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

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I N A S S E M B L Y

May 29, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Gunther) -- (at request of the Office for People with Developmental Disabilities) -- read once and referred to the Committee on Mental Health

AN ACT to amend the social services law, in relation to a developmental disabilities managed care plan; to amend the mental hygiene law, in relation to the development of certain methodologies; and to repeal certain provisions of the mental hygiene law relating thereto

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

Section 1. Subdivision 1 of section 364-j of the social services law is amended by adding a new paragraph (aa) to read as follows:

(AA) "DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN". A MANAGED CARE PLAN THAT HAS RECEIVED A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER AND THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES PURSUANT TO SECTION FORTY-FOUR HUNDRED THREE-G OF THE PUBLIC HEALTH LAW.

S 2. Paragraph (a) of subdivision 3 of section 364-j of the social services law, as amended by section 38 of part A of chapter 56 of the laws of 2013, is amended to read as follows:

(a) Every person eligible for or receiving medical assistance under this article, who resides in a social services district providing medical assistance, which has implemented the state's managed care program shall participate in the program authorized by this section. Provided, however, that participation in a comprehensive HIV special needs plan also shall be in accordance with article forty-four of the public health law [and]; participation in a special needs managed care plan shall also be in accordance with article forty-four of the public health law and article thirty-one of the mental hygiene law AND PARTICIPATION AND ENROLLMENT IN A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN SHALL BE IN ACCORDANCE WITH SECTION FORTY-FOUR HUNDRED THREE-G OF THE PUBLIC HEALTH LAW AND SECTION 13.40 OF THE MENTAL HYGIENE LAW.

S 3. Subparagraph (i) of paragraph (a) of subdivision 4 of section 364-j of the social services law, as amended by section 14 of part C of chapter 58 of the laws of 2004, is amended to read as follows:

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

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(i) a managed care provider shall arrange for access to and enrollment of primary care practitioners and other medical services providers; PROVIDED, HOWEVER, THAT A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN SHALL ARRANGE FOR ACCESS TO AND ENROLLMENT OF PRIMARY CARE PRACTITIONERS IF SO AUTHORIZED. Each managed care provider shall possess the expertise and sufficient resources to assure the delivery of quality medical care to participants in an appropriate and timely manner and may include physicians, nurse practitioners, county health departments, providers of comprehensive health service plans licensed pursuant to article forty-four of the public health law, and hospitals and diagnostic and treatment centers licensed pursuant to article twenty-eight of the public health law or otherwise authorized by law to offer comprehensive health services or facilities licensed pursuant to articles sixteen, thirty-one and thirty-two of the mental hygiene law.

S 4. Paragraph (b) of subdivision 4 of section 364-j of the social services law, as amended by section 57 of part A of chapter 57 of the laws of 2006, is amended to read as follows:

(b) Participants shall select a managed care provider from among those designated under the managed care program, provided, however, a participant shall be provided with a choice of no less than two managed care providers. Notwithstanding the foregoing, a local social services district designated a rural area as defined in 42 U.S.C. 1395ww may limit a participant to one managed care provider, if the commissioner and the local social services district find that only one managed care provider is available, AND THE COMMISSIONER AND THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES MAY LIMIT A PARTICIPANT ELIGIBLE TO ENROLL IN A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN TO ONE SUCH PLAN, IF FEDERAL APPROVAL IS SECURED TO REQUIRE ENROLLMENT WHEN THERE ARE LESS THAN TWO MANAGED CARE PLANS OPERATING IN THE PARTICIPANT'S COUNTY OF RESIDENCE AUTHORIZED TO COORDINATE CARE OR PERSON WITH DEVELOPMENTAL DISABILITIES PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW. A managed care provider in a rural area shall offer a participant a choice of at least three primary care practitioners and permit the individual to obtain a service or seek a provider outside of the managed care network where such service or provider is not available from within the managed care provider network, PROVIDED, HOWEVER, THAT THIS REQUIREMENT SHALL ONLY APPLY TO A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN TO THE EXTENT IT IS AUTHORIZED TO COVER SUCH SERVICES.

S 5. Paragraph (c) of subdivision 4 of section 364-j of the social services law, as amended by chapter 649 of the laws of 1996, is amended to read as follows:

(c) Participants shall select a primary care practitioner from among those designated by the managed care provider. In all districts, participants shall be provided with a choice of no less than three primary care practitioners. In the event that a participant does not select a primary care practitioner, the participant's managed care provider shall select a primary care practitioner for the participant, taking into account geographic accessibility; PROVIDED, HOWEVER, THAT THIS PARAGRAPH SHALL NOT APPLY IF A PARTICIPANT IS ENROLLED IN A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN THAT IS NOT AUTHORIZED TO ARRANGE FOR PRIMARY CARE.

