

NY CONST, ART XIII, § 4; SOCIAL SERVICES LAW § 367-a; 42 USC 1396a(a)(10)(E)(iv)(I), (II); 42 USC 1396u-3.

Because Social Services Law § 367-a(3) does not authorize Medicaid payment of Medicare Part B premiums for anyone whose current income equals or exceeds one hundred twenty percent of the poverty line, amendments to that section are necessary to comply with the Balanced Budget Act of 1997.

March 31, 1998

Hon. Barbara A. DeBuono
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Formal Opinion
No. 98-F4

Dear Commissioner DeBuono:

Your counsel has asked whether it is necessary to amend the New York Social Services Law to implement the provisions of section 4732 of the Balanced Budget Act of 1997, Pub L 105-33. That section requires the Medicaid program to pay the cost of Medicare Part B premiums for certain low-income persons.

Social Services Law § 367-a(3) governs Medicaid coverage of Medicare Part B premiums in New York. Its provisions accord with the requirements of federal law as they existed before the enactment of the Balanced Budget Act. Section 367-a(3) requires Medicaid to cover part B premiums for "qualified Medicare beneficiaries" as defined by the federal social security act and for persons who would be qualified Medicare beneficiaries except that their incomes exceed one hundred percent of the federal income poverty line applicable to the person's family size but are less than one hundred twenty percent of the poverty line.

The Balanced Budget Act added two groups of low-income persons whose Medicare Part B premiums must be paid, in whole or in part, by Medicaid. Federal law now requires that, for the period from January 1998 to December 2002, the full cost of such premiums be paid for persons who would be qualified Medicare beneficiaries except that their incomes are at least one hundred twenty percent but less than one hundred thirty five percent of the poverty line and that part of the cost of such premiums be paid for persons who would be qualified Medicare beneficiaries

except that their incomes are at least one hundred thirty five percent but less than one hundred seventy five percent of the poverty line. 42 USC 1396a(a)(10)(E)(iv)(I), (II).

Because Social Services Law § 367-a(3) does not authorize Medicaid payment of Medicare Part B premiums for anyone whose current income equals or exceeds one hundred twenty percent of the poverty line, amendments to that section are necessary to comply with the Balanced Budget Act of 1997. At the request of the Department of Health, S.6584-A has been introduced in the New York State Senate. This bill would amend Social Services Law § 367-a to comply with these federal requirements.

Section 4759 of the Balanced Budget Act provides that a state which must enact conforming state legislation will not be held to be out of compliance until the first day of the first calendar quarter beginning after the close of the first regular session of the state legislature that begins after August 5, 1997. It also provides that in the case of a state that has a two-year legislative session, each year of the session is considered to be a separate regular session of the state legislature. Section 4 of Article XIII of the New York State Constitution provides that the legislative term commences on the first day of January. The recent practice of the State Legislature has been to remain in formal session throughout the calendar year. Accordingly, for purposes of section 4759, the first regular session of the State Legislature after August 5, 1997 commenced January 1, 1998 and will end December 31, 1998. The time available to New York State to take legislative action without being out of compliance with the Balanced Budget Act, therefore, would extend until December 31, 1998.

We conclude that because Social Services Law § 367-a(3) does not authorize Medicaid payment of Medicare Part B premiums for anyone whose current income equals or exceeds one hundred twenty percent of the poverty line, amendments to that section are necessary to comply with the Balanced Budget Act of 1997.

Very truly yours,

DENNIS C. VACCO
Attorney General