

3651--B

2015-2016 Regular Sessions

I N S E N A T E

February 13, 2015

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, 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

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

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1 SYNDROME, CEREBELLAR DEGENERATION, DYSTONIA, HUNTINGTON'S DISEASE,  
2 SPINOCEREBELLAR DISEASE, AND CERTAIN TYPES OF AMPUTATION, PARALYSIS OR  
3 PARESIS.

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

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

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

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

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

31 (G) "PURE HCPCS CODES" MEANS HEALTHCARE COMMON PROCEDURE CODING SYSTEM  
32 CODES THAT REFER EXCLUSIVELY TO COMPLEX REHABILITATION TECHNOLOGY  
33 PRODUCTS.

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

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

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

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

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

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

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

1 (VI) HAS AT LEAST ONE STOREFRONT LOCATION WITHIN NEW YORK STATE; AND  
2 (VII) PROVIDES WRITTEN INFORMATION REGARDING HOW TO RECEIVE SERVICE  
3 AND REPAIR OF COMPLEX REHABILITATION TECHNOLOGY TO THE COMPLEX NEEDS  
4 PATIENT PRIOR TO THE ORDERING OF SUCH TECHNOLOGY.

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

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

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

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

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

1 SHALL INCLUDE ADEQUATE ACCESS TO SERVICES AND EQUIPMENT PROVIDED BY  
2 QUALIFIED COMPLEX REHABILITATION TECHNOLOGY SUPPLIERS, PURSUANT TO  
3 SECTION THREE HUNDRED SIXTY-SEVEN-J OF THE SOCIAL SERVICES LAW, AND  
4 ADOPT THE SUPPLIER STANDARDS CONTAINED THEREIN.

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

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

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

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

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