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

5686--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 25, 2011

Introduced by M. of A. GOTTFRIED, PAULIN, PEOPLES-STOKES, LIFTON, BROOK-KRASNY, GIBSON, GUNTHER, JACOBS, JAFFEE, LANCMAN, ORTIZ, J. RIVERA, ROSENTHAL, LAVINE, HIKIND, CRESPO, SCHIMEL, MAISEL, CYMBROWITZ, DINOWITZ, HOYT, MENG, TITONE, COLTON, M. MILLER, SCHROEDER, LUPARDO, P. RIVERA, WEPRIN, GABRYSZAK, ZEBROWSKI -- Multi-Sponsored by -- M. of A. ABINANTI, AMEDORE, BENEDETTO, BOYLAND, BRENNAN, BURLING, CALHOUN, CANESTRARI, CROUCH, CUSICK, DUPREY, ENGLEBRIGHT, FARRELL, GIGLIO, HAYES, JEFFRIES, LATIMER, V. LOPEZ, McDONOUGH, McENENY, McKEVITT, MILLMAN, MONTESANO, MURRAY, PERRY, PRETLOW, RAIA, REILLY, ROBINSON, SCARBOROUGH, SPANO, SWEENEY, THIELE, WRIGHT -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the social services law, in relation to procedures, practices and standards for actions by the office of medicaid inspector general and social services districts

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

Section 1. Section 30 of the public health law, as added by chapter 442 of the laws of 2006, is amended to read as follows:

S 30. Legislative intent. This title establishes an independent office of Medicaid inspector general within the department to consolidate staff and other Medicaid fraud detection, prevention and recovery functions from the relevant governmental entities into a single office, and grants such office new powers and responsibilities. As such, this title is intended to create a more efficient and accountable structure, dramatically reorganize and streamline the state's process of detecting and combating Medicaid fraud and abuse and maximize the recoupment of improper Medicaid payments.

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

LBD07895-08-1

THE LEGISLATURE RECOGNIZES THE NEED TO BALANCE THE ABILITY OF THE STATE TO ENSURE THE INTEGRITY OF THE MEDICAL ASSISTANCE PROGRAM WITH THE NEED TO AFFORD DUE PROCESS TO PROVIDERS AND RECIPIENTS WHO ARE INVESTIGATED, AUDITED OR SUBJECT TO OTHER ACTIONS, IN ORDER TO ENSURE THAT SUCH ACTIONS ARE CONDUCTED IN A FAIR AND CONSISTENT MANNER. THE LEGISLATURE ALSO RECOGNIZES THE NEED FOR ESTABLISHED STATUTORY STANDARDS REGARDING THE CONDUCT OF INVESTIGATIONS, AUDITS AND RECOVERY OF PAYMENTS AND OTHER ACTIONS.

S 2. Section 30-a of the public health law is amended by adding four new subdivisions 4, 5, 6 and 7 to read as follows:

4. "PROVIDER" MEANS ANY PERSON OR ENTITY ENROLLED AS A PROVIDER IN THE MEDICAL ASSISTANCE PROGRAM.

5. "RECIPIENT" MEANS AN INDIVIDUAL WHO IS ENROLLED IN THE MEDICAL ASSISTANCE PROGRAM, INCLUDING AN INDIVIDUAL WHO WAS PREVIOUSLY A RECIPIENT AND, IN AN APPROPRIATE CASE, AN INDIVIDUAL WHO IS LEGALLY RESPONSIBLE FOR THE RECIPIENT.

6. "MEDICAL ASSISTANCE" AND "MEDICAID" MEANS TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW AND THE PROGRAM THEREUNDER.

7. "DRAFT AUDIT REPORT", "INITIAL AUDIT REPORT", "PROPOSED NOTICE OF AGENCY ACTION" AND "FINAL NOTICE OF AGENCY ACTION" MEANS THOSE DOCUMENTS PREPARED AND ISSUED BY THE INSPECTOR UNDER THIS TITLE AND CORRESPONDING REGULATIONS.

