

4830

2013-2014 Regular Sessions

I N S E N A T E

April 25, 2013

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to clarifying notice requirements conciliation procedures and sanctions in cases when the recipient of public assistance programs refuses to comply with employment program requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 341 of the social services law, as amended by
2 section 148 of part B of chapter 436 of the laws of 1997, subdivision 1
3 as amended by section 1 of part D of chapter 61 of the laws of 2006, is
4 amended to read as follows:
5 S 341. [Conciliation] RE-ENGAGEMENT; CONCILIATION; refusal to partic-
6 ipate. 1. (a) Consistent with federal law and regulations and this
7 title, IF A PARTICIPANT HAS FAILED OR REFUSED TO COMPLY WITH THE
8 REQUIREMENTS OF THIS TITLE AND THE DISTRICT HAS DETERMINED THAT HE OR
9 SHE IS NOT EXEMPT FROM SUCH REQUIREMENTS AND HAS VERIFIED THAT APPROPRI-
10 ATE CHILD CARE, TRANSPORTATION, AND ACCOMMODATIONS FOR DISABILITY WERE
11 IN PLACE AT THE TIME OF SUCH FAILURE OR REFUSAL, [if a participant has
12 failed or refused to comply with the requirements of this title,] the
13 social services district shall issue a RE-ENGAGEMENT notice in plain
14 language indicating that such failure or refusal has taken place and of
15 the right of such participant to [conciliation to resolve] AVOID A PRO-
16 RATA REDUCTION IN PUBLIC ASSISTANCE BENEFITS THROUGH THE RE-ENGAGEMENT
17 PROCESS. "RE-ENGAGEMENT PROCESS" SHALL MEAN THE PROCESS THROUGH WHICH A
18 PARTICIPANT MAY AVOID A PRO-RATA REDUCTION IN PUBLIC ASSISTANCE BENEFITS
19 BY AGREEING TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT
20 WITH ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO
21 PARTICIPATE IN WORK ACTIVITIES, BY NOTIFYING THE DISTRICT THAT HE OR SHE
22 HAS BECOME EXEMPT FROM THE REQUIREMENTS OF THIS TITLE, OR BY RESOLVING
23 the reasons for such failure or refusal [to avoid a pro-rata reduction

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

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1 in public assistance benefits for a period of time set forth in section
2 three hundred forty-two of this title] AT A CONCILIATION CONFERENCE.
3 THE NOTICE SHALL INDICATE THAT THE PARTICIPANT HAS TEN DAYS TO REQUEST
4 RE-ENGAGEMENT WITH THE DISTRICT. The notice shall indicate the specific
5 instance or instances of willful refusal or failure to comply without
6 good cause with the requirements of this title and the necessary actions
7 that must be taken to avoid a pro-rata reduction in public assistance
8 benefits AND THE DISTRICT HAS VERIFIED THAT APPROPRIATE CHILD CARE,
9 TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT THE
10 TIME OF SUCH FAILURE OR REFUSAL. [The notice shall indicate that the
11 participant has seven days to request conciliation with the district
12 regarding such failure or refusal in the case of a safety net partic-
13 ipant and ten days in the case of a family assistance participant.]

14 (1) IF A PARTICIPANT CHOOSES TO AVOID A PRO-RATA REDUCTION IN PUBLIC
15 ASSISTANCE BENEFITS THROUGH A CONCILIATION CONFERENCE, IT WILL BE THE
16 RESPONSIBILITY OF THE PARTICIPANT TO GIVE REASONS FOR SUCH FAILURE OR
17 REFUSAL. The RE-ENGAGEMENT notice shall also include an explanation in
18 plain language of what would constitute good cause for non-compliance
19 and examples of acceptable forms of evidence that may warrant an
20 exemption from work activities, including evidence of domestic violence,
21 and physical or mental health limitations that may be provided at the
22 conciliation conference to demonstrate such good cause for failure to
23 comply with the requirements of this title. UNLESS AS PART OF THE
24 RE-ENGAGEMENT PROCESS THE PARTICIPANT DOES NOT AGREE TO COMPLY, HAS NOT
25 BECOME EXEMPT OR THE DISTRICT DETERMINES AS A RESULT OF THE CONCILIATION
26 CONFERENCE THAT SUCH FAILURE OR REFUSAL WAS WILLFUL AND WITHOUT GOOD
27 CAUSE, NO FURTHER ACTION SHALL BE TAKEN.

