

756

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. PAULIN, GOTTFRIED, BRADLEY, BRODSKY, DINOWITZ, GALEF, JACOBS, LATIMER, PRETLOW, CAHILL, JOHN, CUSICK, COLTON, SPANO, ENGLEBRIGHT, ROSENTHAL, BROOK-KRASNY, WEISENBERG, GREENE -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, DelMONTE, GLICK, GUNTHER, HOOPER, LUPARDO, McENENY, MILLER, MILLMAN, PEOPLES, PERRY, PHEFFER, N. RIVERA, SWEENEY, WEINSTEIN -- read once and referred to the Committee on Health

AN ACT to amend the social services law and chapter 1 of the laws of 2002, amending the public health law, the social services law and the tax law relating to the Health Care Reform Act of 2000, in relation to the living wage adjustment for personal care services workers

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

1 Section 1. The social services law is amended by adding a new section
2 367-v to read as follows:
3 S 367-V. PERSONAL CARE SERVICES WORKERS; LIVING WAGE ADJUSTMENT. 1.
4 THE COMMISSIONER OF HEALTH SHALL, SUBJECT TO THE AVAILABILITY OF FEDERAL
5 FINANCIAL PARTICIPATION, ADJUST PERSONAL CARE SERVICES MEDICAL ASSIST-
6 ANCE RATES OF PAYMENT ESTABLISHED PURSUANT TO THIS TITLE FOR PERSONAL
7 CARE SERVICES PROVIDERS LOCATED IN LOCAL SOCIAL SERVICES DISTRICTS WHERE
8 SUCH SOCIAL SERVICES DISTRICTS ARE LOCATED WITHIN A COUNTY WHICH HAS
9 ENACTED A LOCAL LIVING WAGE LAW THAT APPLIES TO SUCH SERVICES OR ARE
10 LOCATED WITHIN A CITY WITH A POPULATION OF MORE THAN ONE MILLION PERSONS
11 WHICH HAS ENACTED A LOCAL LIVING WAGE LAW THAT APPLIES TO SUCH SERVICES.
12 ADJUSTMENTS SHALL BE MADE IN ACCORDANCE WITH SUBDIVISIONS TWO AND THREE
13 OF THIS SECTION.
14 2. ADJUSTMENTS TO RATES OF PAYMENT UNDER THIS SECTION SHALL BE ALLO-
15 CATED BASED ON THE DIFFERENCE BETWEEN THE RATE OF HOURLY PAYMENT FOR
16 PERSONAL CARE SERVICES WORKERS PRIOR TO AN ADJUSTMENT AND THE RATE OF

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

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1 HOURLY PAYMENT THAT WOULD BE REQUIRED TO COMPLY WITH THE LOCAL LIVING
2 WAGE LAW.

3 3. ADJUSTMENTS UNDER THIS SECTION, UPON APPLICATION BY A LOCAL SOCIAL
4 SERVICES DISTRICT, SHALL BE SUBJECT TO SUBSEQUENT ADJUSTMENT OR RECON-
5 CILIATION FOR PURPOSES OF MAINTAINING COMPLIANCE WITH A LOCAL LIVING
6 WAGE LAW.

7 4. PERSONAL CARE SERVICES PROVIDERS THAT HAVE THEIR RATES ADJUSTED
8 UNDER THIS SECTION SHALL USE THE INCREASED FUNDS FOR THE PURPOSE OF
9 PAYING A STATUTORILY-MANDATED LIVING WAGE TO NON-SUPERVISORY PERSONAL
10 CARE SERVICES WORKERS ONLY AND SHALL NOT USE THE FUNDS FOR ANY OTHER
11 PURPOSE. EACH SUCH PERSONAL CARE SERVICES PROVIDER SHALL SUBMIT, AT A
12 TIME AND IN A MANNER TO BE DETERMINED BY THE COMMISSIONER OF HEALTH, A
13 WRITTEN CERTIFICATION ATTESTING THAT SUCH FUNDS WILL BE USED SOLELY FOR
14 THE PURPOSE OF PAYING A STATUTORILY-MANDATED LIVING WAGE IN ACCORDANCE
15 WITH A LOCAL LAW TO NON-SUPERVISORY PERSONAL CARE SERVICES WORKERS. THE
16 COMMISSIONER OF HEALTH IS AUTHORIZED TO AUDIT EACH SUCH PROVIDER TO
17 ENSURE COMPLIANCE WITH THIS SUBDIVISION AND SHALL RECOUP ANY FUNDS
18 DETERMINED TO HAVE BEEN USED FOR PURPOSES OTHER THAN PAYING A STATUTORI-
19 LY-MANDATED LIVING WAGE TO NON-SUPERVISORY PERSONAL CARE SERVICES WORK-
20 ERS. SUCH RECOUPMENT SHALL BE IN ADDITION TO ANY OTHER PENALTIES
21 PROVIDED BY LAW.

22 5. FOR SOCIAL SERVICES DISTRICTS WHICH INCLUDE A CITY WITH A POPU-
23 LATION OF MORE THAN ONE MILLION PERSONS ADJUSTMENTS UNDER THIS SECTION
24 SHALL BE MADE PURSUANT TO MEMORANDUM OF UNDERSTANDING ENTERED INTO
25 BETWEEN THE STATE OF NEW YORK AND THE LOCAL SOCIAL SERVICES DISTRICT.

26 6. ADJUSTMENTS UNDER THIS SECTION SHALL BE EFFECTIVE FOR PERIODS ON
27 AND AFTER THE EFFECTIVE DATE OF A LOCAL LIVING WAGE LAW.

28 7. FOR THE PURPOSES OF THIS SECTION, "LOCAL LIVING WAGE LAW" MEANS ANY
29 LOCAL LAW OR, WHEN AUTHORIZED, LOCAL RESOLUTION THAT REQUIRES A COUNTY
30 OR UNIT OF LOCAL GOVERNMENT TO INCLUDE IN ANY CONTRACT FOR SERVICES A
31 SPECIFIED MINIMUM HOURLY RATE OF PAYMENT COMMONLY KNOWN AS A LIVING
32 WAGE.

33 S 2. Section 4 of part A of chapter 1 of the laws of 2002, amending
34 the public health law, the social services law and the tax law relating
35 to the Health Care Reform Act of 2000, as amended by section 27 of part
36 J of chapter 82 of the laws of 2002, is amended to read as follows:

37 S 4. Notwithstanding any law, rule or regulation to the contrary, the
38 provisions of section 36 of chapter 433 of the laws of 1997, as amended,
39 shall have no force or effect with regard to Medicaid funds received by
40 providers of personal care services pursuant to section 367-q OR 367-V
41 of the social services law or pursuant to paragraph (bb) of subdivision
42 1 of section 2807-v of the public health law, or by providers of home
43 care services pursuant to subdivision 8 of section 3614 of the public
44 health law.

45 S 3. This act shall take effect immediately.