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I N   A S S E M B L Y

June 10, 2010

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Introduced by COMMITTEE ON RULES -- (at request of M. of A. Wright) --  
read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to clarifying  
conciliation procedures in cases when the recipient of public assist-  
ance programs refuses to comply with employment program requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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; refusal to participate. 1. (a) Consistent with  
6     federal law and regulations and this title AND THE DISTRICT HAS DETER-  
7     MINED THAT HE OR SHE IS NOT EXEMPT FROM SUCH REQUIREMENTS AND HAS VERI-  
8     FIED THAT APPROPRIATE CHILD CARE, TRANSPORTATION, AND ACCOMMODATIONS FOR  
9     DISABILITY WERE IN PLACE AT THE TIME OF SUCH FAILURE OR REFUSAL, if a  
10    participant has failed or refused to comply with the requirements of  
11    this title, the social services district shall issue a notice in plain  
12    language indicating that such failure or refusal has taken place and of  
13    the right of such participant to [conciliation to resolve] AVOID A PRO-  
14    RATA REDUCTION IN PUBLIC ASSISTANCE BENEFITS BY AGREEING TO COMPLY WITH  
15    THE REQUIREMENTS OF THIS TITLE CONSISTENT WITH ANY MEDICAL CONDITION  
16    WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO PARTICIPATE IN WORK ACTIV-  
17    ITIES, BY NOTIFYING THE DISTRICT THAT HE OR SHE HAS BECOME EXEMPT FROM  
18    THE REQUIREMENTS OF THIS TITLE, OR BY RESOLVING the reasons for such  
19    failure or refusal [to avoid a pro-rata reduction in public assistance  
20    benefits for a period of time set forth in section three hundred forty-  
21    two of this title] AT CONCILIATION. The notice shall indicate the  
22    specific instance or instances of willful refusal or failure to comply  
23    without good cause with the requirements of this title and the necessary  
24    actions that must be taken to avoid a pro-rata reduction in public  
25    assistance benefits AND SHALL VERIFY THAT APPROPRIATE CHILD CARE, TRANS-  
26    PORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT THE TIME OF  
27    SUCH FAILURE OR REFUSAL. The notice shall indicate that the participant

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

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1 has [seven] TEN days to AVOID A PRO-RATA REDUCTION IN PUBLIC ASSISTANCE  
2 BENEFITS BY EITHER AGREEING TO COMPLY WITH THE REQUIREMENTS OF THIS  
3 TITLE CONSISTENT WITH ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVID-  
4 UAL'S ABILITY TO PARTICIPATE IN WORK ACTIVITIES OR BY NOTIFYING THE  
5 DISTRICT THAT HE OR SHE HAS BECOME EXEMPT FROM THE REQUIREMENTS OF THIS  
6 TITLE, OR TO request conciliation with the district regarding such fail-  
7 ure or refusal [in the case of a safety net participant and ten days in  
8 the case of a family assistance participant]. The notice shall also  
9 include an explanation in plain language of what would constitute good  
10 cause for non-compliance and examples of acceptable forms of evidence  
11 that may warrant an exemption from work activities, including evidence  
12 of domestic violence, and physical or mental health limitations that may  
13 be provided at the conciliation conference to demonstrate such good  
14 cause for failure to comply with the requirements of this title. If the  
15 participant does not contact the district within the specified number of  
16 days, the district shall [issue ten days notice of intent to discontinue  
17 or reduce assistance,] MAKE A FINDING OF WHETHER THE ALLEGED FAILURE OR  
18 REFUSAL TO COMPLY WAS WILLFUL AND WITHOUT GOOD CAUSE AND SHALL CONSIDER  
19 ANY EVIDENCE IN THE POSSESSION OF THE DISTRICT INDICATING THAT THE  
20 PARTICIPANT HAS GOOD CAUSE AND IF THE PARTICIPANT IS OTHERWISE PARTIC-  
21 IPATING IN WORK ACTIVITIES, THERE SHALL BE NO FINDING OF WILLFULNESS  
22 WITHOUT GOOD CAUSE BASED ON A SINGLE APPOINTMENT OR INFRACTION. IF THE  
23 DISTRICT DETERMINES THAT SUCH FAILURE OR REFUSAL WAS WILLFUL AND WITHOUT  
24 GOOD CAUSE, THE DISTRICT SHALL NOTIFY SUCH PARTICIPANT IN WRITING, IN  
25 PLAIN LANGUAGE AND IN A MANNER DISTINCT FROM ANY PREVIOUS NOTICE, BY  
26 ISSUING TEN DAYS NOTICE OF ITS INTENT TO DISCONTINUE OR REDUCE ASSIST-  
27 ANCE pursuant to regulations of the department. Such notice shall also  
28 include a statement of the participant's right to a fair hearing relat-  
29 ing to such discontinuance or reduction. If such participant contacts  
30 the district within [seven] TEN days [in the case of a safety net  
31 participant or within ten days in the case of a family assistance  
32 participant] AND CHOOSES TO AVOID A PRO-RATA REDUCTION IN PUBLIC ASSIST-  
33 ANCE BENEFITS BY RESOLVING THE REASONS FOR SUCH FAILURE OR REFUSAL AT  
34 CONCILIATION, it will be the responsibility of the participant to give  
35 reasons for such failure or refusal.

