

5074--B

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, SIMON, ORTIZ, GOTTFRIED, MOSLEY, TITONE, FAHY, DUPREY -- Multi-Sponsored by -- M. of A. COOK, HOOPER, McLAUGHLIN, SALADINO, SIMANOWITZ -- read once and referred to the Committee on Health -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services 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-

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

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1 GENESIS IMPERFECTA, ARTHROGRYPOSIS, AMYOTROPHIC LATERAL SCLEROSIS,  
2 MULTIPLE SCLEROSIS, DEMYELINATING DISEASE, MYELOPATHY, MYOPATHY,  
3 PROGRESSIVE MUSCULAR ATROPHY, ANTERIOR HORN CELL DISEASE, POST-POLIO  
4 SYNDROME, CEREBELLAR DEGENERATION, DYSTONIA, HUNTINGTON'S DISEASE,  
5 SPINOCEREBELLAR DISEASE, AND CERTAIN TYPES OF AMPUTATION, PARALYSIS OR  
6 PARESIS.

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

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

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

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

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

34 (G) "PURE HCPCS CODES" MEANS HEALTHCARE COMMON PROCEDURE CODING SYSTEM  
35 CODES THAT REFER EXCLUSIVELY TO COMPLEX REHABILITATION TECHNOLOGY  
36 PRODUCTS.

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

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

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

44 (II) IS AN ENROLLED MEDICARE SUPPLIER AND MEETS THE SUPPLIER AND QUALITY  
45 STANDARDS ESTABLISHED FOR DURABLE MEDICAL EQUIPMENT SUPPLIERS  
46 INCLUDING THOSE FOR COMPLEX REHABILITATION TECHNOLOGY UNDER THE MEDICARE  
47 PROGRAM;

48 (III) HAS AT LEAST ONE EMPLOYEE WHO IS A QUALIFIED COMPLEX REHABILITATION  
49 TECHNOLOGY PROFESSIONAL AVAILABLE TO ANALYZE THE NEEDS AND CAPACITIES  
50 OF COMPLEX NEEDS PATIENTS IN CONSULTATION WITH A QUALIFIED HEALTH CARE  
51 PROFESSIONAL AND PARTICIPATE IN THE SELECTION OF APPROPRIATE COMPLEX  
52 REHABILITATION TECHNOLOGY AND PROVIDE TRAINING IN THE PROPER USE  
53 OF THE COMPLEX REHABILITATION TECHNOLOGY;

54 (IV) REQUIRES A QUALIFIED COMPLEX REHABILITATION TECHNOLOGY PROFESSIONAL  
55 BE PHYSICALLY PRESENT FOR THE EVALUATION AND DETERMINATION OF

1 APPROPRIATE COMPLEX REHABILITATION TECHNOLOGY FOR COMPLEX NEEDS  
2 PATIENTS;

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

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

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

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

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

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

50 S 4. Section 4403 of the public health law is amended by adding a new  
51 subdivision 9 to read as follows:

52 9. EVERY HEALTH MAINTENANCE ORGANIZATION SHALL INCLUDE ADEQUATE ACCESS  
53 TO SERVICES AND EQUIPMENT PROVIDED BY QUALIFIED COMPLEX REHABILITATION  
54 TECHNOLOGY SUPPLIERS, PURSUANT TO SECTION THREE HUNDRED SIXTY-SEVEN-J OF  
55 THE SOCIAL SERVICES LAW, AND ADOPT THE SUPPLIER STANDARDS CONTAINED  
56 THEREIN.

1     S 5. This act shall take effect on the first of January next succeed-  
2     ing the date on which it shall have become a law, and shall apply to  
3     contracts and policies issued, renewed, modified or amended on or after  
4     such effective date.