

6001

2013-2014 Regular Sessions

I N   S E N A T E

December 2, 2013

---

Introduced by Sen. GIPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to funding early intervention services

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

1     Section 1. The public health law is amended by adding a new section  
2     2807-o to read as follows:  
3     S 2807-O. EARLY INTERVENTION SERVICES POOL. 1. DEFINITIONS. THE  
4     FOLLOWING WORDS OR PHRASES AS USED IN THIS SECTION SHALL HAVE THE  
5     FOLLOWING MEANINGS:  
6     (A) "EARLY INTERVENTION SERVICES" SHALL MEAN SERVICES DELIVERED TO AN  
7     ELIGIBLE CHILD, PURSUANT TO AN INDIVIDUALIZED FAMILY SERVICE PLAN UNDER  
8     THE EARLY INTERVENTION PROGRAM.  
9     (B) "EARLY INTERVENTION PROGRAM" SHALL MEAN THE EARLY INTERVENTION  
10    PROGRAM FOR TODDLERS WITH DISABILITIES AND THEIR FAMILIES AS CREATED BY  
11    TITLE TWO-A OF ARTICLE TWENTY-FIVE OF THIS CHAPTER.  
12    (C) "MUNICIPALITY" SHALL MEAN ANY COUNTY OUTSIDE OF THE CITY OF NEW  
13    YORK OR THE CITY OF NEW YORK.  
14    2. GRANTS FOR EARLY INTERVENTION SERVICES. (A) THE COMMISSIONER SHALL,  
15    FROM FUNDS ALLOCATED FOR SUCH PURPOSE UNDER PARAGRAPH (G) OF SUBDIVISION  
16    SIX OF SECTION TWENTY-EIGHT HUNDRED SEVEN-S OF THIS ARTICLE, MAKE GRANTS  
17    TO MUNICIPALITIES FOR THE DELIVERY OF EARLY INTERVENTION SERVICES. SUCH  
18    GRANTS SHALL BE DEEMED REIMBURSEMENT FROM THIRD PARTY PAYORS TO SUCH  
19    MUNICIPALITIES AND THE STATE OF NEW YORK FOR THE PURPOSES OF THE EARLY  
20    INTERVENTION PROGRAM.  
21    (B) GRANTS UNDER THIS SUBDIVISION SHALL BE AWARDED TO MUNICIPALITIES  
22    BY THE COMMISSIONER. EACH MUNICIPALITY AND THE STATE OF NEW YORK SHALL  
23    RECEIVE A SHARE OF SUCH GRANTS EQUAL TO ITS PROPORTIONATE SHARE OF THE  
24    TOTAL APPROVED STATEWIDE DOLLARS NOT REIMBURSABLE BY THE MEDICAL ASSIST-  
25    ANCE PROGRAM PAID TO PROVIDERS OF EARLY INTERVENTION SERVICES BY THE  
26    STATE AND MUNICIPALITIES ON ACCOUNT OF EARLY INTERVENTION SERVICES IN  
27    THE LAST COMPLETE STATE FISCAL YEAR FOR WHICH SUCH DATA IS AVAILABLE.

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

LBD03039-02-3

1 S 2. Subdivision 6 of section 2807-s of the public health law is  
2 amended by adding two new paragraphs (g) and (h) to read as follows:

3 (G) A FURTHER GROSS STATEWIDE AMOUNT FOR TWO THOUSAND FOURTEEN SHALL  
4 BE FOUR HUNDRED MILLION DOLLARS.

5 (H) THE AMOUNT SPECIFIED IN PARAGRAPH (G) OF THIS SUBDIVISION SHALL BE  
6 ALLOCATED AMONG THE MUNICIPALITIES AND THE STATE OF NEW YORK BASED ON  
7 EACH MUNICIPALITY'S SHARE AND THE STATE'S SHARE OF EARLY INTERVENTION  
8 PROGRAM EXPENDITURES NOT REIMBURSABLE BY THE MEDICAL ASSISTANCE PROGRAM  
9 FOR THE LATEST TWELVE MONTH PERIOD FOR WHICH SUCH DATA IS AVAILABLE.

