

Memorandum in Support ELDER LAW SECTION

Elder #3-A

February 20, 2014

A. 4996

By: M. of A. Gottfried

S. 6586

By: Senator Rivera

Assembly Committee: Health

Senate Committee: Social Services

Effective Date: Immediately

THE ELDER LAW SECTION SUPPORTS THIS LEGISLATION

This legislation addresses two problems in the appeals process faced by Medicaid recipients who are enrolled in Managed Long Term Care: The ability to request a fair hearing without exhausting other review and appeal remedies and the ability to obtain “aid continuing” during the appeals process.

Section 1 addresses the issue of exhausting other review and appeal remedies. Medicaid recipients are increasingly being moved into managed care plans. Even though they maintain their fair hearing rights, the appeals process has become complex and confusing to many recipients. Fair hearings are being denied because recipients did not understand that they had to first exhaust the managed care internal appeals process. Medicaid recipients who have requested fair hearings have had their hearings dismissed months later because they did not request an internal appeal, even if by that time it was too late to request an internal appeal. This new requirement that enrollees “exhaust” all internal appeals within a Medicaid managed care plan before they have a right to a fair hearing, is being mandated by New York State Department of Health without legislative authority.

This bill will assure that the remedies of managed care benefits appeals are cumulative to Medicaid fair hearing rights.

Sections 2 and 3 assure that Medicaid recipients receive the due process guarantee of “aid continuing” pending a final decision on their appeal. The right to “aid continuing” is one of the most fundamental rights guaranteed by the Due Process clause of the Fourteenth Amendment. In *Goldberg v. Kelly*, 397 U.S. 254 (1970), the United States Supreme Court held that government entitlements based on financial need cannot be reduced or terminated without affording the recipient the opportunity for a “pre-termination hearing,” meaning a hearing that is held and decided *before* the proposed reduction or termination takes effect.

New York Law precludes the elimination of fair hearing rights including aid continuing when the state contracts the authorization of services to a private entity. Social Services Law §365-a(8). This provision was enacted in 2009 on the recommendation of the New York State Bar Association Elder Law Section. 2009 N.Y. Laws ch. 58, §48-a.

However, recently the State has delegated the authority to authorize all Medicaid long term care services to managed long term care [MLTC] plans, and despite Social Services Law §365-a(8), the Commissioner of Health has nevertheless eviscerated the right of “aid continuing.” Under the Department’s policy, MLTC plans are allowed to reduce hours of home care services or even terminate services altogether, with no advance notice and no right for the consumer to receive services while a hearing is pending, if the MLTC plan’s service reduction coincides with the end of an “authorization period” for the services. Both in the prior system administered by the local districts, and the new MLTC system, all home care and other services are authorized for certain “authorization periods,” generally about six months.

Section 2 of this Bill would clarify that Social Services Law §365-a(8) applies without regard to the expiration of the prior service authorization. Section 3 would clarify that managed long term care appeals are subject to Social Services Law §365-a(8).

Based on the foregoing, the Elder Law Section strongly **SUPPORTS** this legislation.

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