

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, McENEANY, 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:

1 Section 1. Section 30 of the public health law, as added by chapter
2 442 of the laws of 2006, is amended to read as follows:
3 S 30. Legislative intent. This title establishes an independent office
4 of Medicaid inspector general within the department to consolidate staff
5 and other Medicaid fraud detection, prevention and recovery functions
6 from the relevant governmental entities into a single office, and grants
7 such office new powers and responsibilities. As such, this title is
8 intended to create a more efficient and accountable structure, dramat-
9 ically reorganize and streamline the state's process of detecting and
10 combating Medicaid fraud and abuse and maximize the recoupment of
11 improper Medicaid payments.

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

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

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

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

13 5. "RECIPIENT" MEANS AN INDIVIDUAL WHO IS ENROLLED IN THE MEDICAL
14 ASSISTANCE PROGRAM, INCLUDING AN INDIVIDUAL WHO WAS PREVIOUSLY A RECIPI-
15 ENT AND, IN AN APPROPRIATE CASE, AN INDIVIDUAL WHO IS LEGALLY RESPONSIB-
16 BLE FOR THE RECIPIENT.

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

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

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

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

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

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

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

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

1 INTERPRETATIONS SHALL ONLY BE APPLIED PROSPECTIVELY AND UPON REASONABLE
2 NOTICE.

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

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

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

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

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

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

46 3. FOLLOWING COMPLETION OF THE INVESTIGATION AND AT LEAST THIRTY DAYS
47 PRIOR TO COMMENCING A RECOVERY OR ADJUSTMENT ACTION OR REQUESTING VOLUN-
48 TARY REPAYMENT, THE INSPECTOR OR OTHER INVESTIGATING ENTITY SHALL
49 PROVIDE THE RECIPIENT WITH WRITTEN NOTICE OF THE DETERMINATION OF INCOR-
50 RECT PAYMENT TO BE RECOVERED OR ADJUSTED. THE NOTICE OF DETERMINATION
51 SHALL IDENTIFY THE EVIDENCE RELIED UPON, SET FORTH THE FACTUAL CONCLU-
52 SIONS OF THE INVESTIGATION, AND EXPLAIN THE RECIPIENT'S RIGHT TO REQUEST
53 A FAIR HEARING IN ORDER TO CONTEST THE OUTCOME OF THE INVESTIGATION. THE
54 EXPLANATION OF THE RIGHT TO A FAIR HEARING SHALL CONFORM TO THE REQUIRE-
55 MENTS OF SUBDIVISION TWELVE OF SECTION TWENTY-TWO OF THE SOCIAL SERVICES
56 LAW AND REGULATIONS THEREUNDER.

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

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

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

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

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