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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

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Introduced by M. of A. DINOWITZ, ENGLEBRIGHT, RIVERA, PAULIN, JAFFEE,
ABBATE -- Multi-Sponsored by -- M. of A. FINCH, MAISEL, SWEENEY --
read once and referred to the Committee on Aging

AN ACT to amend the elder law, in relation to consumer directed personal
assistance services

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

1 Section 1. Section 214 of the elder law is amended by adding a new
2 subdivision 8 to read as follows:
3 8. CONSUMER DIRECTED PERSONAL ASSISTANCE SERVICE PROVIDER. (A) ANY
4 OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, THE
5 OFFICE SHALL BE DEEMED A PARTICIPATING PROVIDER FOR THE PURPOSES OF
6 PROVIDING CONSUMER DIRECTED PERSONAL ASSISTANCE SERVICES PURSUANT TO
7 SECTION THREE HUNDRED SIXTY-FIVE-F OF THE SOCIAL SERVICES LAW, EXCEPT
8 THAT NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SUCH SECTION THREE
9 HUNDRED SIXTY-FIVE-F, THE TERM "ELIGIBLE INDIVIDUAL" AS USED IN SUCH
10 SECTION SHALL MEAN, FOR SERVICES PROVIDED BY OR THROUGH THE OFFICE
11 PURSUANT TO THIS SECTION, AN INDIVIDUAL AGED SIXTY OR OLDER WHO MEETS
12 THE CRITERIA ESTABLISHED UNDER PARAGRAPH (A), (B) OR (C) OF SUBDIVISION
13 TWO OF SUCH SECTION THREE HUNDRED SIXTY-FIVE-F, AND THE TERM "PARTIC-
14 IPATING PROVIDER" AS USED IN SUCH SECTION, SHALL WHEN APPLIED TO THE
15 OFFICE PURSUANT TO THIS SECTION MEAN AND INCLUDE THE OFFICE, ITS
16 CONTRACTORS, AND ANY INTERMEDIARY SERVICE ORGANIZATION, WHETHER THE
17 RESPONSIBILITIES OF SUCH ORGANIZATION ARE PROVIDED BY THE OFFICE OR BY
18 AN ENTITY OR ENTITIES CONTRACTED TO PERFORM SUCH RESPONSIBILITIES WITH
19 THE OFFICE AND/OR ITS CONTRACTORS, IN THE FOLLOWING MODELS OR ANY COMBI-
20 NATION THEREOF. THE OFFICE SHALL DEVELOP A PARTICIPATING PROVIDER MODEL
21 OR MODELS FOR THE PROVISION OF SERVICE WHICH ALLOW FOR A FULL RANGE OF
22 FISCAL, SUPPORTIVE AND INTERMEDIARY SERVICES TO BE MADE AVAILABLE TO AN
23 ELIGIBLE INDIVIDUAL IN A MANNER THAT CREATES A SEAMLESS FINANCING AND

