THE COUNCIL

The City of New York

Int. No. 395 **July 28, 1998**

Introduced by Council Members Robles, Eldridge, Clarke, Espada, Freed, Leffler, Lopez, Marshall, Perkins, Rodriguez and Watkins; also Council Members Carrion, Foster, Linares, Michels, Rivera, Sabini, Warden and Wooten—read and referred to the Committee on Health.

A LOCAL LAW

To amend the administrative code of the city of New York in relation to the introduction and implementation of Medicaid managed care in New York City.

Be it enacted by the Council as follows:

Section 1. Legislative declaration. The council of the City of New York finds that women's health services are an essential part of a comprehensive health care plan. The council further finds that the right of any woman to access and obtain comprehensive health services that meet her health care needs is a personal right protected by state and federal law. Despite this affirmation by all levels of government however, many women, mostly poor and minority women, remain without meaningful access to comprehensive health care services tailored to the special needs of women.

Studies show that in New York, Medicaid recipients still face barriers to accessing and receiving these important health services. Such barriers include an intermittent flow of information and education; deficiency in the availability and comprehensiveness of the services, the timeliness of the care, and the lack of confidentiality and privacy, as well as the inaccessibility of the geographic location of many providers.

According to the most recent data compiled, births to teens in New York City accounted for over half of the total teenage pregnancy in New York State, representing a

7 percent increase in New York City and accounting for approximately 10 percent of all births. New York ranks 36th nationwide in the provision of contraceptive services to women in need, representing only 37 percent of all women in need and 32 percent of teenagers in need in New York. Yet, a single act of unprotected sex with an infected partner exposes a teenage woman to a 1 percent risk of acquiring HIV, a 30 percent risk of getting genital herpes and a 50 percent chance of contracting gonorrhea. Additionally, women of childbearing age account for 65 percent of all reported STD infections in New York City, which reports nearly 70 percent of the our state's syphilis and gonorrhea infections and one of the highest hepatitis B rates in the United States.

Moreover, while reproductive health and HIV/AIDS related services are part of the essential services available under the Medicaid program, and the Medicaid program is the primary source of health care for women with HIV/AIDS, Medicaid recipients in New York are not receiving the needed preventive care and treatment. New York City reports eighty percent of the total number of reported AIDS cases in New York State, with heterosexual women and African-American experiencing the largest increases.

Enrollment of the Medicaid population to a Managed Care plan is mandated as a means of protecting and securing the right of that population to access comprehensive health care. For that accessibility to comprehensive health care services to be meaningful, all Medicaid enrollees must be clearly notified of the scope of the services provided, as well as the specific services not made available by their providers. The council therefore finds it appropriate for the protection of the public health, safety and welfare, to enact legislation to ensure that no Medicaid recipient is involuntarily assigned to a managed care plan that does not provide a full range of reproductive health and family planning services, to ensure that Medicaid recipients receive prominent, easily comprehensible notice of their right to such reproductive health and family planning ser-

vices and where to find them, to ensure that persons denied timely access to such reproductive health and family planning services can seek redress in the courts, and to permit the city to obtain injunctive relief against such unlawful conduct.

§ 2. Title 17 of the administrative code of the city of New York is amended by adding thereto a new chapter 8, to follow chapter 7, to read as follows:

CHAPTER 8

PROTECTION OF REPRODUCTIVE HEALTH AND FAMILY PLANNING SERVICES UNDER MEDICAID MANAGED CARE

§ 17-801. Short title. This local law shall be known as the "Medicaid Managed Care Reproductive Health and Family Planning Services Act."

§ 17-802. Definitions. For the purposes of this chapter:

a. "Auto-assigned enrollee" shall mean a participant who is auto-assigned to a Managed care plan.

b. "Auto-assignment" shall mean a process by which a participant, mandated to enroll in a managed care plan, but who has not enrolled within 60 days in a managed care plan, is assigned to a managed care plan.

c. "Auto-assignment rate" shall mean the percentage of participants who are enrolled in managed care plans pursuant to auto-assignment.

d. "Comprehensive health services" shall mean all those health services which an enrolled population might require in order to be maintained in good health, and shall include, but shall not be limited to physician services (including consultant and referral services) 1, in-patient and out-patient hospital services, diagnostic laboratory and therapeutic and diagnostic radiology services, and emergency and preventive health services.

e. "Disenrollment" shall mean discontinuance of an enrollee's participation in a managed care plan.

f. "Disenrollment rate" shall mean the percentage of participants who disenroll.