S 6. Subparagraphs (iv), (v), (vi) and (vii) of paragraph (e) of subdivision 4 of section 364-j of the social services law, subparagraphs (iv) and (vii) as amended by section 39 of part A of chapter 56 of the laws of 2013, subparagraph (v) as amended by section 78 of part H of chapter 59 of the laws of 2011, and subparagraph (vi) as amended by

section 14 of part C of chapter 58 of the laws of 2004, are amended to read as follows:

(iv) Local social services districts or enrollment organizations through their enrollment counselors, OR IN THE CASE OF DEVELOPMENTAL DISABILITIES MANAGED CARE PLANS, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES OR ENROLLMENT ORGANIZATIONS THROUGH THEIR ENROLLMENT COUNSELORS, shall provide participants with the opportunity for face to face counseling including individual counseling upon request of the participant. Local social services districts or enrollment organizations through their enrollment counselors shall also provide participants with information in a culturally and linguistically appropriate and understandable manner, in light of the participant's needs, circumstances and language proficiency, sufficient to enable the participant to make an informed selection of a managed care provider. Such information shall include, but shall not be limited to: how to access care within the program; a description of the medical assistance services that can be obtained other than through a managed care provider; the available managed care providers and the scope of services covered by each; a listing of the medical services providers associated with each managed care provider; the participants' rights within the managed care program; and how to exercise such rights. Enrollment counselors shall inquire into each participant's existing relationships with medical services providers and explain whether and how such relationships may be maintained within the managed care program. For enrollments made during face to face counseling, if the participant has a preference for particular medical services providers, enrollment counselors shall verify with the medical services providers that such medical services providers whom the participant prefers participate in the managed care provider's network and are available to serve the participant.

(v) Upon delivery of the pre-enrollment information, the local district or the enrollment organization shall certify the participant's receipt of such information. Upon verification that the participant has received the pre-enrollment education information, a managed care provider, a local district or the enrollment organization may enroll a participant into a managed care provider. Managed care providers must submit enrollment forms to the local department of social services. Upon enrollment, participants will sign an attestation that they have been informed that: participants have a choice of managed care providers; participants have a choice of primary care practitioners; and, except as otherwise provided in this section, including but not limited to the exceptions listed in subparagraph (iii) of paragraph (a) of this subdivision, participants must exclusively use their primary care practitioners and plan providers. The commissioner of health may suspend or curtail enrollment or impose sanctions for failure to appropriately notify clients as required in this subparagraph. ENROLLMENT IN A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN SHALL NOT BE GOVERNED BY THIS SUBPARAGRAPH.

(vi) Enrollment counselors or local social services districts, OR, AS APPROPRIATE, ENROLLMENT COUNSELORS OR THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, shall further inquire into each participant's health status in order to identify physical or behavioral conditions that require immediate attention or continuity of care, and provide to participants information regarding health care options available to persons with HIV and other illnesses or conditions under the managed care program. Any information disclosed to counselors shall be kept

confidential in accordance with applicable provisions of the public health law, and as appropriate, the mental hygiene law.

(vii) Any marketing materials developed by a managed care provider shall be approved by the department of health or the local social services district, and the commissioner of mental health and the commissioner of alcoholism and substance abuse services, OR THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES, where appropriate, within sixty days prior to distribution to recipients of medical assistance. All marketing materials shall be reviewed within sixty days of submission.

S 7. Paragraph (f) of subdivision 4 of section 364-j of the social services law is amended by adding a new subparagraph (vi) to read as follows:

(VI) THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO PARTICIPANTS ELIGIBLE TO ENROLL IN A DEVELOPMENT DISABILITIES MANAGED CARE PLAN.

S 8. Paragraph (g) of subdivision 4 of section 364-j of the social services law, as amended by section 39 of part A of chapter 56 of the laws of 2013, is amended to read as follows:

(g) If another managed care provider is available, participants may change such provider or plan without cause within thirty days of notification of enrollment or the effective date of enrollment, whichever is later with a managed care provider by making a request of the local social services district except that such period shall be forty-five days for participants who have been assigned to a provider by the commissioner of health. However, after such thirty or forty-five day period, whichever is applicable, a participant may be prohibited from changing managed care providers more frequently than once every twelve months, as permitted by federal law except for good cause as determined by the commissioner of health through regulations. NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH, PARTICIPANTS MAY CHANGE A MANAGED CARE PROVIDER TO ENROLL IN A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN AT ANY TIME WITHOUT CAUSE AND MAY CHANGE DEVELOPMENTAL DISABILITIES MANAGED CARE PLANS AT ANY TIME WITHOUT CAUSE.

