

5201

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 14, 2011

---

Introduced by M. of A. BRENNAN, DINOWITZ, GOTTFRIED, ORTIZ, J. RIVERA, PEOPLES-STOKES, PHEFFER, CASTRO, CAHILL, JAFFEE -- Multi-Sponsored by -- M. of A. GALEF, JACOBS, LUPARDO, McENENY, MENG, SWEENEY -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to the medical assistance presumptive eligibility program

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

1     Section 1. Subdivisions 1, 2 and 3 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. (A) An individual, upon application for medical assistance, shall  
5 be 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)] (I) the applicant is receiving acute care in such hospi-  
15 tal; [(b)] (II) a physician certifies that such applicant no longer  
16 requires acute hospital care, but still requires medical care which can  
17 be provided by a certified home health agency, long term home health  
18 care program, hospice or residential health care facility; [(c)] (III)  
19 the applicant or his representative states that the applicant does not  
20 have insurance coverage for the required medical care and that such care  
21 cannot be afforded; [(d)] (IV) it reasonably appears that the applicant  
22 is otherwise eligible to receive medical assistance; [(e)] (V) it  
23 reasonably appears that the amount expended by the state and the local

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

LBD06135-02-1

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

14 (B) AN INDIVIDUAL, UPON APPLICATION FOR MEDICAL ASSISTANCE, SHALL BE  
15 PRESUMED ELIGIBLE FOR SUCH ASSISTANCE FOR CARE, SERVICES AND SUPPLIES  
16 RELATED TO THE TREATMENT OF A MENTAL ILLNESS FOR A PERIOD OF NINETY DAYS  
17 FROM THE DATE OF DISCHARGE FROM A HOSPITAL, AS DEFINED IN SECTION 1.03  
18 OF THE MENTAL HYGIENE LAW, A CORRECTIONAL FACILITY AS DEFINED IN PARA-  
19 GRAPH (A) OF SUBDIVISION FOUR OF SECTION TWO OF THE CORRECTION LAW OR A  
20 LOCAL CORRECTIONAL FACILITY AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION  
21 SIXTEEN OF SECTION TWO OF THE CORRECTION LAW, IF THE LOCAL DEPARTMENT OF  
22 SOCIAL SERVICES DETERMINES THAT THE APPLICANT MEETS EACH OF THE FOLLOW-  
23 ING CRITERIA: (I) THE APPLICANT IS SEVERELY AND PERSISTENTLY MENTALLY  
24 ILL; (II) A PHYSICIAN CERTIFIES THAT SUCH APPLICANT REQUIRES MEDICAL  
25 CARE TO TREAT SUCH MENTAL ILLNESS; (III) THE APPLICANT OR HIS REPRESENTATIVE  
26 STATES THAT THE APPLICANT DOES NOT HAVE INSURANCE COVERAGE FOR  
27 THE REQUIRED MEDICAL CARE AND THAT SUCH CARE CANNOT BE AFFORDED; (IV) IT  
28 REASONABLY APPEARS THAT THE APPLICANT IS OTHERWISE ELIGIBLE TO RECEIVE  
29 MEDICAL ASSISTANCE; (V) IT REASONABLY APPEARS THAT THE AMOUNT EXPENDED  
30 BY THE STATE AND THE LOCAL SOCIAL SERVICES DISTRICT FOR MEDICAL ASSIST-  
31 ANCE FOR TREATMENT OF A MENTAL ILLNESS DURING THE PERIOD OF PRESUMED  
32 ELIGIBILITY, WOULD BE LESS THAN THE AMOUNT THE STATE AND THE LOCAL  
33 SOCIAL SERVICES DISTRICT WOULD EXPEND FOR CONTINUED OR FUTURE ACUTE  
34 HOSPITAL CARE FOR SUCH PERSON; AND (VI) SUCH OTHER DETERMINATIVE CRITE-  
35 RIA AS THE COMMISSIONER OF HEALTH SHALL PROVIDE BY RULE OR REGULATION.  
36 IF A PERSON HAS BEEN DETERMINED TO BE PRESUMPTIVELY ELIGIBLE FOR MEDICAL  
37 ASSISTANCE, PURSUANT TO THIS SUBDIVISION, AND IS SUBSEQUENTLY DETERMINED  
38 TO BE INELIGIBLE FOR SUCH ASSISTANCE, THE COMMISSIONER OF HEALTH, ON  
39 BEHALF OF THE STATE AND THE LOCAL SOCIAL SERVICES DISTRICT SHALL HAVE  
40 THE AUTHORITY TO RECOUP FROM THE INDIVIDUAL THE SUMS EXPENDED FOR SUCH  
41 ASSISTANCE DURING THE PERIOD OF PRESUMED ELIGIBILITY.

