

2284

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 14, 2011

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Introduced by M. of A. SCHIMMINGER, GABRYSZAK -- Multi-Sponsored by --  
M. of A. HOOPER, J. RIVERA, N. RIVERA, TOWNS -- read once and referred  
to the Committee on Health

AN ACT to amend the social services law, in relation to requiring the  
state to pay medicare part A premiums for persons eligible for medi-  
care part A and medical assistance and to require local commissioners  
of social services to appeal denial of medicare coverage before  
approving medical assistance coverage for long term care

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

1     Section 1. Subdivisions 1 and 2 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. An individual, upon application for medical assistance, shall be  
5     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) the applicant is receiving acute care in such hospital;  
15    (b) a physician certifies that such applicant no longer requires acute  
16    hospital care, but still requires medical care which can be provided by  
17    a certified home health agency, [long term home health care program,]  
18    hospice or residential health care facility; (c) the applicant or his OR  
19    HER representative states that the applicant does not have insurance  
20    coverage for the required medical care and that such care cannot be  
21    afforded; (d) it reasonably appears that the applicant is otherwise

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

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1 eligible to receive medical assistance; (e) it reasonably appears that  
2 the amount expended by the state and the local social services district  
3 for medical assistance in a certified home health agency, [long term  
4 home health care program,] hospice or residential health care facility,  
5 during the period of presumed eligibility, would be less than the amount  
6 the state and the local social services district would expend for  
7 continued acute hospital care for such person; and (f) such other deter-  
8 minative criteria as the commissioner shall provide by rule or regu-  
9 lation. If a person has been determined to be presumptively eligible for  
10 medical assistance, pursuant to this subdivision, and is subsequently  
11 determined to be ineligible for such assistance, the commissioner, on  
12 behalf of the state and the local social services district shall have  
13 the authority to recoup from the individual the sums expended for such  
14 assistance during the period of presumed eligibility.

15 2. Payment for up to sixty days of care for services provided under  
16 the medical assistance program shall be made for an applicant presumed  
17 eligible for medical assistance pursuant to subdivision one of this  
18 section provided, however, that such payment shall not exceed sixty-five  
19 percent of the rate payable under this title for services provided by a  
20 certified home health agency, [long term home health care program,]  
21 hospice or residential health care facility. Notwithstanding any other  
22 provision of law, no federal financial participation shall be claimed  
23 for services provided to a person while presumed eligible for medical  
24 assistance under this program until such person has been determined to  
25 be eligible for medical assistance by the local social services  
26 district. During the period of presumed medical assistance eligibility,  
27 payment for services provided persons presumed eligible under this  
28 program shall be made from state funds. Upon the final determination of  
29 eligibility by the local social services district, payment shall be made  
30 for the balance of the cost of such care and services provided to such  
31 applicant for such period of eligibility and a retroactive adjustment  
32 shall be made by the department to appropriately reflect federal finan-  
33 cial participation and the local share of costs for the services  
34 provided during the period of presumptive eligibility. Such federal and  
35 local financial participation shall be the same as that which would have  
36 occurred if a final determination of eligibility for medical assistance  
37 had been made prior to the provision of the services provided during the  
38 period of presumptive eligibility. In instances where an individual who  
39 is presumed eligible for medical assistance is subsequently determined  
40 to be ineligible, the cost for services provided to such individual  
41 shall be reimbursed in accordance with the provisions of section three  
42 hundred sixty-eight-a of this [article] TITLE. Provided, however, if  
43 upon audit the department determines that there are subsequent determi-  
44 nations of ineligibility for medical assistance in at least fifteen  
45 percent of the cases in which presumptive eligibility has been granted  
46 in a local social services district, payments for services provided to  
47 all persons presumed eligible and subsequently determined ineligible for  
48 medical assistance shall be divided equally by the state and the  
49 district.

