STATE OF NEW YORK

9817

IN SENATE

May 31, 2024

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to providing breast pumps to certain incarcerated nursing birth parents

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

Section 1. Section 611 of the correction law is amended by adding four new subdivisions 5, 6, 7 and 8 to read as follows:

5. A person who gives birth in a hospital or medical facility while in the custody of an institution or local correctional facility shall be permitted to keep all health and newborn related supplies and equipment provided to them by the hospital or medical facility upon their return to the institution or local correctional facility, including but not limited to diapers, breast pump equipment, breastfeeding supplies, breast pads, sanitary napkins, underwear, water bottle, heating pad, perineal squirt bottles, sitz baths, and health creams, ointments, and sprays. Such person and their newborn shall be provided with uninterrupted access to therapeutically equivalent medication as prescribed by medical personnel at the hospital or medical facility for a duration consistent with the timeframe prescribed by such personnel.

6. (a) For purposes of this subdivision, a breastfeeding parent is defined as:

(i) a parent in custody of an institution or local correctional facility who lives with their child pursuant to subdivisions two and three of this section; and

(ii) a parent in custody of an institution or local correctional facility who is able to produce breast milk of any amount and whose child is living in the community and is thirty-six months of age or younger.

(b) (i) A breastfeeding parent shall have the right to:

(A) breastfeed their child consistent with the rights enumerated in subdivision three of section twenty-five hundred five-a of the public health law;

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

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(B) breastfeed their child in any location consistent with section seventy-nine-e of the civil rights law or use a breast pump or express breast milk in any location, provided that the institution or local correctional facility has authorized such parent and their child to be in such location;

(C) breastfeed and express breast milk at a frequency determined by such parent;

(D) store breast milk at the institution or local correctional facility in a fashion consistent with the requirements set forth in paragraphs (f) and (g) of this subdivision; and

(E) if such parent is not living with their child, designate an individual in the community to gather breast milk from the institution or local correctional facility for the purpose of delivering the breast milk to their child.

(ii) An institution or local correctional facility shall not require a parent to breastfeed or discriminate against or penalize in any way a parent for their breastfeeding decisions and actions.

(c) A breastfeeding parent participating in jobs and programs shall not be penalized for engaging in activities consistent with section two hundred six-c of the labor law, and shall be provided with the same accommodations as required under such section of the labor law.

(d) An institution or local correctional facility shall provide a breastfeeding parent, as defined in paragraph (a) of this subdivision, with the following:

(i) a personal electric pump with associated parts including flanges, valves, membranes, connections, tubes, and collection bottles;

(ii) a personal manual pump;

(iii) a personal breastfeeding cover, personal pillow, and other personal items that allow for comfort and privacy during breastfeeding and expressing breast milk;

(iv) comprehensive current information about breastfeeding and lactation that reflects standards of the department of health in a language and manner understandable to such parent; and

(v) access to breastfeeding and lactation assistance from personnel with relevant expertise and, if available, other individuals incarcerated at the institution or local correctional facility who work in or otherwise support pregnancy or child related programming and are able to provide breastfeeding and lactation support.

(e) Upon such parent's request for infant formula, the institution or local correctional facility shall provide such parent with formula that meet standards and nutrient requirements set forth by the United States food and drug administration. If such parent determines that their infant is intolerant to or otherwise made physically uncomfortable by the formula provided, the institution or local correctional facility shall provide alternate formulas until such parent determines that one is sufficient for their infant. Prior to making their determination, such parent shall be afforded the opportunity to discuss formula related issues with personnel providing lactation care and pediatric care in that institution or local correctional facility.

(f) An institution or local correctional facility shall acquire breast pump parts and breast milk storage devices only from organizations and agencies that are in compliance with section 37-0505 of the environmental conservation law, and shall clean or allow a breastfeeding parent, as defined in paragraph (a) of this subdivision, to clean breast pump parts and breast milk storage devices at a frequency consistent with regulations set forth by the department of health.

(g) An institution or local correctional facility shall store breast-milk safely in a refrigerator or comparable cooling unit consistent with guidelines set forth by the department of health until it is ready for consumption by the child of a breastfeeding parent, as defined in paragraph (a) of this subdivision, or for pick up by a designated individual pursuant to paragraph (b) of this subdivision.