36 (b) Unless the district determines as a result of such conciliation  
37 process that such failure or refusal was willful and was without good  
38 cause, no further action shall be taken. If the district determines that  
39 such failure or refusal was willful and without good cause, AND THAT THE  
40 INDIVIDUAL IS NOT EXEMPT FROM THE REQUIREMENTS OF THIS TITLE, the  
41 district shall notify such participant in writing, in plain language and  
42 in a manner distinct from any previous notice, by issuing ten days  
43 notice of its intent to discontinue or reduce assistance. Such notice  
44 shall include the reasons for such determination, the specific instance  
45 or instances of willful refusal or failure to comply without good cause  
46 with the requirements of this title, SHALL VERIFY THAT APPROPRIATE CHILD  
47 CARE, TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT  
48 THE TIME OF SUCH FAILURE OR REFUSAL, AND SPECIFY the necessary actions  
49 that must be taken to avoid a pro-rata reduction in public assistance  
50 benefits, INCLUDING AGREEING TO COMPLY WITH THE REQUIREMENTS OF THIS  
51 TITLE CONSISTENT WITH ANY MEDICAL CONDITION WHICH MAY LIMIT THE INDIVID-  
52 UAL'S ABILITY TO PARTICIPATE IN WORK ACTIVITIES OR NOTIFYING THE  
53 DISTRICT THAT HE OR SHE HAS BECOME EXEMPT FROM THE REQUIREMENTS OF THIS  
54 TITLE and the right to a fair hearing relating to such discontinuance or  
55 reduction. Unless extended by mutual agreement of the participant and  
56 the district, conciliation shall terminate and a determination shall be

1 made within fourteen days of the date a request for conciliation is made  
2 in the case of a safety net participant or within thirty days of the  
3 conciliation notice in the case of a family assistance participant.

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

7 (b) The district shall contract with an independent entity, approved  
8 by the department, or shall use designated trained staff at the supervi-  
9 sory level who have no direct responsibility for the participant's case  
10 to mediate disputes in the conciliation conference. If no such supervi-  
11 sory staff or independent entity is available, the district may desig-  
12 nate another trained individual, who has no direct responsibility for  
13 the participant's case to mediate disputes in the conciliation confer-  
14 ence.

15 (c) If a participant's dispute cannot be resolved through such concil-  
16 iation procedure, an opportunity for a fair hearing shall be provided.  
17 No sanction relating to the subject dispute may be imposed during the  
18 conciliation process.

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

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

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

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

48 [6.] 5. Consistent with federal law and regulation AND THIS TITLE, no  
49 NOTICE SHALL BE ISSUED AS SPECIFIED IN SUBDIVISION ONE OR TWO OF THIS  
50 SECTION UNLESS IT HAS BEEN DETERMINED THAT THE INDIVIDUAL IS NOT EXEMPT  
51 FROM THE REQUIREMENTS OF THIS TITLE AND HAS DETERMINED THAT APPROPRIATE  
52 CHILD CARE, TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN  
53 PLACE AT THE TIME OF SUCH FAILURE OR REFUSAL TO COMPLY WITH THE REQUIRE-  
54 MENTS OF THIS TITLE AND NO action shall be taken pursuant to this  
55 section for failure to participate in the program or refusal to accept  
56 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[:

(a) for the first instance of failure to comply without good cause with the requirement of this article], until the individual is willing 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[;

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

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

7 3. In the case of an individual who is a member of a household without  
8 dependent children WHOM THE DISTRICT HAS DETERMINED IS NOT EXEMPT FROM  
9 THE REQUIREMENTS OF THIS TITLE AND WHO IS applying for or in receipt of  
10 safety net assistance the public assistance benefits otherwise available  
11 to the household of which such individual is a member shall be reduced  
12 pro-rata[:

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

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

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

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

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

34 S 3. This act shall take effect immediately.