STATE OF NEW YORK

7996

2021-2022 Regular Sessions

IN ASSEMBLY

June 4, 2021

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to early intervention and existing covered lives assessment funding; and to repeal certain provisions of the public health law and the insurance law relating thereto

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

Section 1. Paragraph (b) of subdivision 6 of section 2807-t of the public health law, as amended by section 13 of part Y of chapter 56 of the laws of 2020, is amended to read as follows:

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, for covered lives assessment rate periods on and after January first, two thousand fifteen through December thirty-first, two thousand twenty-three, for amounts collected in the aggregate in excess of one billion forty-five million dollars on an annual basis, prospective adjustments shall be suspended if the annual reconciliation calculation from the prior year would otherwise result in a decrease to the regional allocation of the specified gross annual payment amount for that region, provided, however, that such suspension shall be lifted upon a determination by the commissioner, in consultation with the director of the budget, that**: (i) as a first priority,** sixty-five million dollars in aggregate collections on an annual basis over and above one billion forty-five million dollars on an annual basis have been reserved and set aside for deposit in the HCRA resources fund**; and (ii) as a second priority, that twenty million dollars in aggregate collections on an annual basis over and above one billion one hundred million dollars, on an annual basis have been reserved and set aside for deposit in the HCRA resources fund for purposes of payments to the early intervention services pool, pursuant to section twenty-eight hundred seven-o of this article**. Any amounts collected in the aggregate at or below one billion

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

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forty-five million dollars on an annual basis, shall be subject to regional adjustments reconciling any decreases or increases to the regional allocation in accordance with paragraph (a) of this subdivision.

§ 2. The public health law is amended by adding a new section 2807-o to read as follows:

§ 2807-o. Early intervention services pool. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Early intervention services" shall mean services delivered to an eligible child, pursuant to an individualized family service plan under the early intervention program.

(b) "Early intervention program" shall mean the early intervention program for toddlers with disabilities and their families, as created by title two-A of article twenty-five of this chapter.

(c) "Municipality" shall mean any county outside of the city of New York or the city of New York.

2. Payments for early intervention services. (a) The commissioner shall, from funds allocated for such purpose under paragraph (b) of subdivision six of section twenty-eight hundred seven-t of this article, make payments to municipalities and the state for the delivery of early intervention services.

(b) Payments under this subdivision shall be made to municipalities and the state by the commissioner. Each municipality and the state of New York shall receive a share of such payments based on available funding, covered lives assessment equal to its proportionate share of the total approved statewide dollars not reimbursable by the medical assistance program paid to providers of early intervention services by the state and municipalities on account of early intervention services in the last complete state fiscal year for which such data is available.

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

1. The approved costs for an eligible child who receives an evaluation and early intervention services pursuant to this title shall be a charge upon the municipality wherein the eligible child resides or, where the services are covered by the medical assistance program, upon the social services district of fiscal responsibility with respect to those eligible children who are also eligible for medical assistance. All approved costs shall be paid in the first instance and at least quarterly by the appropriate governing body or officer of the municipality upon vouchers presented and audited in the same manner as the case of other claims against the municipality. Notwithstanding the insurance law or regulations thereunder relating to the permissible exclusion of payments for services under governmental programs, no such exclusion shall apply with respect to payments made pursuant to this title. Notwithstanding the insurance law or any other law or agreement to the contrary, benefits under this title shall be considered secondary to [~~any plan of insurance or state government benefit~~] **the medical assistance** program under which an eligible child may have coverage. [~~Nothing in this section shall increase or enhance coverages provided for within an insurance contract subject to the provisions of this title.~~]

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

2. The department shall reimburse the approved costs paid by a municipality for the purposes of this title, other than those reimbursable by

the medical assistance program [~~or by third party payors~~], in an amount of fifty percent of the amount expended in accordance with the rules and regulations of the commissioner; provided, however, that in the discretion of the department and with the approval of the director of the division of the budget, the department may reimburse municipalities in an amount greater than fifty percent of the amount expended. Such state reimbursement to the municipality shall not be paid prior to April first of the year in which the approved costs are paid by the municipality, provided, however that, subject to the approval of the director of the budget, the department may pay such state aid reimbursement to the municipality prior to such date.

