

5074

2015-2016 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. McDONALD, LAVINE, MONTESANO, MILLER, GUNTHER,
LIFTON -- Multi-Sponsored by -- M. of A. DUPREY, HOOPER, SIMANOWITZ --
read once and referred to the Committee on Health

AN ACT to amend the social services law, the insurance law and the
public health law, in relation to preserving access to quality complex
rehabilitation technology for patients with complex medical needs

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "complex needs patient act".

3 S 2. Legislative intent. It is the intent of the legislature to:

4 1. protect access for complex needs patients to quality complex reha-
5 bilitation technology;

6 2. establish and improve standards and safeguards relating to the
7 provision of complex rehabilitation technology; and

8 3. provide quality support for complex needs patients to stay in the
9 home or community setting, prevent institutionalization, and prevent
10 hospitalizations and other costly secondary complications.

11 S 3. The social services law is amended by adding a new section 367-j
12 to read as follows:

13 S 367-J. COMPLEX NEEDS PATIENT ACT. 1. DEFINITIONS. AS USED IN THIS
14 SECTION:

15 (A) "COMPLEX NEEDS PATIENT" MEANS AN INDIVIDUAL WITH SIGNIFICANT PHYS-
16 ICAL OR FUNCTIONAL IMPAIRMENT RESULTING FROM A MEDICAL CONDITION OR
17 DISEASE INCLUDING, BUT NOT LIMITED TO: SPINAL CORD INJURY, TRAUMATIC
18 BRAIN INJURY, CEREBRAL PALSY, MUSCULAR DYSTROPHY, SPINA BIFIDA, OSTEO-
19 GENESIS IMPERFECTA, ARTHROGRYPOSIS, AMYOTROPHIC LATERAL SCLEROSIS,
20 MULTIPLE SCLEROSIS, DEMYELINATING DISEASE, MYELOPATHY, MYOPATHY,
21 PROGRESSIVE MUSCULAR ATROPHY, ANTERIOR HORN CELL DISEASE, POST-POLIO
22 SYNDROME, CEREBELLAR DEGENERATION, DYSTONIA, HUNTINGTON'S DISEASE,

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

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1 SPINOCEREBELLAR DISEASE, AND CERTAIN TYPES OF AMPUTATION, PARALYSIS OR
2 PARESIS.

3 (B) "COMPLEX REHABILITATION TECHNOLOGY" MEANS PRODUCTS CLASSIFIED AS
4 DURABLE MEDICAL EQUIPMENT WITHIN THE MEDICARE PROGRAM AS OF JANUARY
5 FIRST, TWO THOUSAND FIFTEEN THAT ARE INDIVIDUALLY CONFIGURED FOR INDI-
6 VIDUALS TO MEET THEIR SPECIFIC AND UNIQUE MEDICAL, PHYSICAL AND FUNC-
7 TIONAL NEEDS AND CAPACITIES FOR BASIC AND FUNCTIONAL ACTIVITIES OF DAILY
8 LIVING. SUCH PRODUCTS INCLUDE, BUT ARE NOT LIMITED TO: INDIVIDUALLY
9 CONFIGURED MANUAL AND POWER WHEELCHAIRS AND ACCESSORIES, ADAPTIVE SEAT-
10 ING AND POSITIONING ITEMS AND ACCESSORIES, AND OTHER SPECIALIZED EQUIP-
11 MENT SUCH AS STANDING FRAMES AND GAIT TRAINERS AND ACCESSORIES.

12 (C) "EMPLOYEE" MEANS A PERSON WHOSE TAXES ARE WITHHELD BY A QUALIFIED
13 COMPLEX REHABILITATION TECHNOLOGY SUPPLIER AND REPORTED TO THE INTERNAL
14 REVENUE SERVICE.

15 (D) "HEALTHCARE COMMON PROCEDURE CODING SYSTEM", OR "HCPCS", MEANS THE
16 BILLING CODES USED BY MEDICARE AND OVERSEEN BY THE FEDERAL CENTERS FOR
17 MEDICARE AND MEDICAID SERVICES THAT ARE BASED ON THE CURRENT PROCEDURAL
18 TECHNOLOGY CODES DEVELOPED BY THE AMERICAN MEDICAL ASSOCIATION.