10 S 3. Subdivision 7 of section 2807-s of the public health law is  
11 amended by adding a new paragraph (d) to read as follows:

12 (D) FUNDS SHALL BE ADDED TO THE FUNDS COLLECTED BY THE COMMISSIONER  
13 FOR DISTRIBUTION IN ACCORDANCE WITH SECTION TWENTY-EIGHT HUNDRED SEVEN-O  
14 OF THIS ARTICLE, IN THE FOLLOWING AMOUNT: FOUR HUNDRED MILLION DOLLARS  
15 FOR THE PERIOD JANUARY FIRST, TWO THOUSAND FOURTEEN THROUGH DECEMBER  
16 THIRTY-FIRST, TWO THOUSAND FOURTEEN.

17 S 4. Subdivision 1 of section 2557 of the public health law, as  
18 amended by section 4 of part C of chapter 1 of the laws of 2002, is  
19 amended to read as follows:

20 1. The approved costs for an eligible child who receives an evaluation  
21 and early intervention services pursuant to this title shall be a charge  
22 upon the municipality wherein the eligible child resides or, where the  
23 services are covered by the medical assistance program, upon the social  
24 services district of fiscal responsibility with respect to those eligi-  
25 ble children who are also eligible for medical assistance. All approved  
26 costs shall be paid in the first instance and at least quarterly by the  
27 appropriate governing body or officer of the municipality upon vouchers  
28 presented and audited in the same manner as the case of other claims  
29 against the municipality. Notwithstanding the insurance law or regu-  
30 lations thereunder relating to the permissible exclusion of payments for  
31 services under governmental programs, no such exclusion shall apply with  
32 respect to payments made pursuant to this title. Notwithstanding the  
33 insurance law or any other law or agreement to the contrary, benefits  
34 under this title shall be considered secondary to any [plan of insurance  
35 or] state government benefit program under which an eligible child may  
36 have coverage. [Nothing in this section shall increase or enhance cover-  
37 ages provided for within an insurance contract subject to the provisions  
38 of this title.]

39 S 5. Section 2557 of the public health law is amended by adding a new  
40 subdivision 4 to read as follows:

41 4. THE COMMISSIONER SHALL COLLECT DATA, BY MUNICIPALITY, ON THE EARLY  
42 INTERVENTION PROGRAM AUTHORIZED UNDER THIS TITLE FOR PURPOSES OF IMPROV-  
43 ING THE EFFICIENCY, COST EFFECTIVENESS, AND QUALITY OF SUCH PROGRAM.  
44 SUCH MUNICIPALITY DATA COLLECTION SHALL INCLUDE BUT NOT BE LIMITED TO:

45 (A) THE NUMBER AND AGES OF CHILDREN ENROLLED IN THE EARLY INTERVENTION  
46 PROGRAM;

47 (B) THE TOTAL NUMBER OF CHILDREN, WITHIN A MUNICIPALITY, RECEIVING A  
48 SINGLE SERVICE, THE PERCENTAGE OF THOSE CHILDREN BY SERVICE TYPE, AND  
49 THE AVERAGE FREQUENCY OF VISITS PER WEEK FOR SUCH SERVICE TYPE;

50 (C) THE TOTAL NUMBER OF CHILDREN, WITHIN A MUNICIPALITY, RECEIVING  
51 MULTIPLE SERVICES, THE PERCENTAGE OF THOSE CHILDREN BY SERVICE TYPE, THE  
52 AVERAGE FREQUENCY OF VISITS PER WEEK FOR SUCH SERVICE TYPE AND THE AVER-  
53 AGE NUMBER OF SERVICE TYPES THAT EACH CHILD RECEIVES;

54 (D) THE NUMBER OF NEW YORK STATE APPROVED AGENCIES, INSTITUTIONS, OR  
55 ORGANIZATIONS PROVIDING EARLY INTERVENTION SERVICES BY SERVICE SPECIALTY  
56 OR SPECIALTIES AND THE NUMBER OF NEW YORK STATE APPROVED INDEPENDENT