S 3. Subdivision 20 of section 32 of the public health law, as added by chapter 442 of the laws of 2006, is amended to read as follows:

20. to, consistent with provisions of this title AND OTHER APPLICABLE FEDERAL AND STATE LAWS, REGULATIONS, POLICIES, GUIDELINES AND STANDARDS, implement and amend, as needed, rules and regulations relating to the prevention, detection, investigation and referral of fraud and abuse within the medical assistance program and the recovery of improperly expended medical assistance program funds;

S 4. The public health law is amended by adding two new sections 37 and 38 to read as follows:

S 37. PROCEDURES, PRACTICES AND STANDARDS. 1. SUBJECT TO FEDERAL LAW OR REGULATION, RECOVERY OF AN OVERPAYMENT RESULTING FROM THE ISSUANCE OF A FINAL AUDIT REPORT OR FINAL NOTICE OF AGENCY ACTION RELATING TO A MONETARY PENALTY BY THE INSPECTOR SHALL COMMENCE NOT LESS THAN SIXTY DAYS AFTER THE ISSUANCE OF THE FINAL AUDIT REPORT OR FINAL NOTICE OF AGENCY ACTION. THE INSPECTOR SHALL NOT COMMENCE ANY RECOVERY UNDER THIS SUBDIVISION WITHOUT PROVIDING A MINIMUM OF TEN DAYS ADVANCE WRITTEN NOTICE TO THE PROVIDER.

2. CONTRACTS, COST REPORTS, CLAIMS, BILLS OR EXPENDITURES OF MEDICAL ASSISTANCE PROGRAM FUNDS THAT WERE THE SUBJECT MATTER OF A PREVIOUS AUDIT OR REVIEW BY OR ON BEHALF OF THE INSPECTOR, WITHIN THE LAST THREE YEARS, SHALL NOT BE SUBJECT TO REVIEW OR AUDIT EXCEPT ON THE BASIS OF NEW INFORMATION, FOR GOOD CAUSE TO BELIEVE THAT THE PREVIOUS REVIEW OR AUDIT WAS ERRONEOUS, OR WHERE THE SCOPE OF THE INSPECTOR'S REVIEW OR AUDIT IS SIGNIFICANTLY DIFFERENT FROM THE SCOPE OF THE PREVIOUS REVIEW OR AUDIT, AND SHALL NOT BE SUBJECT TO A NEW AUDIT.

3. IN CONDUCTING AUDITS, THE INSPECTOR SHALL APPLY THE LAWS, REGULATIONS, POLICIES, GUIDELINES, STANDARDS AND INTERPRETATIONS OF THE APPROPRIATE AGENCY THAT WERE IN PLACE AT THE TIME THE SUBJECT CLAIM AROSE OR OTHER CONDUCT TOOK PLACE. DISALLOWANCES MAY BE IMPOSED OR OTHER ACTION TAKEN ONLY FOR NON-COMPLIANCE WITH THOSE LAWS, REGULATIONS, POLICIES, GUIDELINES OR STANDARDS. FOR PURPOSES OF THIS SUBDIVISION, ANY CHANGE IN SUCH LAWS, REGULATIONS, POLICIES, GUIDELINES, STANDARDS OR

INTERPRETATIONS SHALL ONLY BE APPLIED PROSPECTIVELY AND UPON REASONABLE NOTICE.

4. (A) THE INSPECTOR SHALL MAKE NO RECOVERY FROM A PROVIDER, BASED ON AN ADMINISTRATIVE OR TECHNICAL DEFECT IN PROCEDURE OR DOCUMENTATION MADE WITHOUT INTENT TO FALSIFY OR DEFRAUD, IN CONNECTION WITH CLAIMS FOR PAYMENT FOR MEDICALLY NECESSARY CARE, SERVICES AND SUPPLIES OR THE COST THEREOF AS SPECIFIED IN SUBDIVISION TWO OF SECTION THREE HUNDRED SIXTY-FIVE-A OF THE SOCIAL SERVICES LAW PROVIDED IN OTHER RESPECTS APPROPRIATELY TO A BENEFICIARY OF THE MEDICAL ASSISTANCE PROGRAM, EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION.