§ 5. Paragraph (b) of subdivision 5 of section 2557 of the public health law, as amended by section 9-a of part A of chapter 56 of the laws of 2012, is amended to read as follows:

(b) Notwithstanding any inconsistent provision of section one hundred twelve or one hundred sixty-three of the state finance law, sections one hundred forty-two and one hundred forty-three of the economic development law, or any other contrary provision of law, the commissioner is authorized to enter into a contract or contracts under paragraph (a) of this subdivision without a competitive bid or request for proposal process, provided, however, that:

(i) The department shall post on its website, for a period of no less than thirty days:

(1) A description of the proposed services to be provided pursuant to the contract or contracts;

(2) The criteria for selection of a contractor or contractors;

(3) The period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(4) The manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(ii) All reasonable and responsive submissions that are received from prospective contractors in a timely fashion shall be reviewed by the commissioner; [~~and~~]

(iii) **Such fiscal agent contractor shall pay claims in accordance with the timeframes included in section thirty-two hundred twenty-four-a of the insurance law, provided that such fiscal agent develop processes for the processing of claims which have minor errors where the liability and amount to be paid is clear; and**

(iv) The commissioner shall select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section.

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

[~~Third party insurance and medical~~] **Medical** assistance program payments.

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

3. (a) [~~Providers of evaluations and early intervention services, hereinafter collectively referred to in this subdivision as "provider" or "providers", shall in the first instance and where applicable, seek payment from all third party payors including governmental agencies prior to claiming payment from a given municipality for evaluations~~

~~conducted under the program and for services rendered to eligible children, provided that, the obligation to seek payment shall not apply to a payment from a third party payor who is not prohibited from applying such payment, and will apply such payment, to an annual or lifetime limit specified in the insured's policy.~~

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

~~(ii)~~] Parents shall provide the municipality and the service coordinator with a written referral from a primary care provider as documentation, for eligible children, of the medical necessity of early intervention services.

[~~(iii) providers~~] **(b) Providers** shall utilize the department's fiscal agent and data system for claiming payment for evaluations and services rendered under the early intervention program**, provided such fiscal agent complies with the requirements of subdivision five of section twenty-five hundred fifty-seven of this title**.

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

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

~~(d)~~] **(c)** A municipality, or its designee, and a provider shall be subrogated, to the extent of the expenditures by such municipality or for early intervention services furnished to persons eligible for benefits under this title, to any rights such person may have or be entitled to from [~~third party reimbursement~~] **the medical assistance program**. The provider shall submit notice to the insurer or plan administrator of his or her exercise of such right of subrogation upon the provider's assignment as the early intervention service provider for the child. The right of subrogation does not attach to benefits paid or provided [~~under any health insurance policy or health benefits plan~~] prior to receipt of written notice of the exercise of subrogation rights [~~by the insurer or plan administrator providing such benefits~~]**. Notwithstanding any inconsistent provision of this title, except as provided for in this subdivision, no third-party payor other than the medical assistance program shall be required to reimburse for early intervention services provided pursuant to this title**.

§ 8. Subdivision 3 of section 2543 of the public health law is REPEALED.

§ 9. Section 3235-a of the insurance law is REPEALED.

§ 10. Subparagraph (F) of paragraph 25 of subsection (i) of section 3216 of the insurance law is REPEALED.

§ 11. Subparagraph (F) of paragraph 17 of subsection (l) of section 3221 of the insurance law is REPEALED.

§ 12. Paragraph 6 of subsection (ee) of section 4303 of the insurance law is REPEALED.

§ 13. Section 2550 of the public health law is amended by adding a new subdivision 4 to read as follows:

4. (a) The lead agency shall review the individualized family service plan (hereinafter referred to as "the IFSP") from the previous calendar year, determine the appropriateness of the care or service received and whether the service received conforms to the IFSP, as outlined in section twenty-five hundred forty-five of this title.

(b) The agency shall review the number of visits and hours of service rendered and determine whether services were appropriate, complete and fulfilled the terms of the IFSP.

(c) The fiscal agent, in dispersing reimbursement funds to providers, shall first ensure that the claim submitted by providers is appropriately billed and technically correct.

§ 14. This act shall take effect January 1, 2022; provided, however, that the amendments to section 2807-t of the public health law made by section one of this act shall not affect the expiration of such section and shall be deemed to expire therewith. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.