1 PROVIDERS OF EARLY INTERVENTION SERVICES BY SERVICE SPECIALTY OR  
2 SPECIALTIES;

3 (E) THE NUMBER AND PERCENTAGE OF CHILDREN RECEIVING A SINGLE SERVICE  
4 BY TYPE OF NEW YORK STATE APPROVED SERVICE PROVIDER, AND THE NUMBER AND  
5 PERCENTAGE OF CHILDREN RECEIVING MULTIPLE SERVICES BY TYPE OF NEW YORK  
6 STATE APPROVED SERVICE PROVIDER;

7 (F) THE OVERALL NUMBER OF NEW YORK STATE APPROVED EVALUATORS. THE  
8 NUMBER OF APPROVED EVALUATORS WHO ALSO PROVIDE SERVICES TO EARLY INTER-  
9 VENTION CHILDREN THEY HAVE EVALUATED;

10 (G) THE NUMBER OF FAMILIES RECEIVING FAMILY SUPPORTIVE SERVICES SUCH  
11 AS FAMILY TRAINING, COUNSELING, PARENT SUPPORT GROUPS, AND RESPITE;

12 (H) THE TYPES OF CLINICAL PRACTICE GUIDELINES, EVALUATION TOOLS AND  
13 TESTING INSTRUMENTS USED BY MUNICIPALITIES TO ESTABLISH ELIGIBILITY OR  
14 NEED FOR EARLY INTERVENTION SERVICES;

15 (I) BOTH SERVICE, COST AND PAYMENT OVERSIGHT MECHANISMS USED BY COUN-  
16 TIES TO ENSURE QUALITY AND EFFICIENT DELIVERY OF EARLY INTERVENTION  
17 SERVICES;

18 (J) THE NUMBER OF CHILDREN THAT ARE COVERED BY THE MEDICAL ASSISTANCE  
19 PROGRAM;

20 (K) THE NUMBER OF CLAIMS SUBMITTED TO THE MEDICAL ASSISTANCE PROGRAM  
21 BY MUNICIPALITY. THE PERCENTAGE OF CLAIMS DENIED BY THE MEDICAL ASSIST-  
22 ANCE PROGRAM. THE REASONS FOR THE DENIALS.

23 THE COMMISSIONER SHALL COLLECT AND ANALYZE SUCH DATA ELEMENTS TO  
24 DETERMINE SERVICE AND UTILIZATION PATTERNS AND TO ENHANCE THE DEPART-  
25 MENT'S ONGOING PROVISION OF PROGRAM OVERSIGHT AND GUIDANCE. IN ADDITION,  
26 THE COMMISSIONER SHALL REPORT FOR THE PERIOD JULY FIRST, TWO THOUSAND  
27 FOURTEEN TO DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN, AND FOR EACH  
28 CALENDAR YEAR THEREAFTER, TO THE GOVERNOR AND THE LEGISLATURE, BY MARCH  
29 FIRST OF EACH YEAR, THE INFORMATION AND ANALYSIS REQUIRED BY THIS SUBDI-  
30 VISION.

31 S 6. Subdivision 2 of section 2557 of the public health law, as  
32 amended by section 9-a of part A of chapter 56 of the laws of 2012, is  
33 amended to read as follows:

34 2. The department shall reimburse the approved costs paid by a munici-  
35 pality for the purposes of this title, other than those reimbursable by  
36 the medical assistance program [or by third party payors], in an amount  
37 of fifty percent of the amount expended in accordance with the rules and  
38 regulations of the commissioner; provided, however, that in the  
39 discretion of the department and with the approval of the director of  
40 the division of the budget, the department may reimburse municipalities  
41 in an amount greater than fifty percent of the amount expended. Such  
42 state reimbursement to the municipality shall not be paid prior to April  
43 first of the year in which the approved costs are paid by the munici-  
44 pality, provided, however that, subject to the approval of the director  
45 of the budget, the department may pay such state aid reimbursement to  
46 the municipality prior to such date.

