

6910

I N S E N A T E

April 11, 2012

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
24 in public assistance benefits for a period of time set forth in section
25 three hundred forty-two of this title] AT A CONCILIATION CONFERENCE.
26 THE NOTICE SHALL INDICATE THAT THE PARTICIPANT HAS TEN DAYS TO REQUEST

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

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1 RE-ENGAGEMENT WITH THE DISTRICT. The notice shall indicate the specific
2 instance or instances of willful refusal or failure to comply without
3 good cause with the requirements of this title and the necessary actions
4 that must be taken to avoid a pro-rata reduction in public assistance
5 benefits AND THE DISTRICT HAS VERIFIED THAT APPROPRIATE CHILD CARE,
6 TRANSPORTATION AND ACCOMMODATIONS FOR DISABILITY WERE IN PLACE AT THE
7 TIME OF SUCH FAILURE OR REFUSAL. [The notice shall indicate that the
8 participant has seven days to request conciliation with the district
9 regarding such failure or refusal in the case of a safety net partic-
10 ipant and ten days in the case of a family assistance participant.]

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

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

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

1 THE TIME OF SUCH FAILURE OR REFUSAL TO COMPLY WITH THE REQUIREMENTS OF
2 THIS TITLE AND NO action shall be taken pursuant to this section for
3 failure to participate in the program or refusal to accept employment
4 if:

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

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

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

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

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

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

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

54 (a) for the first instance of failure to comply without good cause
55 with the requirement of this article] until the individual is willing to
56 comply WITH THE REQUIREMENTS OF THIS TITLE CONSISTENT WITH ANY MEDICAL

1 CONDITION WHICH MAY LIMIT THE INDIVIDUAL'S ABILITY TO PARTICIPATE IN
2 WORK ACTIVITIES[;

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

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

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

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

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

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

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

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

36 S 3. This act shall take effect immediately.