g. "Enrollee" shall mean a Medicaid recipient who has been certified by the state of New York as eligible to enroll with a managed care plan and who has signed an enrollment form to join a managed care plan, or who has been auto-assigned to a managed care plan.

h. "Enrollment broker" shall mean any entity that contracts with the state of New York or the city of New York to provide education and outreach services to participants in the city's managed care program.

i. "Family planning services" shall mean the offering, arranging and furnishing to individuals, including minors, of those services that prevent or reduce the incidence of unintended pregnancies, including sterilization, birth control, all medically approved drugs and supplies.

j. "Fee-for-service" shall mean a method of Medicaid reimbursement whereby payment is made to medical services providers for services rendered to Medicaid recipients subsequent to, and specifically for, the rendering of those services.

k. "Geographically accessible" shall mean that an enrollee can obtain reproductive health and family planning services from a provider of such services that is located not farther than thirty minutes by public transportation from the enrollee's home.

l. "Managed care provider" shall mean an entity that provides Medicaid services and supplies to participants, including case management and (i) is authorized to operate under article forty-four of the New York state public health law or article forty-three of the New York state insurance law and provides comprehensive health services as a fully capitated program; or (ii) is authorized as a partially capitated program pursuant to subdivision f of section 364 of the New York state social services law or subdivision e of section 4403 of the New York state public health law.

m. "Managed care provider advertisement" shall mean words, pictures, photographs, symbols, graphics, or images of any kind, or any combination thereof, the purpose or effect of which is to identify a Managed care provider, a trademark of a managed care provider, or a trade name associated exclusively with a managed care provider, or to promote the managed care provider.

n. "Managed care plan" shall mean any health services program, including but not limited to a comprehensive health services plan, through which a participant is entitled to receive Medicaid services and supplies from a managed care provider.

o. "Marketing" shall mean any activity of a managed care provider by which information about the managed care plan is made known to participants for purposes of persuading them to enroll in that managed care plan.

p. "Medicaid" shall mean the medical assistance program authorized by title XIX of the social security act, which is jointly administered by the federal government, the state of New York and the city of New York.

q. "Medicaid managed care program" shall mean the program in the city of New York in which Medicaid recipients enroll on a voluntary or mandatory basis to receive Medicaid services, including case management, directly or indirectly from a managed care provider.

r. "Medical services provider" shall mean a physician, nurse, nurse practitioner, licensed midwife, dentist, optometrist or other licensed health care practitioner or facility authorized to provide Medicaid services.

s. "Non-participating medical services provider" shall mean with respect to a particular managed care plan a medical services provider who has not contracted with or is not employed by a particular managed care provider to deliver services to its enrollees on a capitated basis as part of managed care plan.

t. "OMMC" shall mean the New York City Office of Medicaid managed care or any successor agency, or any agency designated by the city of New York or the New York State Department of Health to perform all or part of the duties of the New York City Office of Medicaid managed care.

u. "Participant" shall mean a Medicaid recipient who receives, is required to receive or elects to receive his or her Medicaid services from a managed care provider.

v. "Participating medical services provider" shall mean a medical services provider who has contracted with or is employed by a managed care provider to deliver services to its enrollees on a capitated basis.

w. "Primary care practitioner" shall mean a physician or nurse practitioner providing primary care to and management of the medical and health care services of a participant served by managed care provider.

x. "Reproductive health services" shall mean, in addition to family planning services, annual pap smears, abortion, testing and treatment of sexually transmitted diseases, HIV prevention, testing and counseling, and pregnancy testing and counseling.

y. "Timely" shall mean as is soon as medically appropriate, so as not to increase the health risks to the enrollee from the date of the enrollee's request for reproductive health services or family planning services.

z. "Voluntary enrollee" shall mean a participant who chooses to enroll in a managed care plan pursuant to the Medicaid managed care program.

§ 17-803. Auto-Assigned Enrollees. a. When contracting for the provision of Medicaid services to auto-assigned enrollees, the city of New York shall contract only with managed care providers that themselves provide reproductive health and family planing services to auto-assigned enrollees or that provide these services pursuant to written agreements with non-participating medical services providers who themselves

provide reproductive health and family planning services to auto-assigned enrollees.

b. A managed care provider that contracts with non-participating medical services providers to provide reproductive health and family planning services to its enrollees pursuant to this subchapter shall

(i) enter into contracts with any willing non-participating medical services provider qualified by the state of New York to provide Medicaid services;

(ii) demonstrate to OMMC that it has written agreements with a sufficient number of non-participating medical services providers themselves to provide timely and geographically accessible reproductive health and family planning services to all enrollees;

(iii) notify enrollees, by a conspicuous writing in all member handbooks and in a separate brochure that shall be distributed by every primary care practitioner, of the name, address and telephone number of each nonparticipating medical services provider with whom the managed care provider has an agreement to provide reproductive health and family planning services; and

(iv) ensure that when advising enrollees about Medicaid services or medical services providers, all managed care providers employees notify enrollees in understandable and culturally appropriate language whether a participating medical services provider provides family planning services or reproductive health services.

