

STATE OF NEW YORK

5284

2019-2020 Regular Sessions

IN SENATE

April 23, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to establishing access to benefits and services for people with HIV in each local department of social services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The social services law is amended by adding a new section
2 138 to read as follows:

3 § 138. Access to HIV services. 1. The office of temporary and disabili-
4 ty assistance shall direct each local department of social services
5 (LDSS) to establish and maintain access to benefits and services as
6 defined in subdivision three of this section to every person with HIV
7 infection who requests assistance, and shall ensure the provision of
8 benefits and services to each eligible person infected with HIV.

9 2. The commissioner of the office of temporary and disability assist-
10 ance shall direct each LDSS to provide to persons with HIV infection who
11 satisfy the eligibility requirements for Medicaid as set forth in U.S.C.
12 1396 et seq.:

13 (a) intensive case management with an average ratio which shall not
14 exceed one caseworker or supervisor to twenty-five family cases, and
15 with an overall average ratio for all cases which shall not exceed one
16 caseworker or supervisor to thirty-four cases; and

17 (b) transportation and nutrition allowances in an amount not less than
18 one hundred ninety-three dollars per month.

19 3. (a) Whenever used in this subdivision, the following terms shall
20 have the following meanings:

21 (1) "Access to benefits and services" shall mean the provision of
22 assistance by staff of the LDSS to a person with HIV infection at a
23 single location in order to apply for publicly subsidized benefits and
24 services, to establish any and all elements of eligibility including,

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

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1 but not limited to, assistance provided at a field office of the LDSS,
2 at the home of the applicant or recipient, at a hospital where such
3 applicant or recipient is a patient or at another location in assembling
4 such documentation as may be necessary to establish any and all elements
5 of eligibility and to maintain such eligibility;

6 (2) "Eligible person" shall mean a person who satisfies the eligibil-
7 ity requirements established pursuant to applicable local, state or
8 federal statute, law, rule or regulation for the benefits and services
9 set forth in paragraph (b) of this subdivision or for any other benefits
10 and services deemed appropriate by the commissioner;

11 (3) "Medically appropriate transitional and permanent housing" shall
12 mean housing which is suitable for persons with HIV infection, and if
13 necessary, accessible to persons with disabilities. Such housing shall
14 include, but not be limited to, individual refrigerated food and medi-
15 cine storage and adequate bathroom facilities which shall, at a minimum,
16 provide an effective locking mechanism and any other such measures as
17 are necessary to ensure privacy;

18 (4) "Person with HIV infection" shall mean a person who has received a
19 medical determination that he or she is infected with HIV; and

20 (5) "Commissioner" shall mean the commissioner of the office of tempo-
21 rary and disability assistance.

22 (b) The office of temporary and disability assistance shall provide,
23 or the commissioner shall direct LDSSs to provide access to benefits and
24 services to every eligible person with HIV infection who requests
25 assistance, and shall ensure the provision of benefits and services to
26 eligible persons with HIV infection. Any eligible person shall receive
27 only those benefits and services for which such person qualifies in
28 accordance with the applicable eligibility standards established pursu-
29 ant to local, state or federal statute, law, rule or regulation. Such
30 benefits and services shall include, but not be limited to: medically
31 appropriate transitional and permanent housing; Medicaid, as set forth
32 in 42 U.S.C. 1396 et seq. and other health-related services; long term
33 care services provided by a certified home health agency, long term home
34 health care program or AIDS home care program authorized pursuant to
35 article thirty-six of the public health law; personal care services
36 pursuant to this article; homemaker services as defined in subdivision
37 six of section thirty-six hundred two of the public health law; supple-
38 mental nutrition assistance program benefits in accordance with section
39 ninety-five of this chapter; transportation and nutrition allowances as
40 required by subdivision two of this section; preventative services,
41 including rent subsidies, in accordance with section four hundred nine-a
42 of this chapter; financial benefits; and intensive case management as
43 required by subdivision two of this section. The commissioner shall have
44 the authority to direct each LDSS to provide access to additional bene-
45 fits and services and ensure the provision of such additional benefits
46 and services whenever deemed appropriate. The requirements with respect
47 to such access to and eligibility for benefits and services shall not be
48 more restrictive than those requirements mandated by state or federal
49 statute, law, rule or regulation. Within thirty days of the effective
50 date of this section, the commissioner shall establish criteria pursuant
51 to which an applicant shall be entitled to a home or hospital visit for
52 the purpose of establishing eligibility and applying for benefits and
53 services.

