

4372--A

2015-2016 Regular Sessions

I N   S E N A T E

March 17, 2015

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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-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

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 RESPIRE;

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.