



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
LEGAL PROBLEMS OF THE AGING COMMITTEE**

A.3006-B/S.2606-B, Part A, Section 34

Amends various provisions of law relating to implementing the health and mental hygiene budget for the 2013-2014 state fiscal year. This provision would eliminate the requirement that social services districts provide interim Medicaid services for those with immediate needs while their Medicaid applications are pending.

THIS PROVISION IS OPPOSED

The New York City Bar Association's Legal Problems of the Aging Committee respectfully submits this report to express its opposition to Section 34 of Part A of the 2013 Health and Mental Hygiene Budget Article VII for the 2013-2014 (A.3006-B/S.2606-B). The Committee believes that the bill should be amended to eliminate Section 34 of Part A in order to preserve the right of Medicaid recipients who have "immediate" needs, i.e. whose health and safety are in danger, to obtain Medicaid pending the final determination of their application.

There are circumstances in which gravely ill or impaired New Yorkers need immediate care especially in the community outside the hospital or institutional settings. This can occur when an individual is a victim of a serious accident or sudden unexpected onset of a long term illness or injury. Without these immediate services the ill individual will face health and safety risks and unnecessary suffering. Social Service Law currently provides for this occurrence in Section 133 which allows that Medicaid must be granted to that person pending the completion of an investigation to determine whether or not the Medicaid applicant is in fact Medicaid eligible. The regular administrative eligibility determination process is suspended in light of the health need. The requirement and exception to policy as defined in Section 133 is supported by Konstantino v. Daines, 101 A.D.3d 520 (1st Dept. 2012) in which the Appellate Division affirmed a trial court determination that the present procedures of the Department of Social Services "are inadequate to meet the requirements of Social Services Law Section 133 to provide temporary personal care services for those in immediate need of those services and to notify applicants of the availability of those services." See also Coleman v. Daines, N.Y.3d, N.Y. Slip Op. 07222 (October 30, 2012).

Section 34 of Part A of the Health and Mental Hygiene Budget Article VII bill would amend Social Services Law Section 364-i to provide that Social Services Law Section 133 would never apply to the Medicaid program. This would mean that regardless of a person's "immediate need," Medicaid services necessary to preserve the person's health and safety would not have to

be granted to that person unless the stricter and more limited rules concerning presumptive eligibility under Social Services Law Section 364-i were applied.

Thus, most outpatients with an “immediate need” for medical services such as homecare would not be able to obtain those services on an expedited basis regardless of their level of need.

The passage of this proposed amendment to Social Services Law Section 364-i would put the health of New Yorkers at risk. The budget bill should be amended to eliminate this provision. The Department of Social Services should be required to comply with the mandate of the court in Konstantinov v. Daines, supra. It should be required to provide notice to health providers and Medicaid applicants of the availability of this service and establish workable regulations so that New Yorkers who are truly in need can get expedited Medicaid in appropriate cases.

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