47 S 7. The section heading of section 2559 of the public health law, as  
48 added by chapter 428 of the laws of 1992, is amended to read as follows:

49 [Third party insurance and medical] MEDICAL assistance program  
50 payments.

51 S 8. Subdivision 3 of section 2559 of the public health law, as added  
52 by chapter 428 of the laws of 1992, paragraphs (a), (c) and (d) as  
53 amended by section 11 of part A of chapter 56 of the laws of 2012 and  
54 paragraph (b) as further amended by section 104 of part A of chapter 62  
55 of the laws of 2011, is amended to read as follows:

1 3. (a) Providers of evaluations and early intervention services, here-  
2 inafter collectively referred to in this subdivision as "provider" or  
3 "providers", shall in the first instance and where applicable, seek  
4 payment from [all third party payors including governmental agencies]  
5 THE MEDICAL ASSISTANCE PROGRAM prior to claiming payment from a given  
6 municipality for evaluations conducted under the program and for  
7 services rendered to eligible children, provided that, the obligation to  
8 seek payment shall not apply [to a payment from a third party payor who  
9 is not prohibited from applying such payment, and will apply such  
10 payment, to an annual or lifetime limit specified in the insured's poli-  
11 cy] WHERE THE INSURED IS NOT ELIGIBLE FOR MEDICAL ASSISTANCE PURSUANT TO  
12 THE SOCIAL SERVICES LAW.

13 (i) Parents shall provide the municipality and service coordinator  
14 information on any insurance policy, plan or contract under which an  
15 eligible child has coverage.

16 (ii) Parents shall provide the municipality and the service coordina-  
17 tor with a written referral from a primary care provider as documenta-  
18 tion, for eligible children, of the medical necessity of early inter-  
19 vention services.

20 (iii) providers shall utilize the department's fiscal agent and data  
21 system for claiming payment for evaluations and services rendered under  
22 the early intervention program.

23 (b) [The commissioner, in consultation with the director of budget and  
24 the superintendent of financial services, shall promulgate regulations  
25 providing public reimbursement for deductibles and copayments which are  
26 imposed under an insurance policy or health benefit plan to the extent  
27 that such deductibles and copayments are applicable to early inter-  
28 vention services.

29 (c) Payments made for early intervention services under an insurance  
30 policy or health benefit plan, including payments made by the medical  
31 assistance program or other governmental third party payor, which are  
32 provided as part of an IFSP pursuant to section twenty-five hundred  
33 forty-five of this title shall not be applied by the insurer or plan  
34 administrator against any maximum lifetime or annual limits specified in  
35 the policy or health benefits plan, pursuant to section eleven of the  
36 chapter of the laws of nineteen hundred ninety-two which added this  
37 title.

38 (d)] A municipality, or its designee, and a provider shall be subro-  
39 gated, to the extent of the expenditures by such municipality or for  
40 early intervention services furnished to persons eligible for benefits  
41 under this title, to any rights such person may have or be entitled to  
42 from [third party reimbursement] THE MEDICAL ASSISTANCE PROGRAM. The  
43 provider shall submit notice to the insurer or plan administrator of his  
44 or her exercise of such right of subrogation upon the provider's assign-  
45 ment as the early intervention service provider for the child. The right  
46 of subrogation does not attach to benefits paid or provided [under any  
47 health insurance policy or health benefits plan] prior to receipt of  
48 written notice of the exercise of subrogation rights [by the insurer or  
49 plan administrator providing such benefits]. NOTWITHSTANDING ANY INCON-  
50 SISTENT PROVISION OF THIS TITLE, EXCEPT AS PROVIDED FOR HEREIN, NO THIRD  
51 PARTY PAYOR OTHER THAN THE MEDICAL ASSISTANCE PROGRAM SHALL BE REQUIRED  
52 TO REIMBURSE FOR EARLY INTERVENTION SERVICES PROVIDED UNDER THIS TITLE.

53 S 9. This act shall take effect April 1, 2014; provided, however the  
54 amendments to section 2807-s of the public health law made by sections  
55 two and three of this act shall not affect the expiration of such  
56 section and shall be deemed to expire therewith.