54 (c)(1) Upon written or oral application or submission of documents
55 required to establish eligibility for benefits and services by a person
56 with HIV infection, such person shall immediately be provided with a

1 receipt which shall include, but not be limited to, the date, a
2 description of the information received, and a statement as to whether
3 any application for such benefits and services is complete or incom-
4 plete, and if incomplete, such receipt shall identify any information or
5 documents needed in order for the application to be deemed complete.

6 (2) Where no statute, law, rule or regulation provides a time period
7 within which a benefit or service shall be provided to an eligible
8 person who requests such a benefit or service, such benefit or service
9 shall be provided no later than twenty business days following
10 submission of all information or documentation required to determine
11 eligibility.

12 (d) Where a person with HIV infection who applies for benefits and
13 services, or access to benefits and services, indicates that one or more
14 minor children reside with him or her or are in his or her care or
15 custody, such person shall be given information and program referrals on
16 child care options and custody planning, including the availability of
17 standby guardianship pursuant to section seventeen hundred twenty-six of
18 the surrogate's court procedure act and referral to legal assistance
19 programs.

20 (e) Recertification of eligibility, as required by any state or feder-
21 al law, statute, rule or regulation shall be conducted no more frequent-
22 ly than mandated by such statute, law, rule or regulation.

23 (f) Eligibility for benefits and services for persons with HIV
24 infection may not be terminated except where the recipient is determined
25 to no longer satisfy eligibility requirements, is deceased, or upon
26 certification by the LDSS that the recipient cannot be located to verify
27 his or her continued eligibility for benefits and services. In the
28 latter circumstance, the LDSS shall conduct a reasonable good faith
29 search for at least a ninety day period to locate the recipient, includ-
30 ing sending written notice by certified mail, return receipt requested,
31 to the last known address of such recipient, requiring the recipient to
32 contact the LDSS within ten days.

33 (g) Not later than sixty days from the effective date of this section,
34 the commissioner shall direct each LDSS to prepare a draft policy and
35 procedures manual for LDSS staff. Such policy and procedures manual
36 shall include, but not be limited to, strict guidelines on maintaining
37 the confidentiality of the identity of and information relating to all
38 applicants and recipients, instructional materials relating to the
39 medical and psychological needs of persons with HIV infection, applica-
40 tion procedures, eligibility standards, mandated time periods for the
41 provision of each benefit and service available to applicants and recip-
42 ients and advocacy resources available to persons with HIV infection.
43 Such lists of advocacy resources shall be updated semi-annually. Within
44 thirty days following the preparation of such draft policy and proce-
45 dures manual and prior to the preparation of a final policy and proce-
46 dures manual, the LDSS shall distribute such draft policy and procedures
47 manual to all social services agencies and organizations that contract
48 with the LDSS to provide HIV-related services and to all others whom the
49 LDSS deems appropriate, and hold no fewer than one noticed public hear-
50 ing at a site accessible to the disabled, at which advocates, services
51 providers, persons with HIV infection, and any other member of the
52 public shall be given an opportunity to comment on such draft policy and
53 procedures manual. Each LDSS shall prepare a final policy and procedures
54 manual within thirty days after the conclusion of such hearing and shall
55 thereafter review and where appropriate, revise such policy and proce-
56 dures manual on an annual basis. Each LDSS shall provide for semi-annual

1 training, using such policy and procedures manual, for all division
2 staff.