42 2. (A) Payment for up to sixty days of care for services provided  
43 under the medical assistance program shall be made for an applicant  
44 presumed eligible for medical assistance pursuant to PARAGRAPH (A) OF  
45 subdivision one of this section provided, however, that such payment  
46 shall not exceed sixty-five percent of the rate payable under this title  
47 for services provided by a certified home health agency, long term home  
48 health care program, hospice or residential health care facility.

49 (B) PAYMENT FOR UP TO NINETY DAYS OF CARE FOR SERVICES PROVIDED UNDER  
50 THE MEDICAL ASSISTANCE PROGRAM SHALL BE MADE FOR AN APPLICANT PRESUMED  
51 ELIGIBLE FOR MEDICAL ASSISTANCE FOR CARE, SERVICES AND SUPPLIES RELATED  
52 TO THE TREATMENT OF A MENTAL ILLNESS PURSUANT TO PARAGRAPH (B) OF SUBDI-  
53 VISION ONE OF THIS SECTION, PROVIDED HOWEVER, THAT SUCH PAYMENT SHALL  
54 NOT EXCEED ONE HUNDRED PERCENT OF THE RATE PAYABLE UNDER THIS TITLE FOR  
55 SUCH CARE, SERVICES AND SUPPLIES.

1 (C) Notwithstanding any other provision of law, no federal financial  
2 participation shall be claimed for services provided to a person while  
3 presumed eligible for medical assistance under this program until such  
4 person has been determined to be eligible for medical assistance by the  
5 local social services district. During the period of presumed medical  
6 assistance eligibility, payment for services provided persons presumed  
7 eligible under this program shall be made from state funds. [Upon] (I)  
8 IN THE CASE OF COSTS INCURRED FOR A PERSON PRESUMPTIVELY ELIGIBLE FOR  
9 MEDICAL ASSISTANCE UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS  
10 SECTION, UPON the final determination of eligibility by the local social  
11 services district, payment shall be made for the balance of the cost of  
12 such care and services provided to such applicant for such period of  
13 eligibility and a retroactive adjustment shall be made by the department  
14 OF HEALTH to appropriately reflect federal financial participation and  
15 the local share of costs for the services provided during the period of  
16 presumptive eligibility. Such federal and local financial participation  
17 shall be the same as that which would have occurred if a final determi-  
18 nation of eligibility for medical assistance had been made prior to the  
19 provision of the services provided during the period of presumptive  
20 eligibility. In instances where an individual who is presumed eligible  
21 for medical assistance is subsequently determined to be ineligible, the  
22 cost for services provided to such individual shall be reimbursed in  
23 accordance with the provisions of section three hundred sixty-eight-a of  
24 this article. Provided, however, if upon audit the department OF HEALTH  
25 determines that there are subsequent determinations of ineligibility for  
26 medical assistance in at least fifteen percent of the cases in which  
27 presumptive eligibility has been granted in a local social services  
28 district, payments for services provided to all persons presumed eligi-  
29 ble and subsequently determined ineligible for medical assistance shall  
30 be divided equally by the state and the district.