28 (2) If the participant does not contact the district within [the spec-
29 ified number of] TEN days OF THE RE-ENGAGEMENT NOTICE, the district
30 shall [issue ten days notice of intent to discontinue or reduce assist-
31 ance, pursuant to regulations of the department. Such notice shall also
32 include a statement of the participant's right to a fair hearing relat-
33 ing to such discontinuance or reduction. If such participant contacts
34 the district within seven days in the case of a safety net participant
35 or within ten days in the case of a family assistance participant, it
36 will be the responsibility of the participant to give reasons for such
37 failure or refusal] MAKE A FINDING OF WHETHER THE ALLEGED FAILURE OR
38 REFUSAL TO COMPLY WAS WILLFUL AND WITHOUT GOOD CAUSE AND SHALL CONSIDER
39 ANY EVIDENCE IN THE POSSESSION OF THE DISTRICT INDICATING THAT THE
40 PARTICIPANT HAS GOOD CAUSE AND IF THE PARTICIPANT IS OTHERWISE PARTIC-
41 IPATING IN WORK ACTIVITIES, THERE SHALL BE NO FINDING OF WILLFULNESS
42 WITHOUT GOOD CAUSE BASED ON A SINGLE APPOINTMENT OR INFRACTION.

43 (b) [Unless the district determines as a result of such conciliation
44 process that such failure or refusal was willful and was without good
45 cause, no further action shall be taken.] If the district determines
46 that such failure or refusal was willful and without good cause, AND
47 THAT THE INDIVIDUAL IS NOT EXEMPT FROM THE REQUIREMENTS OF THIS TITLE,
48 the district shall notify such participant in writing, in plain language
49 and in a manner distinct from any previous notice, by issuing ten days
50 notice of its intent to discontinue or reduce assistance. Such notice
51 shall include the reasons for such determination, the specific instance
52 or instances of willful refusal or failure to comply without good cause
53 with the requirements of this title, SHALL VERIFY THAT APPROPRIATE CHILD
54 CARE, TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT
55 THE TIME OF SUCH FAILURE OR REFUSAL, AND SPECIFY the necessary actions
56 that must be taken to avoid a pro-rata reduction in public assistance

benefits, INCLUDING AGREEING TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT WITH ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO PARTICIPATE IN WORK ACTIVITIES OR NOTIFYING THE DISTRICT THAT HE OR SHE HAS BECOME EXEMPT FROM THE REQUIREMENTS OF THIS TITLE and the right to a fair hearing relating to such discontinuance or reduction. [Unless extended by mutual agreement of the participant and the district, conciliation shall terminate and a determination shall be made within fourteen days of the date a request for conciliation is made in the case of a safety net participant or within thirty days of the conciliation notice in the case of a family assistance participant.]

2. (a) The department shall establish in regulation a conciliation procedure for the resolution of disputes related to an individual's participation in programs pursuant to this title.

(b) The district shall contract with an independent entity, approved by the department, or shall use designated trained staff at the supervisory level who have no direct responsibility for the participant's case to mediate disputes in the conciliation conference. [If no such supervisory staff or independent entity is available, the district may designate another trained individual, who has no direct responsibility for the participant's case to mediate disputes in the conciliation conference.]

(c) If a participant's dispute cannot be resolved through such conciliation procedure, an opportunity for a fair hearing shall be provided. No sanction relating to the subject dispute may be imposed during the [conciliation] RE-ENGAGEMENT process.

3. When any [family assistance] participant required to participate in work activities fails to comply with the provisions of this title, the social services district shall take such actions as prescribed by appropriate federal law and regulation and this title.

4. [When any safety net participant required to participate in work activities fails to comply with the provisions of this title, the social services district shall deny assistance to such participant in accordance with section three hundred forty-two of this title.]

5. (a) To the extent that] CONSISTENT WITH federal law [requires] AND THIS TITLE, a social services district shall provide to those [family assistance] participants whose failure to comply has continued for [three months] THIRTY DAYS or longer a written reminder of the option to end a sanction [after the expiration of the applicable minimum sanction period] by terminating the failure to comply as specified in subdivision [three] ONE of this section. Such notice shall advise that the participant may immediately terminate the [first or second] sanction by [participating in the program or accepting employment and that any subsequent sanction after six months have elapsed may be terminated by participating in the program or accepting employment.]

(b) A social services district shall provide to those safety net participants whose failure to comply has continued for the length of the sanction period or longer a written reminder of the option to end a sanction after the expiration of the applicable minimum sanction period by terminating the failure to comply as specified in subdivision four of this section.] EITHER AGREEING TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT WITH ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO PARTICIPATE IN WORK ACTIVITIES OR NOTIFYING THE DISTRICT THAT HE OR SHE HAS BECOME EXEMPT FROM THE REQUIREMENTS OF THIS TITLE.

