVIDERS EMPLOYED
2 BY OR CONTRACTED WITH A CAPITATED MANAGED CARE NETWORK UNDER THE DEMON-
3 STRATION WAIVER TO SETTLE DISPUTES; AND

4 (X) A TECHNICAL ADVISORY PANEL CONVENED BY THE COMMISSIONER OF HEALTH
5 TO ADVISE THE AGENCY IN THE AREAS OF RISK-ADJUSTED-RATE SETTING, BENEFIT
6 DESIGN INCLUDING THE ACTUARIAL EQUIVALENCE AND SUFFICIENCY STANDARDS TO
7 BE USED, CHOICE COUNSELING AND ANY OTHER ASPECTS OF THE DEMONSTRATION
8 IDENTIFIED BY THE COMMISSIONER OF HEALTH. THE PANEL SHALL INCLUDE, BUT
9 SHALL NOT BE LIMITED TO, REPRESENTATIVES FROM THE STATE'S HEALTH PLANS,
10 REPRESENTATIVES FROM PROVIDER-SPONSORED NETWORKS, A MEDICAID CONSUMER
11 REPRESENTATIVE, AND A REPRESENTATIVE FROM THE STATE INSURANCE DEPART-
12 MENT.

13 C. THE DEMONSTRATION WAIVER SHALL BE IMPLEMENTED IN NO LESS THAN THREE
14 GEOGRAPHIC AREAS OF THE STATE TO BE DETERMINED BY THE COMMISSIONER OF
15 HEALTH.

16 D. THE DEPARTMENT OF HEALTH SHALL COMPREHENSIVELY EVALUATE THE
17 PROGRAMS CREATED IN THIS SUBDIVISION AND CONTINUE SUCH EVALUATION FOR
18 TWENTY-FOUR MONTHS AFTER THE PILOT PROGRAMS HAVE ENROLLED MEDICAID
19 RECIPIENTS AND PROVIDED HEALTH CARE SERVICES. THE EVALUATION SHALL
20 INCLUDE ASSESSMENTS OF THE LEVEL OF CONSUMER EDUCATION, CHOICE AND
21 ACCESS TO SERVICES, COORDINATION OF CARE, QUALITY OF CARE BY EACH ELIGI-
22 BILITY CATEGORY AND MANAGED CARE PLAN IN EACH PILOT SITE AND ANY COST
23 SAVINGS. THE EVALUATION SHALL DESCRIBE ADMINISTRATIVE OR LEGAL BARRIERS
24 TO THE IMPLEMENTATION AND OPERATION OF EACH PILOT PROGRAM AND INCLUDE
25 RECOMMENDATIONS REGARDING STATEWIDE EXPANSION OF THE MANAGED CARE PILOT
26 PROGRAMS. THE DEPARTMENT OF HEALTH SHALL SUBMIT AN EVALUATION REPORT TO
27 THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF
28 THE ASSEMBLY BY DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN.

29 E. UPON COMPLETION OF THE EVALUATION CONDUCTED UNDER PARAGRAPH D OF
30 THIS SUBDIVISION, THE COMMISSIONER OF HEALTH MAY REQUEST STATEWIDE
31 EXPANSION OF THE DEMONSTRATION PROJECTS. STATEWIDE EXPANSION INTO ADDI-
32 TIONAL AREAS SHALL BE CONTINGENT UPON REVIEW AND APPROVAL BY THE LEGIS-
33 LATURE.

34 F. THIS WAIVER AUTHORITY IS CONTINGENT UPON FEDERAL APPROVAL AND
35 FEDERAL FINANCIAL PARTICIPATION (FFP) FOR:

36 (I) THOSE MEDICAID BENEFITS AND ELIGIBILITY CATEGORIES PARTICIPATING
37 IN THE WAIVER, INCLUDING THE LOCK-IN PROVISIONS;

38 (II) THE EMPLOYER SPONSORED INSURANCE OPTION WITH COST SHARING;

39 (III) ANY ENHANCED BENEFIT EXPENDITURES, INCLUDING THE ABILITY TO
40 DISBURSE HEALTH SAVINGS ACCOUNT FUNDS TO FORMER MEDICAID RECIPIENTS WHO
41 ACCRUED FUNDS WHILE ON MEDICAID; AND

42 (IV) ANY OTHER FEDERAL APPROVALS OR FEDERAL FINANCIAL PARTICIPATION
43 CONTINGENCIES THAT THE COMMISSIONER OF HEALTH MAY DEEM NECESSARY.

44 S 2. This act shall take effect immediately; provided, however, that
45 the department of health shall submit the medicaid reform demonstration
46 waiver pursuant to the provisions of subdivision 6-b of section 366 of
47 the social services law, as added by section one of this act, within six
48 months of the effective date of this act.