

# STATE OF NEW YORK

3298

2023-2024 Regular Sessions

## IN ASSEMBLY

February 2, 2023

Introduced by M. of A. CARROLL -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law, the social services law and the workers' compensation law, in relation to establishing contingency management services for certain persons with substance use disorders

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

1 Section 1. Section 19.03 of the mental hygiene law is amended by  
2 adding a new subdivision 3 to read as follows:

3 3. "Contingency management services" means addiction disorder  
4 services, including digital therapeutics prescribed by a healthcare  
5 professional, for persons with a substance use disorder that provides  
6 individuals with a financial incentive or positive reinforcement to  
7 abstain from substance use, by rewarding specified behaviors, including,  
8 but not limited to continued evidence of negative urinalysis, engagement  
9 in treatment, and other behavior which adheres to treatment goals.

10 § 2. Section 19.17 of the mental hygiene law is amended by adding a  
11 new subdivision (h) to read as follows:

12 (h) (1) The office shall, in coordination with the department of  
13 health and the New York state conference of local mental hygiene direc-  
14 tors, establish a program to provide contingency management services, as  
15 defined in subdivision three of section 19.03 of this article for  
16 persons eligible for medical assistance under title eleven of article  
17 five of the social services law for individuals in recovery for  
18 substance use disorder.

19 (2) Notwithstanding any contrary provision of law, incentives or  
20 rewards for contingency management services received by an individual  
21 pursuant to this subdivision shall not be considered income or resources  
22 of an individual for the purposes of any determinations of eligibility  
23 for any other state program or benefit, including but not limited to the

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

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1 medical assistance program, any state or federal program, or any other  
2 means-tested program or benefit.

3 (3) In developing the program under paragraph one of this subdivision,  
4 the office shall ensure that incentives or rewards for contingency  
5 management services are used for the intended purposes and not diverted  
6 for other uses. The office shall develop a plan to monitor the program  
7 for fraud and misuse of contingency management incentives and rewards.

8 (4) Notwithstanding any contrary provision of law, the commissioner,  
9 in collaboration with the commissioner of health, shall, to the extent  
10 necessary, develop and submit any appropriate waivers for implementation  
11 of this program, including, but not limited to, those authorized pursu-  
12 ant to sections eleven hundred fifteen and nineteen hundred fifteen of  
13 the federal social security act, or successor provisions, and any other  
14 waivers necessary to achieve the purposes of high quality, integrated,  
15 and cost effective care and integrated financial eligibility policies  
16 under the medical assistance program or pursuant to title XVIII of the  
17 federal social security act. Copies of such original waiver applications  
18 shall be provided to the chair of the senate finance committee and the  
19 chair of the assembly ways and means committee simultaneously with their  
20 submission to the federal government.

21 § 3. Subdivision 2 of section 365-a of the social services law is  
22 amended by adding a new paragraph (kk) to read as follows:

23 (kk) contingency management services and supports provided pursuant to  
24 article nineteen of the mental hygiene law.

25 § 4. The social services law is amended by adding a new section 367-x  
26 to read as follows:

27 § 367-x. Payment for contingency management services. 1. (a) For the  
28 purpose of this section, "contingency management services" shall have  
29 the same meaning as set forth in subdivision three of section 19.03 of  
30 the mental hygiene law.

31 (b) The receipt of any incentive or reward pursuant to contingency  
32 management services shall not be considered income for purposes of  
33 eligibility for public benefits or other public assistance to the extent  
34 allowed by law.

35 2. The commissioner may authorize the payment of medical assistance  
36 funds for contingency management services. The commissioner shall, in  
37 consultation with the AIDS Institute and the office of addiction  
38 services and supports:

39 (a) Issue guidance on the use of contingency management services for  
40 beneficiaries who access substance use disorder services under the  
41 medical assistance program;

42 (b) Establish limits on the number and value of incentives available  
43 to beneficiaries who receive services pursuant to contingency management  
44 services; and

45 (c) Determine maximum allowable rates for contingency management  
46 services based upon the medical assistance program fee-for-service  
47 outpatient rates for the same or similar services, or any other data  
48 deemed reliable and relevant by the commissioner.

49 3. Subdivision two of this section shall be effective if, and as long  
50 as, federal financial participation is available for medical assistance  
51 expenditures made pursuant to it.