S 9. Paragraph (h) of subdivision 4 of section 364-j of the social services law, as amended by section 39 of part A of chapter 56 of the laws of 2013, is amended to read as follows:

(h) If another medical services provider is available, a participant may change his or her provider of medical services (including primary care practitioners) without cause within thirty days of the participant's first appointment with a medical services provider by making a request of the managed care provider. However, after that thirty day period, no participant shall be permitted to change his or her provider of medical services other than once every six months except for good cause as determined by the commissioner through regulations. THIS PARAGRAPH SHALL NOT APPLY TO PARTICIPANTS ENROLLED IN DEVELOPMENTAL DISABILITIES MANAGED CARE PLANS.

S 10. Paragraph (i) of subdivision 4 of section 364-j of the social services law, as amended by section 39 of part A of chapter 56 of the laws of 2013, is amended to read as follows:

(i) A managed care provider requesting a disenrollment shall not disenroll a participant without the prior approval of the local social services district in which the participant resides, OR, IN THE CASE OF A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN, WITHOUT THE PRIOR APPROVAL OF THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES, provided that disenrollment from a special needs managed care plan must comply with the standards of the commissioner of health, the commissioner of alcoholism and substance abuse services, and the commissioner of mental health AND

DISENROLLMENT FROM A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN MUST COMPLY WITH THE STANDARDS OF THE COMMISSIONER OF HEALTH AND THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES. A managed care provider shall not request disenrollment of a participant based on any diagnosis, condition, or perceived diagnosis or condition, or a participant's efforts to exercise his or her rights under a grievance process, provided however, that a managed care provider may, where medically appropriate, request permission to refer participants to a managed care provider that is a special needs managed care plan or a comprehensive HIV special needs plan after consulting with such participant and upon obtaining his/her consent to such referral, and provided further that a special needs managed care plan may, where clinically appropriate, disenroll individuals who no longer require the level of services provided by a special needs managed care plan.

S 11. Paragraph (m) of subdivision 4 of section 364-j of the social services law, as amended by chapter 649 of the laws of 1996, is amended to read as follows:

(m) A managed care provider shall provide all early periodic screening diagnosis and treatment services, as well as interperiodic screening and referral, to each participant under the age of twenty-one, at regular intervals, as medically appropriate, EXCEPT THAT A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN SHALL ONLY BE REQUIRED TO PROVIDE SUCH SERVICES IF SO AUTHORIZED.

S 12. Paragraph (n) of subdivision 4 of section 364-j of the social services law, as amended by chapter 484 of the laws of 2009, is amended to read as follows:

(n) A managed care provider shall provide or arrange, directly or indirectly (including by referral) for the provision of comprehensive prenatal care services to all pregnant participants in accordance with standards adopted by the department of health, EXCEPT THAT A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN SHALL ONLY BE REQUIRED TO PROVIDE OR ARRANGE FOR SUCH SERVICES IF SO AUTHORIZED.

S 13. Paragraph (v) of subdivision 4 of section 364-j of the social services law, as added by section 39 of part A of chapter 56 of the laws of 2013, is amended to read as follows:

(v) A managed care provider must allow enrollees to access chemical dependence treatment services from facilities certified by the office of alcoholism and substance abuse services, even if such services are rendered by a practitioner who would not otherwise be separately reimbursed, including but not limited to a credentialed alcoholism and substance abuse counselor (CASAC), EXCEPT THAT A DEVELOPMENTAL DISABILITIES MANAGED CARE PLAN SHALL ONLY BE REQUIRED TO ALLOW ACCESS TO SUCH SERVICES IF SO AUTHORIZED.

S 14. Paragraph (g) of subdivision 5 of section 364-j of the social services law, as added by section 15 of part C of chapter 58 of the laws of 2004, is amended to read as follows:

(g) The commissioner of health may delegate some or all of the tasks identified in this section to the local districts, EXCEPT THAT THE COMMISSIONER OF HEALTH MAY NOT MAKE ANY SUCH DELEGATION WITH RESPECT TO DEVELOPMENTAL DISABILITIES MANAGED CARE PLANS.