50 S 2. Paragraph (d) of subdivision 2 of section 365-f of the social  
51 services law, as added by chapter 81 of the laws of 1995, is amended to  
52 read as follows:

53 (d) meets such other criteria, as may be established by the commis-  
54 sioner, which are necessary to effectively implement the objectives of  
55 this section. SUCH CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO, A  
56 REQUIREMENT THAT ANY PERSON WHO IS ELIGIBLE FOR, OR REASONABLY APPEARS

1 TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS UNDER SUBCHAPTER XVIII  
2 OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE REQUIRED TO APPLY FOR AND  
3 FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY  
4 THE COSTS OF THE PROGRAM. IF SUCH PERSON APPLIES FOR SUCH BENEFITS UNDER  
5 SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S  
6 APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH DENIAL OR  
7 PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.  
8 IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE  
9 FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING RECEIPT THEREOF  
10 IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION OR PERMIT THE  
11 LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.

12 S 3. Subparagraph 1 of paragraph (b) of subdivision 2 of section 366  
13 of the social services law, as amended by chapter 638 of the laws of  
14 1993 and designated by chapter 170 of the laws of 1994, is amended to  
15 read as follows:

16 (1) In establishing standards for determining eligibility for and  
17 amount of such assistance, the department shall take into account only  
18 such income and resources, in accordance with federal requirements, as  
19 are available to the applicant or recipient and as would not be required  
20 to be disregarded or set aside for future needs, and there shall be a  
21 reasonable evaluation of any such income or resources. The department  
22 shall not consider the availability of an option for an accelerated  
23 payment of death benefits or special surrender value pursuant to para-  
24 graph one of subsection (a) of section one thousand one hundred thirteen  
25 of the insurance law, or an option to enter into a viatical settlement  
26 pursuant to the provisions of article seventy-eight of the insurance  
27 law, as an available resource in determining eligibility for an amount  
28 of such assistance, provided, however, that the payment of such benefits  
29 shall be considered in determining eligibility for and amount of such  
30 assistance. There shall not be taken into consideration the financial  
31 responsibility of any individual for any applicant or recipient of  
32 assistance under this title unless such applicant or recipient is such  
33 individual's spouse or such individual's child who is under twenty-one  
34 years of age. In determining the eligibility of a child who is categori-  
35 cally eligible as blind or disabled, as determined under regulations  
36 prescribed by the social security act for medical assistance, the income  
37 and resources of parents or spouses of parents are not considered avail-  
38 able to that child if [she/he] HE OR SHE does not regularly share the  
39 common household even if the child returns to the common household for  
40 periodic visits. In the application of standards of eligibility with  
41 respect to income, costs incurred for medical care, whether in the form  
42 of insurance premiums or otherwise, shall be taken into account. Any  
43 person who is eligible for, or reasonably appears to meet the criteria  
44 of eligibility for, benefits under [title] SUBCHAPTER XVIII of the  
45 federal social security act shall be required to apply for and fully  
46 utilize such benefits in accordance with this chapter. IN THE CASE OF A  
47 PERSON WHO IS RECEIVING OR SEEKING LONG TERM CARE, BENEFITS UNDER  
48 SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE FULLY  
49 UTILIZED IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY THE COSTS OF SUCH  
50 LONG TERM CARE. IF SUCH PERSON APPLIES FOR SUCH BENEFITS UNDER SUBCHAP-  
51 TER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S APPLICA-  
52 TION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH DENIAL OR PERMIT  
53 THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF. IF  
54 SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL  
55 SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING RECEIPT THEREOF IS

1 TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION OR PERMIT THE LOCAL  
2 SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.

3 S 4. Subparagraph (v) of paragraph b of subdivision 6-a of section 366  
4 of the social services law, as amended by chapter 627 of the laws of  
5 2004, is amended to read as follows:

6 (v) meet such other criteria as may be established by the commissioner  
7 of health as may be necessary to administer the provision of this subdi-  
8 vision in an equitable manner. SUCH CRITERIA SHALL INCLUDE, BUT NOT BE  
9 LIMITED TO, A REQUIREMENT THAT ANY PERSON WHO IS ELIGIBLE FOR, OR  
10 REASONABLY APPEARS TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS  
11 UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE  
12 REQUIRED TO APPLY FOR AND FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH  
13 THIS CHAPTER TO DEFRAY THE COSTS OF THE PROGRAM. IF SUCH PERSON APPLIES  
14 FOR SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY  
15 ACT AND SUCH PERSON'S APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST  
16 APPEAL SUCH DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO  
17 ON HIS OR HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER  
18 SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S  
19 CONTINUING RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST APPEAL SUCH  
20 TERMINATION OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS  
21 OR HER BEHALF.