19 (E) "INDIVIDUALLY CONFIGURED" MEANS A DEVICE WITH A COMBINATION OF
20 SIZES, FEATURES, ADJUSTMENTS OR MODIFICATIONS THAT ARE CONFIGURED OR
21 DESIGNED BY A QUALIFIED COMPLEX REHABILITATION TECHNOLOGY SUPPLIER FOR A
22 SPECIFIC INDIVIDUAL BY MEASURING, FITTING, PROGRAMMING, ADJUSTING OR
23 ADAPTING THE DEVICE SO THAT THE DEVICE IS CONSISTENT WITH THE INDIVID-
24 UAL'S MEDICAL CONDITION, PHYSICAL AND FUNCTIONAL NEEDS AND CAPABILITIES,
25 BODY SIZE, PERIOD OF NEED AND INTENDED USE AS DETERMINED BY AN ASSESS-
26 MENT OR EVALUATION BY A QUALIFIED HEALTH CARE PROFESSIONAL.

27 (F) "MIXED HPCS CODES" MEANS HEALTHCARE PROCEDURE CODING SYSTEM CODES
28 THAT REFER TO A MIX OF COMPLEX REHABILITATION TECHNOLOGY PRODUCTS AND
29 STANDARD MOBILITY AND ACCESSORY PRODUCTS.

30 (G) "PURE HPCS CODES" MEANS HEALTHCARE PROCEDURE CODING SYSTEM CODES
31 THAT REFER EXCLUSIVELY TO COMPLEX REHABILITATION TECHNOLOGY PRODUCTS.

32 (H) "QUALIFIED COMPLEX REHABILITATION TECHNOLOGY PROFESSIONAL" MEANS
33 AN INDIVIDUAL WHO IS CERTIFIED AS AN ASSISTIVE TECHNOLOGY PROFESSIONAL
34 (ATP) BY THE REHABILITATION ENGINEERING AND ASSISTIVE TECHNOLOGY SOCIETY
35 OF NORTH AMERICA (RESNA).

36 (I) "QUALIFIED COMPLEX REHABILITATION TECHNOLOGY SUPPLIER" MEANS A
37 COMPANY OR ENTITY THAT:

38 (I) IS ACCREDITED BY A RECOGNIZED ACCREDITING ORGANIZATION;

39 (II) IS AN ENROLLED MEDICARE SUPPLIER AND MEETS THE SUPPLIER AND QUAL-
40 ITY STANDARDS ESTABLISHED FOR DURABLE MEDICAL EQUIPMENT SUPPLIERS
41 INCLUDING THOSE FOR COMPLEX REHABILITATION TECHNOLOGY UNDER THE MEDICARE
42 PROGRAM;

43 (III) HAS AT LEAST ONE EMPLOYEE WHO IS A QUALIFIED COMPLEX REHABILI-
44 TATION TECHNOLOGY PROFESSIONAL AVAILABLE TO ANALYZE THE NEEDS AND CAPAC-
45 ITIES OF COMPLEX NEEDS PATIENTS IN CONSULTATION WITH A QUALIFIED HEALTH
46 CARE PROFESSIONAL AND PARTICIPATE IN THE SELECTION OF APPROPRIATE
47 COMPLEX REHABILITATION TECHNOLOGY AND PROVIDE TRAINING IN THE PROPER USE
48 OF THE COMPLEX REHABILITATION TECHNOLOGY;

49 (IV) REQUIRES A QUALIFIED COMPLEX REHABILITATION TECHNOLOGY PROFES-
50 SIONAL BE PHYSICALLY PRESENT FOR THE EVALUATION AND DETERMINATION OF
51 APPROPRIATE COMPLEX REHABILITATION TECHNOLOGY FOR COMPLEX NEEDS
52 PATIENTS;

53 (V) HAS THE CAPABILITY TO PROVIDE SERVICE AND REPAIR BY QUALIFIED
54 TECHNICIANS FOR ALL COMPLEX REHABILITATION TECHNOLOGY IT SELLS;

55 (VI) HAS AT LEAST ONE STOREFRONT LOCATION WITHIN NEW YORK STATE; AND

1 (VII) PROVIDES WRITTEN INFORMATION REGARDING HOW TO RECEIVE SERVICE
2 AND REPAIR OF COMPLEX REHABILITATION TECHNOLOGY TO THE COMPLEX NEEDS
3 PATIENT PRIOR TO THE ORDERING OF SUCH TECHNOLOGY.