§ 17-804. Notification. a. A managed care provider that contracts with the city of New York to provide Medicaid services to voluntary enrollees pursuant to the Medicaid managed care program, but does not provide reproductive health or family planning services on a capitated basis, shall include written and prominent notice in all materials, including but not limited to all handbooks, brochures, recruitment materials, identifica-

tion cards, and advertisements, explicitly stating that the managed care provider does not provide reproductive health or family planning services and that the participant has the right to self-refer for such services to any medical services provider of her choice that accepts Medicaid. The notice required by this chapter shall include, but not limited, to the following:

i. Each managed care provider shall provide such written and prominent notice in large boldfaced type in the first five pages of its handbook. Such notice shall identify specifically the services not provided. The written and prominent notice required by this chapter shall, in capital boldfaced 18 point type, placed in the first five pages of the managed care provider handbook, include the following: "NOTICE: FAMILY PLANNING AND REPRODUCTIVE HEALTH SERVICES INCLUDING BIRTH CONTROL, STERILIZATION, ABORTION, HIV PREVENTION, TESTING AND COUNSELING, AND CERTAIN OTHER SERVICES ARE *NOT* PROVIDED BY THIS PLAN. YOU CAN USE YOUR MEDICAID CARD TO OBTAIN FREE CONFIDENTIAL FAMILY PLANNING AND REPRODUCTIVE HEALTH SERVICES FROM ANY CLINIC OR DOCTOR WHO TAKES MEDICAID AND OFFERS THESE SERVICES".

ii. All managed care provider member identification cards shall be embossed with such written and prominent notice on the front of the member identification card. The written and prominent notice required by this subchapter shall, in capital letters in the same size type and type face used to display the enrollee's name on the managed care provider member identification card, state the following: "NOTICE: FAMILY PLANNING SERVICES, INCLUDING BIRTH CONTROL, ABORTION AND HIV TESTING ARE

NOT PROVIDED BY THIS PLAN. YOU CAN USE YOUR MEDICAID CARD TO OBTAIN THESE SERVICES FROM ANY CLINIC OR DOCTOR WHO ACCEPTS MEDICAID".

iii. All managed care provider advertisements shall include such written and prominent notice. The written and prominent notice required by this sub-chapter, which shall be in capital letters of the height of the tallest letter in the managed care provider advertisement, and shall appear in conspicuous and legible type in contrast by layout or color with other printed material in the advertisement, shall state the following: "NOTICE: FAMILY PLANNING SERVICES, INCLUDING BIRTH CONTROL, ABORTION AND HIV TESTING ARE *NOT* PROVIDED BY THIS PLAN".

b. A managed care provider that does not itself provide reproductive health and planning services shall notify its participating medical services providers that they may bill Medicaid directly for reproductive health and family planning services that they provide to enrollees and which are not included in that managed care provider's managed care plan.

§ 17-805. Enrollment counseling. a. Any person or entity involved in enrollment counseling regarding the Medicaid managed care program, including but not limited to any employee of the city of New York or any employee of an enrollment broker, shall notify participants both orally and in writing, in understandable and culturally appropriate language, whether a managed care provider provides reproductive health and family planning services and how enrollees can obtain such services with their Medicaid card, when advising participants about enrollment in a Medicaid managed care program. OMMC and the enrollment broker shall provide training to any persons involved in enrollment counseling regarding the city's Medicaid managed care program, and that

training shall include a detailed explanation of the reproductive health and family planning services provided, or not provided, by each managed care plan, and how enrollees can obtain such services with their Medicaid card.

b. OMMC and the enrollment broker shall establish a telephone help line number to provide assistance and information to participants with respect to the availability of reproductive health and family planning services and shall widely publicize that telephone help line number and require that such number be prominently displayed in all materials described in subdivision a of section 17-804 of this chapter, in all enrollment broker offices and in subway and bus advertisements and public service announcements.

c. Any person or entity involved in enrollment counseling regarding the city's Medicaid managed care program shall provide participants with the following during each face-to-face encounter and in each enrollment packet:

(i) a list of every managed care plan in which a participant may enroll. Each managed care plan shall present in an easy to understand comparative chart-like form, information as to: whether the managed care plan provides reproductive health and family planning services and the locations and telephone number at which those services are provided;

(ii) a list of non-participating providers providing reproductive health and family planning services who accept Medicaid on a fee-for-service basis, including the location and telephone number of each; and

(iii) the telephone help line numbers established pursuant to subdivision b of this section.