52 4. For the purposes of implementing this section, the commissioner  
53 shall seek any necessary federal approvals, including approvals of any  
54 state plan amendment or federal waivers, by the federal centers for  
55 medicare and Medicaid services no later than December thirty-first, two  
56 thousand twenty-three.

1 § 5. Subdivision 2 of section 366-d of the social services law, as  
2 amended by chapter 2 of the laws of 1998, is amended to read as follows:

3 2. (a) No medical assistance provider shall:

4 [~~(a)~~] (i) solicit, receive, accept or agree to receive or accept any  
5 payment or other consideration in any form from another person to the  
6 extent such payment or other consideration is given[~~+(i)~~] for the  
7 referral of services for which payment is made under this title [~~eleven~~  
8 ~~of article five of this chapter,~~], or [~~(ii)~~] to purchase, lease or order  
9 any good, facility, service or item for which payment is made under this  
10 title [~~eleven of article five of this chapter~~]; or

11 [~~(b)~~] (ii) offer, agree to give or give any payment or other consider-  
12 ation in any form to another person to the extent such payment or other  
13 consideration is given[~~+(i)~~] for the referral of services for which  
14 payment is made under this title [~~eleven of article five of this chap-~~  
15 ~~ter,~~], or [~~(ii)~~] to purchase, lease or order any good, facility, service  
16 or item for which payment is made under this title [~~eleven of article~~  
17 ~~five of this chapter,~~

18 ~~(c) as~~].

19 (b) As used in this section "person" shall have the meaning set  
20 forth in subdivision seven of section 10.00 of the penal law.

21 [~~(d) this~~] (c) This subdivision shall not apply to any activity  
22 specifically exempt by federal statute or federal regulations promulgat-  
23 ed thereunder.

24 (d) This subdivision shall not apply to contingency management  
25 services operated pursuant to section three hundred sixty-seven-x of  
26 this title.

27 § 6. Paragraph (g) of subdivision 2 of section 13-d of the workers'  
28 compensation law, as amended by section 2 of part CC of chapter 55 of  
29 the laws of 2019, is amended to read as follows:

30 (g) has directly or indirectly requested, received or participated in  
31 the division, transference, assignment, rebating, splitting or refunding  
32 of a fee for, or has directly or indirectly requested, received or prof-  
33 ited by means of a credit or other valuable consideration as a commis-  
34 sion, discount or gratuity in connection with the furnishing of medical  
35 or surgical care, an independent medical examination, diagnosis or  
36 treatment or service, including X-ray examination and treatment, or for  
37 or in connection with the sale, rental, supplying or furnishing of clin-  
38 ical laboratory services or supplies, X-ray laboratory services or  
39 supplies, inhalation therapy service or equipment, ambulance service,  
40 hospital or medical supplies, physiotherapy or other therapeutic service  
41 or equipment, artificial limbs, teeth or eyes, orthopedic or surgical  
42 appliances or supplies, optical appliances, supplies or equipment,  
43 devices for aid of hearing, drugs, medication or medical supplies, or  
44 any other goods, services or supplies prescribed for medical diagnosis,  
45 care or treatment, under this chapter; except that reasonable payment,  
46 not exceeding the technical component fee permitted in the medical fee  
47 schedule, established under this chapter for X-ray examinations, diagno-  
48 sis or treatment, may be made by a provider duly authorized as a roent-  
49 genologist to any hospital furnishing facilities and equipment for such  
50 examination, diagnosis or treatment, provided such hospital does not  
51 also submit a charge for the same services. Nothing contained in this  
52 paragraph shall prohibit such providers who practice as partners, in  
53 groups or as a professional corporation or as a university faculty prac-  
54 tice corporation from pooling fees and moneys received, either by the  
55 partnership, professional corporation, university faculty practice  
56 corporation or group by the individual members thereof, for professional

1 services furnished by any individual professional member, or employee of  
2 such partnership, corporation or group, nor shall the professionals  
3 constituting the partnerships, corporations, or groups be prohibited  
4 from sharing, dividing or apportioning the fees and moneys received by  
5 them or by the partnership, corporation or group in accordance with a  
6 partnership or other agreement. This paragraph shall not apply to  
7 contingency management services operated pursuant to section three  
8 hundred sixty-seven-x of the social services law.

9 § 7. This act shall take effect on the one hundred eightieth day after  
10 it shall have become a law. Effective immediately, the addition, amend-  
11 ment and/or repeal of any rule or regulation necessary for the implemen-  
12 tation of this act on its effective date are authorized to be made and  
13 completed on or before such effective date.