STATE OF NEW YORK

4462--A

2025-2026 Regular Sessions

IN SENATE

February 5, 2025

Introduced by Sens. MAYER, ASHBY, FAHY, HOYLMAN-SIGAL, STEC -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to authorizing Medicaid coverage for complex care assistant services

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

Section 1. The social services law is amended by adding a new section 365-q to read as follows:

§ 365-q. Complex care assistant services program. 1. As used in this section:

(a) "family member" means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, or one partner in a civil union couple, or any other individual related by blood; and

(b) "complex care assistant" means a family member who is certified by the department after passing an in-person examination which tests the proficiency and competence of performing the tasks required to care for a medically fragile child and medically fragile young adult which can include, but is not limited to, all adaptive living skills (ADL's) and instrumental activities of daily living (IADL's), and allowable tasks for a home health aide as defined in section 700.2 (c)(15) of Title 10 of the New York codes, rules and regulations, as well as, any enhanced task as defined by the board of nursing. Any medical necessary skilled nursing task, including but not limited to tracheostomy care, central line care, mechanical ventilation, enteral care (g-tube, gj-tube, ng tube) not otherwise included in eligible complex care assistant tasks may be performed simultaneously in the role of competent family caregiver in absence of an available private duty nurse.

2. (a) No later than one year after this section shall have become a law and receipt of federal approval for the program established pursuant

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

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to this section, the state Medicaid director shall establish a program under which a family member of an enrollee in Medicaid may be certified as a complex care assistant and, after receiving such certification may, under the direction of a registered nurse, provide complex care assistant services to the enrollee through a private duty nursing agency under the reimbursement rates established under paragraph (f) of this subdivision, provided that the enrollee is a medically fragile child as defined in section forty-four hundred one of the public health law or medically fragile young adult as defined in section twenty-eight hundred eight-e of the public health law and qualifies for private duty nursing services under Medicaid. Such program shall operate as a New York Medicaid private duty nursing benefit. The department shall develop an assessment tool that will allow the division to identify enrollees who meet these eligibility criteria readily.

(b) The program established under this section shall require a family member to complete all training, testing, and other qualification criteria required under state and federal law for certification as a complex care assistant. The private duty nursing agency that will employ the family member to provide complex care assistant services to the enrollee shall pay all costs for the family member to become certified as a complex care assistant and to receive certification as a complex care assistant from the department of health, before providing services under the program established pursuant to this section. In no case shall a family member who becomes a complex care assistant under the provisions of this section be required to repay or reimburse the licensed home care services and certified private duty nursing agencies for the costs of the family member becoming certified as a complex care assistant under the program.

(c) An individual certified to practice as a complex care assistant must complete a training program and shall pass an in-person examination approved by the department of health that demonstrates the applicant's competence and proficiency. If the department of health selects the option of utilizing designated home care providers to provide the training, the department shall adequately reimburse such designated providers for providing the training to family caregivers of eligible relatives.

(d) The services received under this program by an eligible member from a complex care assistant shall not exceed forty hours per week. Nothing in this paragraph shall restrict unpaid services provided as part of the family caregiver's familial or household relationship to the eligible relative.

(e) A complex care assistant shall not provide qualified complex care assistant services to an eligible member unless the plan of care for the eligible member is recertified by the provider at least every one hundred eighty calendar days. Registered nurse supervisory visits shall occur regularly to ensure support for all complex care assistants assigned to an eligible member and the ability to complete all tasks as outlined in the member's care plan.

(f) Complex care assistant services provided by a family member of a Medicaid enrollee who becomes certified as a complex care assistant under the program established pursuant to this section shall be reimbursed to a private duty nursing agency at a rate that is no more than the current base reimbursement rate for private duty nursing services and dependent upon whether the services are provided in the downstate region or upstate region, provided, however, that such agencies shall ensure that no less than sixty-five percent of such reimbursement is passed through to a complex care assistant. Cost of living adjustments

to such rates shall be reviewed by the department bi-annually and such rates adjusted accordingly based upon any increases to the United States bureau of labor statistics consumer price index.

(g) The department shall require complex care assistants providing qualified complex care assistant services under the Medicaid program to utilize an electronic visit verification established in accordance with federal law.

(h) The New York state Medicaid director, no later than three years after the date the program is established under this section, and every two years thereafter, shall prepare and submit a report to the governor and make such report publicly available on the department's website. The report shall include but not be limited to the following:

(1) the number of hospitalizations and emergency room visits of eligible members participating in the program;

(2) the number of agency private duty nursing hours each eligible member participating in the program has received and an analysis of whether such hours have increased or decreased since their participation in the program;

(3) the number of qualified complex care assistant services that were provided by complex care assistants to each eligible member enrolled in the program;

(4) the number of overpayments made to each provider employing complex care assistants and other metrics determined by the state that may be used to determine the amount of fraud, waste, and abuse in the program;

(5) an analysis of whether the state's waitlist for private duty nursing services or other home and community-based services under the Medicaid program has improved or declined since the introduction of the program; and

(6) reporting concerning the viability of such program and the Medicaid director's recommendations concerning such program.

§ 2. The state Medicaid director shall apply for such state plan amendments or waivers as may be necessary to implement the provisions of this act and secure federal financial participation for state Medicaid expenditures under the federal Medicaid program.

§ 3. This act shall take effect immediately. The state Medicaid director shall adopt rules and regulations as necessary to implement the provisions of this act.