§ 17-806. Monitoring and reporting. a. In order to ensure that enrollees have access to reproductive health and family planning services, OMMC shall conduct comprehensive monitoring of managed care providers and enrollment broker activities,

which shall include, but not be limited to, the following activities:

(i) review and approve all managed care provider advertisements, marketing, education and outreach materials relating to the Medicaid managed care program;

(ii) review and approve all enrollment broker materials;

(iii) conduct random audits and undercover field audits of enrollment broker activities including, but not limited to, face-to-face encounters and telephone help line services;

(iv) conduct random audits and undercover field audits of marketing activities relating to the Medicaid managed care program of all managed care providers;

(v) conduct surveys of the access to reproductive health and family planning services under each managed care plan and make recommendations to improve access;

(vi) review complaints made by participants to OMMC, managed care providers, and the enrollment broker regarding reproductive health and family planning services;

(vii) interview participants to ensure they have timely access to confidential reproductive health and family planning services; and

(viii) conduct medical record audits enrollees in managed care plans that do not offer reproductive health and family planning services, to determine the timeliness within which they receive reproductive health and family planning services.

b. OMMC shall submit to the mayor and the council three months after the effective date of this chapter and every three months thereafter a report on managed care provider

and enrollment broker activities in the Medicaid managed care program. The reports required by this subdivision shall at a minimum include:

(i) the identity of each managed care provider contracting with the city of New York to provide services under the Medicaid managed care program and whether that managed care provider offers reproductive health and family planning services through participating medical services providers, through written agreements with non-participating medical services providers, or not at all;

(ii) the number of enrollees by zip code in each managed care plan;

(iii) the number of auto-assigned enrollees by zip code in each managed care plan;

(iv) the auto-assignment rate by zip code for each managed care plan;

(v) the disenrollment rate by zip code for each managed care plan;

(vi) the number and geographical distribution by zip code of all nonparticipating medical services providers who have written agreements with each managed care plan;

(vii) the number of reproductive health and family planning services visits by zip code in each managed care plan and the number of reproductive health and family planning services visits by zip code by each managed care plan's enrollees to non-participating medical services providers on a fee-for-service basis:

(viii) the geographic distribution by zip code of participating medical services providers and non-participating medical services providers of reproductive health and family planning services to ensure that participants can access reproductive health and family planning services without traveling more

than thirty minutes;

(ix) the amount of time between the enrollee's visit to primary care practitioner, at which the need for reproductive health and family planning services were identified, and the making of an appointment for these services and the appointment itself;

(x) the number and a description of all complaints made by participants to OMMC, managed care providers and the enrollment broker regarding reproductive health services or family planning services appointment and the actual reproductive health and family planning services; and

(xi) the results of all surveys and audits conducted pursuant to this section.

c. None of the requirements of this chapter shall alter the requirement that all reproductive health and family planning services be provided on a confidential basis.

§ 17-807. Civil cause of action. Any person who is unable to obtain reproductive health services or family planning services as a result of a violation of any provision of this chapter may bring a civil action in any court of competent jurisdiction for any or all of the following relief:

a. injunctive relief;

b. treble the amount of actual damages suffered as a result of such violation, including where applicable, damages for pain and suffering and emotional distress, or damages in the amount of five thousand dollars, whichever is greater;

c. attorneys' fees and costs.

§ 17-808. Civil action by city of New York. The corporation counsel may bring a civil action on behalf of the City in any court of competent jurisdiction for injunctive and other appropriate equitable relief in order to prevent or cure a violation of any provision of this chapter.

§ 17-809. Construction. No provision of this chapter shall be construed or interpreted so as to limit the right of any person or entity to seek other available civil remedies. The penalties and remedies provided under this chapter shall be cumulative and not exclusive.

§ 3. This local law shall take effect sixty days after its enactment.

Note: Matter in *italics* is new; matter in brackets [ ] to be omitted.