7. (a) The department and commission shall compile data outlined in paragraph (b) of this subdivision for an annual report to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the chairperson of the senate health committee, the chairperson of the senate crime victims, crime and correction committee, the chairperson of the assembly health committee, the chairperson of the assembly correction committee, the chairperson of the legislative women's caucus, and the chairperson of the Black, Puerto Rican, Hispanic and Asian legislative caucus. Such data shall be disaggregated by institution and local correctional facility and reported in a de-identified fashion. Reports issued pursuant to this paragraph shall be posted on the websites maintained by the department and the commission.

(b) Each institution and local correctional facility shall work with relevant personnel and contracted external health care providers to collect the following data and provide it in a de-identified fashion to the department for the purpose outlined in paragraph (a) of this subdivision:

(i) the number of individuals known to be pregnant upon admission;

(ii) the number of individuals identified as being pregnant while in custody, including the number participating in a work release program and the number in custody for a parole violation;

(iii) the average daily census of pregnant individuals;

(iv) the number of ectopic pregnancies, molar pregnancies, abortions, miscarriages, stillbirths, vaginal deliveries, and caesarean deliveries;

(v) the number of pregnancies determined by medical personnel to be high risk and the reasons for such determinations;

(vi) for each newborn, the gestational age at delivery, birth weight, and length of stay, if any, in a neonatal intensive care unit;

(vii) for pregnant individuals, their race, ethnicity, gender identity, age, crime of conviction, and county of conviction;

(viii) for individuals who apply for a nursery program, their race, ethnicity, gender identity, age, crime of conviction, and county of conviction, whether those individuals were approved or denied for the program, along with specific and detailed reasons for denials, including how they may relate to the crime of conviction, criminal record, custodial history, history of violence, history of involvement with child protective services, or history of substance use of the individual, the mental or physical health conditions of the individual or child, or the safety of the individual, child, or others in the nursery;

(ix) the number of babies who do not return to an institution with their parent and the reasons, including denial for a nursery program, and where those babies are placed, including non-kinship foster care, kinship foster care, with the other parent, with a friend, and with a family member not in foster care;

(x) for institutions with a nursery program, the number of nursery beds available and the number of beds utilized each month;

(xi) the length of time between each nursery application and decision, the length of time between each decision and the birth of the child, and

if admission is granted, the length of time between the decision and placement of the individual in the nursery;

(xii) the number of individuals participating in the nursery program;

(xiii) the number of children who enter a nursery from the community;

(xiv) the number of individuals removed from the nursery disaggregated by race, ethnicity, gender identity, age, crime of conviction, county of conviction, and length of nursery stay, along with specific and detailed reasons for removals, including how they may relate to the crime of conviction, criminal record, custodial history, history of violence, history of involvement with child protective services, or history of substance use of the individual, the mental or physical health conditions of the individual or child, and the safety of the individual, child, or others in the nursery;

(xv) the number of babies removed from a nursery program and where those babies are placed, including non-kinship foster care, kinship foster care, with the other parent, with a friend, and with a family member not in foster care; and

(xvi) the number of babies who return to the community with their parent after being in a nursery program and the length of time spent in the nursery.

8. Any person confined in an institution or local correctional facility that houses pregnant or postpartum individuals or individuals who may become pregnant shall receive notice in writing in a language and manner understandable to them about the requirements contained in each subdivision of this section upon their admission and again, regardless of the institution or local correctional facility in which they are housed, if they are known to be pregnant or to be a breastfeeding parent, or to be eligible for their child to join them in an institution or local correctional facility pursuant to subdivisions two and three of this section. The superintendent or sheriff shall publish notice of the requirements contained in each subdivision of this section in prominent locations where pregnancy related care and child related care are provided. The department and the sheriff shall provide annual training on the provisions contained in each subdivision of this section for all correctional, civilian and volunteer personnel who are involved in the transportation, supervision or care of pregnant people or breastfeeding parents, as defined in paragraph (a) of subdivision six this section, or parents eligible for their child to join them in an institution or local correctional facility pursuant to subdivisions two and three of this section.

§ 2. This act shall take effect immediately.