22 S 5. Subparagraph (viii) of paragraph b of subdivision 9 of section  
23 366 of the social services law, as added by chapter 170 of the laws of  
24 1994, is amended to read as follows:

25 (viii) meet such other criteria as may be established by the commis-  
26 sioner of mental health, in conjunction with the commissioner, as may be  
27 necessary to administer the provisions of this subdivision in an equita-  
28 ble manner, including those criteria established pursuant to paragraph e  
29 of this subdivision. SUCH CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO,  
30 A REQUIREMENT THAT ANY PERSON WHO IS ELIGIBLE FOR, OR REASONABLY APPEARS  
31 TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS UNDER SUBCHAPTER XVIII  
32 OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE REQUIRED TO APPLY FOR AND  
33 FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY  
34 THE COSTS OF THE PROGRAM. IF SUCH PERSON APPLIES FOR SUCH BENEFITS UNDER  
35 SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S  
36 APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH DENIAL OR  
37 PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.  
38 IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE  
39 FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING RECEIPT THEREOF  
40 IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION OR PERMIT THE  
41 LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF.

42 S 6. The social services law is amended by adding a new section 366-j  
43 to read as follows:

44 S 366-J. LONG TERM CARE; OTHER CASES. IN ALL CASES NOT OTHERWISE  
45 PROVIDED FOR IN THIS TITLE OF A PERSON WHO IS RECEIVING OR SEEKING LONG  
46 TERM CARE, BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURI-  
47 TY ACT SHALL BE FULLY UTILIZED IN ACCORDANCE WITH THIS CHAPTER TO DEFRAY  
48 THE COSTS OF SUCH LONG TERM CARE. IF SUCH PERSON APPLIES FOR SUCH BENE-  
49 FITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH  
50 PERSON'S APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH  
51 DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR  
52 HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER  
53 XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING  
54 RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION  
55 OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER  
56 BEHALF.

1 S 7. Subdivision 3 of section 367-a of the social services law is  
2 amended by adding a new paragraph (e) to read as follows:

3 (E) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION OR OF  
4 ANY OTHER LAW, FOR ANY PERSON WHO IS ELIGIBLE FOR MEDICAL ASSISTANCE AND  
5 FOR MEDICARE UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT,  
6 THE COST OF THE PREMIUM FOR MEDICARE PART A SHALL BE BORNE BY THE STATE.

7 S 8. Subdivision 7 of section 367-c of the social services law, as  
8 added by chapter 895 of the laws of 1977 and renumbered by chapter 854  
9 of the laws of 1987, is amended to read as follows:

10 7. No social services district shall make payments pursuant to [title]  
11 SUBCHAPTER XIX of the federal Social Security Act for benefits available  
12 under [title] SUBCHAPTER XVIII of such act without documentation that  
13 [title] SUBCHAPTER XVIII claims have been filed and denied. UPON SUCH  
14 DENIAL, SUCH PERSON MUST APPEAL SUCH DENIAL OR PERMIT THE LOCAL SOCIAL  
15 SERVICES OFFICIAL TO DO SO ON HIS OR HER BEHALF. IF SUCH PERSON RECEIVES  
16 SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT  
17 AND SUCH PERSON'S CONTINUING RECEIPT THEREOF IS TERMINATED, SUCH PERSON  
18 MUST APPEAL SUCH TERMINATION OR PERMIT THE LOCAL SOCIAL SERVICES OFFI-  
19 CIAL TO DO SO ON HIS OR HER BEHALF.