(B) WHERE THE BASIS FOR RECOVERY IS AN ADMINISTRATIVE OR TECHNICAL DEFECT IN PROCEDURE OR DOCUMENTATION WITHOUT INTENT TO FALSIFY OR DEFRAUD, THE INSPECTOR SHALL AFFORD THE PROVIDER AN OPPORTUNITY TO CORRECT THE DEFECT AND RESUBMIT THE CLAIM WITHIN THIRTY DAYS OF NOTICE OF THE DEFECT.

5. (A) THE INSPECTOR SHALL FURNISH TO THE PROVIDER AT AN AUDIT EXIT CONFERENCE OR IN ANY DRAFT AUDIT FINDINGS ISSUED OR TO BE ISSUED TO THE PROVIDER, A DETAILED WRITTEN EXPLANATION OF THE EXTRAPOLATION METHOD EMPLOYED, INCLUDING THE SIZE OF THE SAMPLE, THE SAMPLING METHODOLOGY, THE DEFINED UNIVERSE OF CLAIMS, THE SPECIFIC CLAIMS INCLUDED IN THE SAMPLE, THE RESULTS OF THE SAMPLE, THE ASSUMPTIONS MADE ABOUT THE ACCURACY AND RELIABILITY OF THE SAMPLE AND THE LEVEL OF CONFIDENCE IN THE SAMPLE RESULTS, AND THE STEPS UNDERTAKEN AND STATISTICS UTILIZED TO CALCULATE THE ALLEGED OVERPAYMENT AND ANY APPLICABLE OFFSET BASED ON THE SAMPLE RESULTS. THIS WRITTEN INFORMATION SHALL INCLUDE A DESCRIPTION OF THE SAMPLING AND EXTRAPOLATION METHODOLOGY.

(B) THE SAMPLING AND EXTRAPOLATION METHODOLOGIES USED BY THE INSPECTOR SHALL BE STATISTICALLY REASONABLY VALID FOR THE INTENDED USE AND SHALL BE ESTABLISHED IN REGULATIONS OF THE INSPECTOR.

S 38. PROCEDURES, PRACTICES AND STANDARDS FOR RECIPIENTS. 1. THIS SECTION APPLIES TO ANY ADJUSTMENT OR RECOVERY OF A MEDICAL ASSISTANCE PAYMENT FROM A RECIPIENT, AND ANY INVESTIGATION OR OTHER PROCEEDING RELATING THERETO.

2. AT LEAST FIVE BUSINESS DAYS PRIOR TO COMMENCEMENT OF ANY INTERVIEW WITH A RECIPIENT AS PART OF AN INVESTIGATION, THE INSPECTOR OR OTHER INVESTIGATING ENTITY SHALL PROVIDE THE RECIPIENT WITH WRITTEN NOTICE OF THE INVESTIGATION. THE NOTICE OF THE INVESTIGATION SHALL SET FORTH THE BASIS FOR THE INVESTIGATION; THE POTENTIAL FOR REFERRAL FOR CRIMINAL INVESTIGATION; THE INDIVIDUAL'S RIGHT TO BE ACCOMPANIED BY A RELATIVE, FRIEND, ADVOCATE OR ATTORNEY DURING QUESTIONING; CONTACT INFORMATION FOR LOCAL LEGAL SERVICES OFFICES; THE INDIVIDUAL'S RIGHT TO DECLINE TO BE INTERVIEWED OR PARTICIPATE IN AN INTERVIEW BUT TERMINATE THE QUESTIONING AT ANY TIME WITHOUT LOSS OF BENEFITS; AND THE RIGHT TO A FAIR HEARING IN THE EVENT THAT THE INVESTIGATION RESULTS IN A DETERMINATION OF INCORRECT PAYMENT.