3 (h) Not later than sixty days from the effective date of this section,
4 each LDSS shall publish a proposed rule establishing a bill of rights
5 for persons with HIV infection. Such draft bill of rights shall include,
6 but not be limited to, an explanation of the benefits and services for
7 which persons with HIV infection may be eligible; timetables within
8 which such benefits and services shall be provided to eligible persons;
9 an explanation of an applicant's and recipient's right to examine his or
10 her file and the procedure for disputing any information contained ther-
11 ein; an explanation of an applicant's and recipient's right to a home or
12 hospital visit for the purpose of applying for or maintaining benefits
13 or services; an explanation of the process for requesting an LDSS
14 conference or fair hearing in accordance with section twenty-two of this
15 chapter; and a summary of the rights and remedies for the redress of
16 discrimination. Within sixty days following the publication of such
17 proposed rule, and prior to the publication of a final rule, each LDSS
18 shall hold no fewer than one noticed public hearing at a site accessible
19 to the disabled at which advocates, service providers, persons with HIV
20 infection, and any other member of the public shall be given an opportu-
21 nity to comment on such draft bill of rights. Each LDSS shall publish a
22 final rule within thirty days after the conclusion of such hearing and
23 shall thereafter review, and where appropriate, revise such bill of
24 rights on an annual basis. Such bill of rights shall be conspicuously
25 posted in all LDSS offices that are open to the public and shall be
26 available for distribution to the public in English, Spanish and any
27 other languages that the commissioner deems appropriate.

28 (i) Not later than ninety days from the effective date of this
29 section, the commissioner shall establish a policy or procedure for
30 overseeing and monitoring the delivery of services required pursuant to
31 this section to persons with HIV infections which shall include, but not
32 be limited to, quality assurance measurements. The commissioner shall
33 submit such policies or procedures to the governor, speaker of the
34 assembly and the temporary president of the senate in writing within ten
35 days from the date such policies or procedures are established.

36 (j) Beginning on September first, two thousand nineteen, and on the
37 first day of each calendar quarter thereafter, the commissioner shall
38 submit a written report to the governor, speaker of the assembly, minor-
39 ity leader of the assembly, the temporary president of the senate, and
40 the minority leader of the senate, providing the following information
41 disaggregated on both a quarterly and annualized basis: the number of
42 persons with HIV infection who requested the benefits and services set
43 forth in paragraph (b) of this subdivision and any other benefits
44 provided by LDSS, disaggregated by LDSS and by the type of benefit or
45 service requested, and the average length of time required to process
46 such requests, disaggregated by LDSS, and the type of benefit or service
47 requested; the number of persons with HIV infection who requested bene-
48 fits and serviced and were determined to be ineligible for such benefits
49 and services, disaggregated by LDSS, by the type of benefit or service
50 requested, and by the reason for such determinations; the number of LDSS
51 staff, by job title, whose duties include providing benefits and
52 services or access to benefits and services pursuant to this section,
53 the number of recipients, the number of cases and the number of requests
54 for assistance, disaggregated by LDSS; the average length of time from
55 the initial request for benefits and services to submission of a
56 complete application for such benefits and services, the average length

1 of time from submission of such complete application to grant or denial
2 of the benefits and services requested, and the average length of time
3 from the grant of such benefits and services to the provision of such
4 benefits and services, disaggregated by LDSS and by the type of benefit
5 or service requested; the average length of time from the initial
6 request for an exception to policy to approve enhanced rental assistance
7 to the approval or disapproval of such exception and the average length
8 of time from the approval of such exception to the issuance of such
9 enhanced rental assistance, disaggregated by LDSS; the number of
10 requests for emergency housing assistance, the number of persons
11 referred to emergency housing assistance, the average length of stay in
12 emergency assistance, and the number of persons referred to permanent
13 housing; the number of persons requesting supportive housing placements,
14 the number of persons referred to such supportive housing and the aver-
15 age length of time from request to placement; the number of cases
16 closed, disaggregated by LDSS and by the reasons for such closure, the
17 number of such closed cases that were re-opened and the average length
18 of time required to re-open such closed cases; the number of administra-
19 tive fair hearings requested, the number of fair hearing decisions in
20 favor of applicants and recipients and the average length of time for
21 compliance with such a fair hearing decision; and the number of
22 proceedings initiated pursuant to article seventy-eight of the civil
23 practice law and rules challenging fair hearing decisions, and the
24 number of article seventy-eight decisions rendered in favor of appli-
25 cants or recipients. For the purposes of this subdivision, "field
26 office" shall mean any office of the department at which persons with
27 HIV infection may access benefits and services.