20 S 9. Subdivision 3 of section 367-e of the social services law, as  
21 added by chapter 622 of the laws of 1988, is amended to read as follows:

22 3. The commissioner shall apply for any waivers, including home and  
23 community based services waivers pursuant to section nineteen hundred  
24 fifteen-c of the social security act, necessary to implement AIDS home  
25 care programs. Notwithstanding any inconsistent provision of law but  
26 subject to expenditure limitations of this section, the commissioner,  
27 subject to the approval of the state director of the budget, may author-  
28 ize the utilization of medical assistance funds to pay for services  
29 provided by AIDS home care programs in addition to those services  
30 included in the medical assistance program under section three hundred  
31 sixty-five-a of this [chapter] TITLE, so long as federal financial  
32 participation is available for such services. Expenditures made under  
33 this subdivision shall be deemed payments for medical assistance for  
34 needy persons and shall be subject to reimbursement by the state in  
35 accordance with the provisions of section three hundred sixty-eight-a of  
36 this [chapter] TITLE. ANY PERSON WHO IS ELIGIBLE FOR, OR REASONABLY  
37 APPEARS TO MEET THE CRITERIA OF ELIGIBILITY FOR, BENEFITS UNDER SUBCHAP-  
38 TER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL BE REQUIRED TO APPLY  
39 FOR AND FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE WITH THIS CHAPTER TO  
40 DEFRAY THE COSTS OF THE PROGRAM. IF SUCH PERSON APPLIES FOR SUCH BENE-  
41 FITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH  
42 PERSON'S APPLICATION THEREFOR IS DENIED, SUCH PERSON MUST APPEAL SUCH  
43 DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR  
44 HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENEFITS UNDER SUBCHAPTER  
45 XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH PERSON'S CONTINUING  
46 RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST APPEAL SUCH TERMINATION  
47 OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO DO SO ON HIS OR HER  
48 BEHALF.

49 S 10. Subdivision 2 of section 367-f of the social services law, as  
50 added by chapter 659 of the laws of 1997, is amended to read as follows:

51 2. Notwithstanding any inconsistent provision of this chapter or any  
52 other law to the contrary, the partnership for long term care program  
53 shall provide Medicaid extended coverage to a person receiving long term  
54 care services if there is federal participation pursuant to such treat-  
55 ment and such person: (a) is or was covered by an insurance policy or  
56 certificate providing coverage for long term care which meets the appli-

1 cable minimum benefit standards of the superintendent of insurance and  
2 other requirements for approval of participation under the program; and,  
3 (b) has exhausted the coverage and benefits as required by the program.  
4 ANY SUCH PERSON WHO IS RECEIVING MEDICAL ASSISTANCE AND WHO IS ELIGIBLE  
5 FOR, OR REASONABLY APPEARS TO MEET THE CRITERIA OF ELIGIBILITY FOR,  
6 BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT SHALL  
7 BE REQUIRED TO APPLY FOR AND FULLY UTILIZE SUCH BENEFITS IN ACCORDANCE  
8 WITH THIS CHAPTER TO DEFRAY THE COSTS OF THE PROGRAM. IF SUCH PERSON  
9 APPLIES FOR SUCH BENEFITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL  
10 SECURITY ACT AND SUCH PERSON'S APPLICATION THEREFOR IS DENIED, SUCH  
11 PERSON MUST APPEAL SUCH DENIAL OR PERMIT THE LOCAL SOCIAL SERVICES OFFI-  
12 CIAL TO DO SO ON HIS OR HER BEHALF. IF SUCH PERSON RECEIVES SUCH BENE-  
13 FITS UNDER SUBCHAPTER XVIII OF THE FEDERAL SOCIAL SECURITY ACT AND SUCH  
14 PERSON'S CONTINUING RECEIPT THEREOF IS TERMINATED, SUCH PERSON MUST  
15 APPEAL SUCH TERMINATION OR PERMIT THE LOCAL SOCIAL SERVICES OFFICIAL TO  
16 DO SO ON HIS OR HER BEHALF.

17 S 11. This act shall take effect on the one hundred twentieth day  
18 after it shall have become a law; provided that the commissioner of  
19 health is authorized to promulgate any and all rules and regulations and  
20 take any other measures necessary to implement this act on its effective  
21 date on or before such date.