4 (J) "QUALIFIED HEALTH CARE PROFESSIONAL" MEANS A HEALTH CARE PROFES-
5 SIONAL LICENSED BY THE STATE EDUCATION DEPARTMENT WHO HAS NO FINANCIAL
6 RELATIONSHIP WITH A QUALIFIED COMPLEX REHABILITATION TECHNOLOGY SUPPLI-
7 ER, INCLUDING BUT NOT LIMITED TO A PHYSICIAN, PHYSICAL THERAPIST, OCCU-
8 PATIONAL THERAPIST, OR OTHER LICENSED HEALTH CARE PROFESSIONAL WHO
9 PERFORMS SPECIALTY EVALUATIONS WITHIN THE PROFESSIONAL'S SCOPE OF PRAC-
10 TICE.

11 2. REIMBURSEMENT AND BILLING PROCEDURES. (A) TO THE EXTENT PERMISSIBLE
12 UNDER FEDERAL LAW, THE COMMISSIONER SHALL MAINTAIN SPECIFIC REIMBURSE-
13 MENT AND BILLING PROCEDURES WITHIN THE STATE MEDICAID PROGRAM FOR
14 COMPLEX REHABILITATION TECHNOLOGY PRODUCTS AND SERVICES TO ENSURE THAT
15 MEDICAID PAYMENTS FOR SUCH PRODUCTS AND SERVICES PERMIT ADEQUATE ACCESS
16 TO COMPLEX NEEDS PATIENTS AND TAKES INTO ACCOUNT THE SIGNIFICANT
17 RESOURCES, INFRASTRUCTURE, AND STAFF NEEDED TO MEET THEIR NEEDS.

18 (B) PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THE COMMISSIONER
19 SHALL, NOT LATER THAN OCTOBER FIRST, TWO THOUSAND SEVENTEEN: (I) DESIG-
20 NATE PRODUCTS AND SERVICES INCLUDED IN MIXED AND PURE HPCS BILLING CODES
21 AS COMPLEX REHABILITATION TECHNOLOGY, AND AS NEEDED, CREATE NEW BILLING
22 CODES OR CODE MODIFIERS FOR SERVICES AND PRODUCTS COVERED FOR COMPLEX
23 NEEDS PATIENTS; (II) SET MINIMUM STANDARDS CONSISTENT WITH PARAGRAPH (I)
24 OF SUBDIVISION ONE OF THIS SECTION IN ORDER FOR SUPPLIERS TO BE CONSID-
25 ERED QUALIFIED COMPLEX REHABILITATION TECHNOLOGY SUPPLIERS ELIGIBLE FOR
26 MEDICAID REIMBURSEMENT; (III) EXEMPT PRODUCTS OR SERVICES BILLED UNDER
27 MIXED OR PURE HPCS CODES FROM INCLUSION IN ANY BIDDING, SELECTIVE
28 CONTRACTING, REQUEST FOR PROPOSAL, OR SIMILAR INITIATIVE; (IV) REQUIRE
29 COMPLEX NEEDS PATIENTS RECEIVING A COMPLEX REHABILITATION MANUAL WHEEL-
30 CHAIR, POWER WHEELCHAIR, OR SEATING COMPONENT TO BE EVALUATED BY A QUAL-
31 IFIED HEALTH CARE PROFESSIONAL AND A QUALIFIED COMPLEX REHABILITATION
32 TECHNOLOGY PROFESSIONAL TO QUALIFY FOR REIMBURSEMENT (SUCH EVALUATION
33 SHALL BE EXEMPT FROM ANY HEALTH CARE PROFESSIONAL CAP); (V) MAKE OTHER
34 CHANGES AS NEEDED TO PROTECT ACCESS TO COMPLEX REHABILITATION TECHNOLOGY
35 FOR COMPLEX NEEDS PATIENTS; AND (VI) AFFIRM THAT WITH THE EXCEPTION OF
36 THOSE ENROLLEES COVERED UNDER A PAYMENT RATE METHODOLOGY OTHERWISE NEGO-
37 TIATED, PAYMENTS FOR COMPLEX REHABILITATION TECHNOLOGY PROVIDED TO
38 PATIENTS ELIGIBLE FOR MEDICAL ASSISTANCE BY ORGANIZATIONS OPERATING IN
39 ACCORDANCE WITH THE PROVISIONS OF ARTICLE FORTY-FOUR OF THE PUBLIC
40 HEALTH LAW OR BY HEALTH MAINTENANCE ORGANIZATIONS ORGANIZED AND OPERAT-
41 ING IN ACCORDANCE WITH ARTICLE FORTY-THREE OF THE INSURANCE LAW, SHALL
42 BE THE RATES OF PAYMENT THAT WOULD BE PAID FOR SUCH PAYMENTS UNDER THE
43 MEDICAL ASSISTANCE PROGRAM AS DETERMINED BY THE COMMISSIONER AND APPLI-
44 CABLE TO SERVICES AT THE TIME SUCH SERVICES WERE PROVIDED.