28 (k) There shall be an advisory board to advise the commissioner on the
29 provision of benefits and services and access to benefits and services
30 to persons with HIV infection as required by this section. This advisory
31 board shall consist of eleven members to be appointed for two year terms
32 as follows: two members shall be appointed by the speaker of the assem-
33 bly, two member shall be appointed by the temporary president of the
34 senate, one member shall be appointed by the minority leader of the
35 assembly, one member shall be appointed by the minority leader of the
36 senate and the remaining five members shall be appointed by the gover-
37 nor. At least one of the appointments made by the speaker of the assem-
38 bly and the temporary president of the senate, and at least three of the
39 appointments made by the governor shall be eligible for benefits and
40 services pursuant to this section. The advisory board shall meet at
41 least quarterly and members shall serve without compensation. Such advi-
42 sory board may formulate and recommend to the commissioner a policy or
43 procedure for overseeing and monitoring the delivery of services to
44 persons with HIV infection which may include quality assurance measure-
45 ments. Such advisory board shall submit such recommended policy or
46 procedure to the speaker of the assembly and the temporary president of
47 the senate upon submission to the commissioner.

48 § 2. Subdivision 14 of section 131-a of the social services law, as
49 amended by section 1 of part ZZ of chapter 59 of the laws of 2018, is
50 amended to read as follows:

51 14. In determining the need for aid provided pursuant to public
52 assistance programs, each person living with medically diagnosed HIV
53 infection [~~as defined by the AIDS institute of the department of health~~
54 ~~in social services districts with a population over five million who is~~
55 ~~receiving services through such district's administrative unit providing~~
56 ~~HIV/AIDS services, public assistance and earned and/or unearned income,~~]

1 shall not be required to pay more than thirty percent of his or her
2 monthly earned and/or unearned income toward the cost of rent that such
3 person has a direct obligation to pay; this provision shall not apply to
4 room and board arrangements.

5 § 3. The commissioner of the office of temporary and disability
6 assistance shall amend 18 N.Y.C.R.R. § 352.3(k) as follows: (a) to
7 require the office of temporary and disability assistance or local
8 departments of social services to provide emergency shelter allowances,
9 upon request, to households composed of an applicant or recipient of
10 public assistance who has been medically diagnosed with HIV infection
11 and any family members residing with such person; (b) to set the amount
12 of the maximum emergency shelter allowance available at the amount, of
13 the fair market rent (FMR) set by the United States department of hous-
14 ing and urban development for the size the eligible household and FMR
15 area where the household is located, with the allowance in no event to
16 be greater than the actual monthly rent due; and (c) pursuant to subdivi-
17 sion 14 of section 131-a of the social services law, as amended in
18 this act, to calculate the amount of the emergency shelter allowance
19 available to a person with HIV infection who has earned and/or unearned
20 income up to 200 percent of the federal poverty guidelines as a function
21 of actual total monthly rent due less 30 percent of the monthly earned
22 and/or unearned income of the person with HIV infection.

23 § 4. Notwithstanding section 153 of the social services law or any
24 other inconsistent provision of law (a) for local departments of social
25 services with a population over five million, New York state shall reim-
26 burse 50 percent of safety net assistance expenditures for emergency
27 shelter, transportation, or nutrition payments which the district deter-
28 mines are necessary to establish or maintain independent living arrange-
29 ments among persons with HIV infection and who are homeless or facing
30 homelessness and for whom no viable and less costly alternative to hous-
31 ing is available; provided, however, that funds appropriated herein may
32 only be used for such purposes if the cost of such allowances are not
33 eligible for reimbursement under medical assistance or other programs;
34 and (b) for local departments of social services with a population under
35 five million, New York state shall pay or reimburse 100 percent of safe-
36 ty net assistance expenditures for emergency shelter, transportation, or
37 nutrition payments necessary to establish or maintain independent living
38 arrangements among persons with HIV infection and who are homeless or
39 facing homelessness and for whom no viable and less costly alternative
40 to housing is available; provided, however, that funds appropriated
41 herein may only be used for such purposes if the cost of such allowances
42 are not eligible for reimbursement under medical assistance or other
43 programs.

44 § 5. This act shall take effect immediately.