S 15. Paragraph (b) of subdivision 6 of section 364-j of the social services law, as added by chapter 649 of the laws of 1996, is amended to read as follows:

(b) distribute marketing materials to recipients of medical assistance, unless such materials are approved by the department of health

and, as appropriate, the office of mental health OR THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.

S 16. Subparagraph (ii) of paragraph (f) of subdivision 8 of section 364-j of the social services law, as added by chapter 649 of the laws of 1996, is amended to read as follows:

(ii) there are opportunities to select from at least three primary care providers, PROVIDED HOWEVER THAT THIS REQUIREMENT SHALL NOT APPLY TO DEVELOPMENTAL DISABILITY MANAGED CARE PLANS THAT ARE NOT AUTHORIZED TO OFFER OR ARRANGE FOR PRIMARY CARE; and

S 17. The opening paragraph of paragraph (f) of subdivision 27 of section 364-j of the social services law, as added by section 72 of part A of chapter 56 of the laws of 2013, is amended to read as follows:

Notwithstanding any inconsistent provisions of this section and sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law to the contrary, the commissioner of health and, in the case of FIDAs authorized exclusively to enroll persons with developmental disabilities, the commissioner of health and the commissioner of the office for people with developmental disabilities, may contract with FIDAs approved under this section without a competitive bid or request for proposal process, [are authorized to enter into a contract or contracts under this section,] provided, however, that:

S 18. The opening paragraph of subdivision (g) of section 13.40 of the mental hygiene law, as added by section 72-b of part A of chapter 56 of the laws of 2013, is amended to read as follows:

Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law to the contrary, the commissioner and the commissioner of health are authorized to enter into a contract or contracts under section forty-four hundred three-g of the public health law, subdivision eight of section forty-four hundred three of the public health law, and subdivision twelve of section forty-four hundred three-f of the public health law, AND TO ENTER INTO CONTRACTS WITH APPLICANTS FOR A CERTIFICATE OF AUTHORITY PURSUANT TO SECTION FORTY-FOUR HUNDRED THREE-G OF THE PUBLIC HEALTH LAW FOR COSTS ASSOCIATED WITH DEVELOPING INFORMATION TECHNOLOGY, HUMAN RESOURCES AND CARE COORDINATION SYSTEMS NECESSARY TO OPERATE A DISCO, provided, however, that:

S 19. Section 13.40 of the mental hygiene law is amended by adding a new subdivision (h) to read as follows:

(H) NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SECTIONS ONE HUNDRED TWELVE AND ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW, OR SECTION ONE HUNDRED FORTY-TWO OF THE ECONOMIC DEVELOPMENT LAW, OR ANY OTHER LAW TO THE CONTRARY, THE COMMISSIONER AND THE COMMISSIONER OF HEALTH ARE AUTHORIZED TO ENTER INTO CONTRACTS FOR ANY OF THE FOLLOWING AS NECESSARY TO OVERSEE AND DEVELOP, OPERATE AND OVERSEE A MANAGED CARE SYSTEM UNDER THE PEOPLE FIRST WAIVER PROGRAM: QUALITY ASSESSMENT, QUALITY IMPROVEMENT, ASSESSMENTS OF ENROLLEES, ENROLLMENT COUNSELING AND ENROLLMENT PROCESSING, OUTSIDE ADVOCACY AND INFORMATION TECHNOLOGY, PROVIDED, HOWEVER, THAT:

1. THE OFFICE SHALL POST ON ITS WEBSITE, FOR A PERIOD OF NO LESS THAN THIRTY DAYS:

(1) A DESCRIPTION OF THE PROPOSED SERVICES TO BE PROVIDED PURSUANT TO THE CONTRACT OR CONTRACTS;

(2) THE CRITERIA FOR SELECTION OF A CONTRACTOR OR CONTRACTORS;

(3) THE PERIOD OF TIME DURING WHICH A PROSPECTIVE CONTRACTOR MAY SEEK SELECTION, WHICH SHALL BE NO LESS THAN THIRTY DAYS AFTER SUCH INFORMATION IS FIRST POSTED ON THE WEBSITE; AND

(4) THE MANNER BY WHICH A PROSPECTIVE CONTRACTOR MAY SEEK SUCH SELECTION, WHICH MAY INCLUDE SUBMISSION BY ELECTRONIC MEANS;