3. FOLLOWING COMPLETION OF THE INVESTIGATION AND AT LEAST THIRTY DAYS PRIOR TO COMMENCING A RECOVERY OR ADJUSTMENT ACTION OR REQUESTING VOLUNTARY REPAYMENT, THE INSPECTOR OR OTHER INVESTIGATING ENTITY SHALL PROVIDE THE RECIPIENT WITH WRITTEN NOTICE OF THE DETERMINATION OF INCORRECT PAYMENT TO BE RECOVERED OR ADJUSTED. THE NOTICE OF DETERMINATION SHALL IDENTIFY THE EVIDENCE RELIED UPON, SET FORTH THE FACTUAL CONCLUSIONS OF THE INVESTIGATION, AND EXPLAIN THE RECIPIENT'S RIGHT TO REQUEST A FAIR HEARING IN ORDER TO CONTEST THE OUTCOME OF THE INVESTIGATION. THE EXPLANATION OF THE RIGHT TO A FAIR HEARING SHALL CONFORM TO THE REQUIREMENTS OF SUBDIVISION TWELVE OF SECTION TWENTY-TWO OF THE SOCIAL SERVICES LAW AND REGULATIONS THEREUNDER.

4. A FAIR HEARING UNDER SECTION TWENTY-TWO OF THE SOCIAL SERVICES LAW SHALL BE AVAILABLE TO ANY RECIPIENT WHO RECEIVES A NOTICE OF DETERMINATION UNDER SUBDIVISION THREE OF THIS SECTION, REGARDLESS OF WHETHER THE RECIPIENT IS STILL ENROLLED IN THE MEDICAL ASSISTANCE PROGRAM.

S 5. Paragraph (b) of subdivision 3 of section 363-d of the social services law, as amended by section 44 of part C of chapter 58 of the laws of 2007, is amended and a new subdivision 5 is added to read as follows:

(b) In the event that the commissioner of health or the Medicaid inspector general finds that the provider does not have a satisfactory program [within ninety days after the effective date of the regulations issued pursuant to subdivision four of this section, the] UNDER THIS SECTION, THE COMMISSIONER OR MEDICAID INSPECTOR GENERAL SHALL SO NOTIFY THE PROVIDER, INCLUDING SPECIFICATION OF BASIS OF THE FINDING SUFFICIENT TO ENABLE THE PROVIDER TO ADOPT A SATISFACTORY COMPLIANCE PROGRAM. THE provider SHALL SUBMIT TO THE COMMISSIONER OR MEDICAID INSPECTOR GENERAL A PROPOSED SATISFACTORY COMPLIANCE PROGRAM WITHIN SIXTY DAYS OF THE NOTICE AND SHALL ADOPT THE PROGRAM AS EXPEDITIOUSLY AS POSSIBLE. IF THE PROVIDER DOES NOT PROPOSE AND ADOPT A SATISFACTORY PROGRAM IN SUCH TIME PERIOD, THE PROVIDER may be subject to any sanctions or penalties permitted by federal or state laws and regulations, including revocation of the provider's agreement to participate in the medical assistance program.

5. ANY REGULATION, DETERMINATION OR FINDING OF THE COMMISSIONER OR THE MEDICAID INSPECTOR GENERAL RELATING TO A COMPLIANCE PROGRAM UNDER THIS SECTION SHALL BE SUBJECT TO AND CONSISTENT WITH SUBDIVISION THREE OF THIS SECTION.

S 6. This act shall take effect October 1, 2011 and shall apply to any matter commenced or pending on or after such date. However with respect to any matter pending on or after such date, this act shall not invalidate any actions or steps taken or commenced prior to such date and shall only apply to actions or steps commenced on or after such date.