[6.] 5. Consistent with federal law and regulation AND THIS TITLE, no NOTICE SHALL BE ISSUED AS SPECIFIED IN SUBDIVISION ONE OF THIS SECTION

UNLESS IT HAS BEEN DETERMINED THAT THE INDIVIDUAL IS NOT EXEMPT FROM THE REQUIREMENTS OF THIS TITLE AND HAS DETERMINED THAT APPROPRIATE CHILD CARE, TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT THE TIME OF SUCH FAILURE OR REFUSAL TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE AND NO action shall be taken pursuant to this section for failure to participate in the program or refusal to accept employment if:

(a) child care for a child under age thirteen (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in activities pursuant to this title or accept employment and such care is not available and the social services district fails to provide such care;

(b) (1) the employment would result in the family of the participant experiencing a net loss of cash income; provided, however, a participant may not claim good cause under this paragraph if the social services district assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the participant was receiving at the time the offer of employment is made; or

(c) the participant meets other grounds for good cause set forth by the department in its implementation plan for this title which, at a minimum, must describe what circumstances beyond the household's control will constitute "good cause".

S 2. Section 342 of the social services law, as added by section 148 of part B of chapter 436 of the laws of 1997, is amended to read as follows:

S 342. Noncompliance with the requirements of this title. 1. In accordance with the provisions of this section an individual who is required to participate in work activities shall be ineligible to receive public assistance if he or she fails to comply, without good cause, with the requirements of this title AND THE DISTRICT HAS DETERMINED THAT HE OR SHE IS NOT EXEMPT FROM SUCH REQUIREMENTS AND HAS VERIFIED THAT APPROPRIATE CHILD CARE, TRANSPORTATION, AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT THE TIME OF SUCH FAILURE OR REFUSAL. Such ineligibility shall be for the amount and [periods] PERIOD specified in this section. Good cause for failing to comply with the requirements of this title shall be defined in department regulations, provided, however, that the parent or caretaker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of this section if the individual can demonstrate, in accordance with the regulations of the office of children and family services [department], that lack of available child care prevents such individual from complying with the work requirements of this title. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

2. In the case of an applicant for or recipient of public assistance WHOM THE DISTRICT HAS DETERMINED IS NOT EXEMPT FROM THE REQUIREMENTS OF THIS TITLE AND who is a parent or caretaker of a dependent child, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata[:

1 (a) for the first instance of failure to comply without good cause
2 with the requirement of this article] until the individual is willing to
3 comply WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT WITH ANY MEDICAL
4 CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO PARTICIPATE IN
5 WORK ACTIVITIES[;

6 (b) for the second instance of failure to comply without good cause
7 with the requirements of this article, for a period of three months and
8 thereafter until the individual is willing to comply;

9 (c) for the third and all subsequent instances of failure to comply
10 without good cause with the requirements of this article, for a period
11 of six months and thereafter until the individual is willing to comply].

12 3. In the case of an individual who is a member of a household without
13 dependent children WHOM THE DISTRICT HAS DETERMINED IS NOT EXEMPT FROM
14 THE REQUIREMENTS OF THIS TITLE AND WHO IS applying for or in receipt of
15 safety net assistance, the public assistance benefits otherwise avail-
16 able to the household of which such individual is a member shall be
17 reduced pro-rata[;

18 (a) for the first such failure or refusal], until the failure or
19 refusal TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT WITH
20 ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO
21 PARTICIPATE IN WORK ACTIVITIES ceases [or ninety days, which ever period
22 of time is longer;

23 (b) for the second such failure or refusal, until the failure ceases
24 or for one hundred fifty days, whichever period of time is longer; and

25 (c) for the third and all subsequent such failures or refusals, until
26 the failure ceases or one hundred eighty days, whichever period of time
27 is longer].

28 4. A recipient of public assistance WHOM THE DISTRICT HAS DETERMINED
29 IS NOT EXEMPT FROM THE REQUIREMENTS OF THIS TITLE AND who quits or
30 reduces his hours of employment without good cause OR DUE TO ANY MEDICAL
31 CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO PARTICIPATE IN
32 WORK ACTIVITIES shall be considered to have failed to comply with the
33 requirements of this article and shall be subject to the provisions of
34 this section.

35 5. A person described in paragraph (b) of subdivision seven of section
36 one hundred fifty-nine of this chapter may not be sanctioned if his or
37 her failure to comply with requirements of this title are related to
38 his or her health status.

39 S 3. This act shall take effect immediately.