31 (II) IN THE CASE OF COSTS INCURRED FOR A PERSON PRESUMPTIVELY ELIGIBLE  
32 FOR MEDICAL ASSISTANCE UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS  
33 SECTION UPON THE FINAL DETERMINATION OF ELIGIBILITY BY THE LOCAL SOCIAL  
34 SERVICES DISTRICT, PAYMENT SHALL BE MADE FOR THE BALANCE OF THE COST OF  
35 SUCH CARE AND SERVICES PROVIDED TO SUCH APPLICANT FOR SUCH PERIOD OF  
36 ELIGIBILITY AND A RETROACTIVE ADJUSTMENT SHALL BE MADE BY THE DEPARTMENT  
37 OF HEALTH TO APPROPRIATELY REFLECT FEDERAL FINANCIAL PARTICIPATION AND  
38 THE LOCAL SHARE OF COSTS FOR THE SERVICES PROVIDED DURING THE PERIOD OF  
39 PRESUMPTIVE ELIGIBILITY. SUCH FEDERAL FINANCIAL PARTICIPATION SHALL BE  
40 THE SAME AS THAT WHICH WOULD HAVE OCCURRED IF A FINAL DETERMINATION OF  
41 ELIGIBILITY FOR MEDICAL ASSISTANCE HAD BEEN MADE PRIOR TO THE PROVISION  
42 OF THE SERVICES PROVIDED DURING THE PERIOD OF PRESUMPTIVE ELIGIBILITY.  
43 THERE SHALL BE NO LOCAL SHARE IN THE COSTS OF SUCH ASSISTANCE DURING THE  
44 PRESUMPTIVE ELIGIBILITY PERIOD; PROVIDED HOWEVER THAT IF UPON AUDIT THE  
45 DEPARTMENT OF HEALTH DETERMINES THAT THERE ARE SUBSEQUENT DETERMINATIONS  
46 OF INELIGIBILITY FOR MEDICAL ASSISTANCE IN AT LEAST FIFTEEN PERCENT OF  
47 THE CASES IN WHICH PRESUMPTIVE ELIGIBILITY HAS BEEN GRANTED IN A LOCAL  
48 SOCIAL SERVICES DISTRICT, PAYMENTS FOR SERVICES PROVIDED TO ALL PERSONS  
49 PRESUMED ELIGIBLE AND SUBSEQUENTLY DETERMINED INELIGIBLE FOR MEDICAL  
50 ASSISTANCE SHALL BE REIMBURSED IN ACCORDANCE WITH THE PROVISIONS OF  
51 SECTION THREE HUNDRED SIXTY-EIGHT-A OF THIS ARTICLE.

52 3. On or before March thirty-first, [nineteen hundred ninety-seven]  
53 TWO THOUSAND THIRTEEN, the department OF HEALTH shall submit to the  
54 governor and legislature an evaluation of the program, including the  
55 program's effects on access, quality and cost of care, and any recommen-  
56 dations for future modifications to improve the program.

1 S 2. Subdivision 1 of section 368-a of the social services law is  
2 amended by adding a new paragraph (aa) to read as follows:

3 (AA) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, REIMBURSEMENT  
4 BY THE STATE FOR PAYMENTS MADE, WHETHER BY THE DEPARTMENT OF HEALTH ON  
5 BEHALF OF A LOCAL SOCIAL SERVICES DISTRICT PURSUANT TO SECTION THREE  
6 HUNDRED SIXTY-SEVEN-B OF THIS TITLE OR BY A LOCAL SOCIAL SERVICES  
7 DISTRICT DIRECTLY, FOR MEDICAL ASSISTANCE FURNISHED TO AN INDIVIDUAL  
8 PRESUMED ELIGIBLE FOR MEDICAL ASSISTANCE UNDER PARAGRAPH (B) OF SUBDIVI-  
9 SION ONE OF SECTION THREE HUNDRED SIXTY-FOUR-I OF THIS TITLE, DURING THE  
10 PRESUMPTIVE ELIGIBILITY PERIOD, SHALL BE MADE FOR THE FULL AMOUNT  
11 EXPENDED FOR SUCH ASSISTANCE, AFTER FIRST DEDUCTING THEREFROM ANY FEDER-  
12 AL FUNDS PROPERLY RECEIVED OR TO BE RECEIVED ON ACCOUNT OF SUCH EXPENDI-  
13 TURE; PROVIDED THAT IF UPON AUDIT THE DEPARTMENT OF HEALTH DETERMINES  
14 THAT THERE ARE SUBSEQUENT DETERMINATIONS OF INELIGIBILITY FOR MEDICAL  
15 ASSISTANCE IN AT LEAST FIFTEEN PERCENT OF THE CASES IN WHICH PRESUMPTIVE  
16 ELIGIBILITY HAS BEEN GRANTED IN A LOCAL SOCIAL SERVICES DISTRICT,  
17 PAYMENTS FOR SERVICES PROVIDED TO ALL PERSONS PRESUMED ELIGIBLE AND  
18 SUBSEQUENTLY DETERMINED INELIGIBLE FOR MEDICAL ASSISTANCE SHALL BE REIM-  
19 BURED IN ACCORDANCE WITH PARAGRAPH (D) OF THIS SUBDIVISION.

20 S 3. This act shall take effect April 1, 2012.