45 S 4. Section 3217-e of the insurance law, as added by chapter 219 of
46 the laws of 2011, is amended to read as follows:

47 S 3217-e. Choice of health care provider. An insurer that is subject
48 to this article and requires or provides for designation by an insured
49 of a participating primary care provider shall permit the insured to
50 designate any participating primary care provider who is available to
51 accept such individual, and in the case of a child, shall permit the
52 insured to designate a physician (allopathic or osteopathic) who
53 specializes in pediatrics as the child's primary care provider if such
54 provider participates in the network of the insurer. EVERY POLICY WHICH
55 PROVIDES MEDICAL, MAJOR MEDICAL, OR SIMILAR COMPREHENSIVE TYPE COVERAGE
56 SHALL INCLUDE ADEQUATE ACCESS TO SERVICES AND EQUIPMENT PROVIDED BY

1 QUALIFIED COMPLEX REHABILITATION TECHNOLOGY SUPPLIERS, PURSUANT TO
2 SECTION THREE HUNDRED SIXTY-SEVEN-J OF THE SOCIAL SERVICES LAW, AND
3 ADOPT THE SUPPLIER STANDARDS CONTAINED THEREIN.

4 S 5. Section 4306-d of the insurance law, as added by chapter 219 of
5 the laws of 2011, is amended to read as follows:

6 S 4306-d. Choice of health care provider. A corporation that is
7 subject to the provisions of this article and requires or provides for
8 designation by a subscriber of a participating primary care provider
9 shall permit the subscriber to designate any participating primary care
10 provider who is available to accept such individual, and in the case of
11 a child, shall permit the subscriber to designate a physician (allopath-
12 ic or osteopathic) who specializes in pediatrics as the child's primary
13 care provider if such provider participates in the network of the corpo-
14 ration. EVERY POLICY WHICH PROVIDES MEDICAL, MAJOR MEDICAL, OR SIMILAR
15 COMPREHENSIVE TYPE COVERAGE SHALL INCLUDE ADEQUATE ACCESS TO SERVICES
16 AND EQUIPMENT PROVIDED BY QUALIFIED COMPLEX REHABILITATION TECHNOLOGY
17 SUPPLIERS, PURSUANT TO SECTION THREE HUNDRED SIXTY-SEVEN-J OF THE SOCIAL
18 SERVICES LAW, AND ADOPT THE SUPPLIER STANDARDS CONTAINED THEREIN.

19 S 6. Section 4403 of the public health law is amended by adding a new
20 subdivision 9 to read as follows:

21 9. EVERY HEALTH MAINTENANCE ORGANIZATION SHALL INCLUDE ADEQUATE ACCESS
22 TO SERVICES AND EQUIPMENT PROVIDED BY QUALIFIED COMPLEX REHABILITATION
23 TECHNOLOGY SUPPLIERS, PURSUANT TO SECTION THREE HUNDRED SIXTY-SEVEN-J OF
24 THE SOCIAL SERVICES LAW, AND ADOPT THE SUPPLIER STANDARDS CONTAINED
25 THEREIN.

26 S 7. This act shall take effect on the first of January next succeed-
27 ing the date on which it shall have become a law, and shall apply to
28 contracts and policies issued, renewed, modified or amended on or after
29 such effective date.