2. ALL REASONABLE AND RESPONSIVE SUBMISSIONS THAT ARE RECEIVED FROM PROSPECTIVE CONTRACTORS IN A TIMELY FASHION SHALL BE REVIEWED BY THE COMMISSIONERS; AND

3. THE COMMISSIONER AND THE COMMISSIONER OF HEALTH MAY JOINTLY SELECT SUCH CONTRACTOR OR CONTRACTORS THAT, IN THEIR DISCRETION, HAVE DEMONSTRATED THE ABILITY TO PERFORM THE SERVICES REQUESTED IN A COST-EFFECTIVE MANNER AND TO PERFORM SUCH SERVICES AND DELIVER WORK PRODUCTS THAT WILL BE OF ADEQUATE QUALITY TO MEET THE NEEDS OF THE OFFICE AND THE DEPARTMENT OF HEALTH AND THE INTERESTS OF INDIVIDUALS PARTICIPATING IN THE PEOPLE FIRST WAIVER PROGRAM.

S 20. Subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (o) of section 41.36 of the mental hygiene law are REPEALED.

S 21. Subdivision (n) of section 41.36 of the mental hygiene law, as amended by chapter 525 of the laws of 1985, is amended to read as follows:

(n) The commissioner OF DEVELOPMENTAL DISABILITIES shall establish a procedure, subject to the approval of the state comptroller, whereby payments in addition to the [client's] personal allowance OF AN INDIVIDUAL LIVING IN A COMMUNITY RESIDENTIAL FACILITY may be made to providers of services for one or more of the following needs of [clients] INDIVIDUALS residing in such facilities, limited to two hundred fifty dollars per [client] INDIVIDUAL per year and paid semi-annually in the manner specified by such procedures:

1. Replacement of necessary clothing;

2. Personal requirements and incidental needs of [clients] INDIVIDUALS RESIDING IN THE FACILITY;

3. Recreational and cultural activities of [clients] INDIVIDUALS RESIDING IN THE FACILITY. Such payments may be made from monies appropriated to the office for this purpose. Such payments shall be audited by the office pursuant to an audit plan approved by the comptroller.

S 22. Subdivision (a) of section 43.02 of the mental hygiene law, as amended by chapter 168 of the laws of 2010, is amended to read as follows:

(a) Notwithstanding any inconsistent provision of law, payment made by government agencies pursuant to title eleven of article five of the social services law for services provided by any facility licensed by the office of mental health pursuant to article thirty-one of this chapter or licensed or operated by the office for people with developmental disabilities pursuant to article sixteen of this chapter or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services, as defined in section 1.03 of this chapter, shall be at rates or fees certified by the commissioner of the respective office and approved by the director of the division of the budget, provided, however, the commissioner of mental health shall annually certify such rates or fees which may vary for distinct geographical areas of the state and, provided, further, that rates or fees for service for inpatient psychiatric services or inpatient chemical dependence services, at hospitals otherwise licensed pursuant to article twenty-eight of the public health law shall be established in accordance with section two thousand eight hundred seven

of the public health law AND, PROVIDED, FURTHER, THAT RATES OR FEES FOR SERVICES PROVIDED BY ANY FACILITY LICENSED OR OPERATED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES PURSUANT TO ARTICLE SIXTEEN OF THIS CHAPTER AND DEVELOPED PURSUANT TO REVISED METHODOLOGIES DEVELOPED AS A CONDITION OF FEDERAL APPROVAL OF THE PEOPLE FIRST WAIVER PROGRAM SHALL BE CERTIFIED BY THE COMMISSIONER OF HEALTH; PROVIDED, HOWEVER, THAT SUCH METHODOLOGIES SHALL TAKE INTO ACCOUNT THE POLICIES AND GOALS OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES.

S 23. Paragraph (ii) of subdivision (c) of section 43.02 of the mental hygiene law, as amended by chapter 168 of the laws of 2010, is amended to read as follows:

(ii) methodologies used in the establishment of the schedules of rates or fees pursuant to this section, PROVIDED, HOWEVER THAT THE COMMISSIONER OF HEALTH SHALL ADOPT RULES AND REGULATIONS INCLUDING METHODOLOGIES DEVELOPED BY HIM OR HER FOR SERVICES PROVIDED BY ANY FACILITY LICENSED OR OPERATED BY THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES PURSUANT TO SUBDIVISION (A) OF THIS SECTION.

S 24. This act shall take effect immediately; provided, however, that the amendments to section 364-j of the social services law made by sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this act shall not affect the repeal of such section and shall be deemed repealed therewith.