

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

4372--A

2015-2016 Regular Sessions

I N S E N A T E

March 17, 2015

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 2807-0. 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

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

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1 RECEIVE A SHARE OF SUCH GRANTS EQUAL TO ITS PROPORTIONATE SHARE OF THE
2 TOTAL APPROVED STATEWIDE DOLLARS NOT REIMBURSABLE BY THE MEDICAL ASSIST-
3 ANCE PROGRAM PAID TO PROVIDERS OF EARLY INTERVENTION SERVICES BY THE
4 STATE AND MUNICIPALITIES ON ACCOUNT OF EARLY INTERVENTION SERVICES IN
5 THE LAST COMPLETE STATE FISCAL YEAR FOR WHICH SUCH DATA IS AVAILABLE.

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

8 (G) A FURTHER GROSS STATEWIDE AMOUNT FOR TWO THOUSAND SEVENTEEN SHALL
9 BE ONE HUNDRED FIFTEEN MILLION DOLLARS.

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

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

17 (D) FUNDS SHALL BE ADDED TO THE FUNDS COLLECTED BY THE COMMISSIONER
18 FOR DISTRIBUTION IN ACCORDANCE WITH SECTION TWENTY-EIGHT HUNDRED SEVEN-O
19 OF THIS ARTICLE, IN THE FOLLOWING AMOUNT: ONE HUNDRED FIFTEEN MILLION
20 DOLLARS FOR THE PERIOD JANUARY FIRST, TWO THOUSAND SEVENTEEN THROUGH
21 DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN.

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

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

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

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

50 (A) THE NUMBER AND AGES OF CHILDREN ENROLLED IN THE EARLY INTERVENTION
51 PROGRAM;

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

55 (C) THE TOTAL NUMBER OF CHILDREN, WITHIN A MUNICIPALITY, RECEIVING
56 MULTIPLE SERVICES, THE PERCENTAGE OF THOSE CHILDREN BY SERVICE TYPE, THE

1 AVERAGE FREQUENCY OF VISITS PER WEEK FOR SUCH SERVICE TYPE AND THE AVER-
2 AGE NUMBER OF SERVICE TYPES THAT EACH CHILD RECEIVES;

3 (D) THE NUMBER OF NEW YORK STATE APPROVED AGENCIES, INSTITUTIONS, OR
4 ORGANIZATIONS PROVIDING EARLY INTERVENTION SERVICES BY SERVICE SPECIALTY
5 OR SPECIALTIES AND THE NUMBER OF NEW YORK STATE APPROVED INDEPENDENT
6 PROVIDERS OF EARLY INTERVENTION SERVICES BY SERVICE SPECIALTY OR
7 SPECIALTIES;

8 (E) THE NUMBER AND PERCENTAGE OF CHILDREN RECEIVING A SINGLE SERVICE
9 BY TYPE OF NEW YORK STATE APPROVED SERVICE PROVIDER, AND THE NUMBER AND
10 PERCENTAGE OF CHILDREN RECEIVING MULTIPLE SERVICES BY TYPE OF NEW YORK
11 STATE APPROVED SERVICE PROVIDER;

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

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

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

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

23 (J) THE NUMBER OF CHILDREN THAT ARE COVERED BY THE MEDICAL ASSISTANCE
24 PROGRAM;

25 (K) THE NUMBER OF CLAIMS SUBMITTED TO THE MEDICAL ASSISTANCE PROGRAM
26 BY MUNICIPALITY. THE PERCENTAGE OF CLAIMS DENIED BY THE MEDICAL ASSIST-
27 ANCE PROGRAM. THE REASONS FOR THE DENIALS.

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

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

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

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

54 [Third party insurance and medical] MEDICAL assistance program
55 payments.

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

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

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

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

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

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

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

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

1 PARTY PAYOR OTHER THAN THE MEDICAL ASSISTANCE PROGRAM SHALL BE REQUIRED
2 TO REIMBURSE FOR EARLY INTERVENTION SERVICES PROVIDED UNDER THIS TITLE.
3 S 9. This act shall take effect on the thirtieth day after it shall
4 have become a law; provided, however the amendments to section 2807-s of
5 the public health law made by sections two and three of this act shall
6 not affect the expiration of such section and shall be deemed to expire
7 therewith.