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

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1 SERVICE DELIVERY SYSTEM. SERVICES TO BE PROVIDED SHALL INCLUDE BUT ARE
2 NOT LIMITED TO SERVICE ASSESSMENT AND/OR CASE MANAGEMENT AND SERVICE
3 MONITORING; PEER COUNSELING AND SUPPORT; ACCESS TO EMPLOYER MANAGEMENT
4 SKILLS TRAINING; ACCESS TO TECHNICAL SKILLS TRAINING FOR ATTENDANTS;
5 ACCESS TO TRAINING REGARDING EMPLOYER-RELATED FISCAL SKILLS; ACCESS TO
6 CRIMINAL AND CERTIFICATION (E.G., NURSE AID REGISTRY) CHECKS; ACCESS TO
7 AN ATTENDANT REGISTRY; AND ACCESS TO EMERGENCY/BACK-UP ATTENDANT
8 SERVICES. THE OFFICE OR AN AGENCY CONTRACTED TO IT MAY SERVE AS THE
9 EMPLOYER OF RECORD OF AN ATTENDANT, WITH THE ELIGIBLE INDIVIDUAL AS THE
10 MANAGING EMPLOYER, AND MAY ALLOW THE ELIGIBLE INDIVIDUAL TO RECRUIT,
11 TRAIN, SUPERVISE AND DISCHARGE HIS OR HER OWN ATTENDANT WHILE THE AGENCY
12 ACTS AS FISCAL AGENT AND RESOURCE FOR SUPPORTIVE ASSISTANCE, AS NEEDED.
13 THE MODEL OR MODELS MAY ALSO PROVIDE FOR PARTICIPATING PROVIDERS TO
14 ADMINISTER AND DISBURSE CASH GRANT OR VOUCHER PROGRAMS ALLOWING ELIGIBLE
15 INDIVIDUALS TO RECEIVE FUNDS INCLUDING PUBLIC FUNDS AND PAY ATTENDANTS
16 DIRECTLY, AND PERFORM OTHER RELATED ADMINISTRATIVE TASKS INCLUDING BUT
17 NOT LIMITED TO THE COLLECTION AND VERIFICATION OF ATTENDANTS TIMESHEETS
18 AND THE SUBMISSION OF INVOICES NECESSARY TO OBTAIN FUNDS FOR DISBURSE-
19 MENT. OTHER SERVICES WHICH MAY BE PROVIDED INCLUDE BUT SHALL NOT BE
20 LIMITED TO CONDUCTING SELF-DIRECTION EVALUATIONS OF ELIGIBLE INDIVID-
21 UALS, PROVIDING EMPLOYER SKILLS AND SELF-ADVOCACY TRAINING, ASSISTING
22 ELIGIBLE INDIVIDUALS WITH THE RECRUITMENT, SCREENING AND HIRING OF
23 ATTENDANTS INCLUDING CONDUCTING BACKGROUND CHECKS AND MAINTAINING AN
24 ATTENDANT REGISTRY, AND ARRANGING FOR EMERGENCY/BACK-UP ATTENDANT STAFF,
25 DETERMINING AND REASSESSING ELIGIBLE INDIVIDUALS SERVICE NEEDS, AND
26 PROVIDING OR ARRANGING FOR TRAINING OPPORTUNITIES FOR ATTENDANTS. SUCH
27 SUPPORTIVE SERVICES MAY ALSO INCLUDE THE PROVISION OF CASE MANAGEMENT
28 AND MONITORING THE QUALITY OF SERVICES PROVIDED AND ELIGIBLE INDIVIDUAL
29 AND ATTENDANT SATISFACTION. THE OFFICE MAY INCLUDE IN DEVELOPING SUCH
30 MODEL OR MODELS ANY COUNTY OR COUNTY AGENCY FOR THE AGING WITH WHICH IT
31 SHALL PARTNER OR CONTRACT AND WHICH IS APPROVED PURSUANT TO INTERNAL
32 REVENUE SERVICE REVENUE PROCEDURE 80-4 OR REVENUE PROCEDURE 70-6 OR ANY
33 SUCCESSOR THERETO TO BE THE EMPLOYER AGENT ON BEHALF OF ELIGIBLE INDIV-
34 VIDUALS OR TO ACT AS THE ELIGIBLE INDIVIDUAL'S FISCAL INTERMEDIARY FOR
35 CERTAIN APPROVED SERVICES.

36 (B) THE OFFICE SHALL FILE OR CAUSE TO BE FILED WITHIN ONE HUNDRED
37 TWENTY DAYS OF THE EFFECTIVE DATE OF THIS SUBDIVISION AN APPLICATION FOR
38 A FEDERAL WAIVER PURSUANT TO SECTION 1115 OF THE SOCIAL SECURITY ACT OR
39 ANY SUCCESSOR THERETO, AND EVERY STATE AGENCY IS HEREBY EMPOWERED AND
40 DIRECTED TO COOPERATE WITH THE OFFICE AND TO COMPLY WITH ANY REQUEST FOR
41 THE FILING OF SUCH WAIVER IF THE OFFICE SHALL LACK POWER AND AUTHORITY
42 TO FILE SUCH WAIVER ITSELF. IN MAKING SUCH APPLICATION FOR FEDERAL WAIV-
43 ER, THE OFFICE SHALL SEEK TO INCLUDE AND PROVIDE A SEAMLESS NETWORK OF
44 OTHER SERVICES PROVIDED THROUGH THE OFFICE WHERE APPROPRIATE. IN FILING
45 SUCH WAIVER FOR THE OPERATION OF THE PROGRAM, THE OFFICE SHALL SEEK TO
46 PROVIDE SERVICES PURSUANT TO THE PRINCIPLE THAT INDIVIDUALS HAVE THE
47 PRIMARY AUTHORITY TO MAKE CHOICES THAT WORK BEST FOR THEM, REGARDLESS OF
48 THE NATURE OR EXTENT OF THEIR DISABILITY OR THE SOURCE OF PAYMENT FOR
49 SERVICES. SERVICES PROVIDED PURSUANT TO THIS SECTION BY OR THROUGH THE
50 OFFICE SHALL OBSERVE THE FOLLOWING OBJECTIVES AND ASSUMPTIONS:

- 51 (1) THAT ELIGIBLE INDIVIDUALS ARE THE EXPERTS ON THEIR SERVICE NEEDS;
- 52 (2) THAT DIFFERENT TYPES OF SERVICES WARRANT DIFFERENT LEVELS OF
- 53 PROFESSIONAL INVOLVEMENT;
- 54 (3) THAT CHOICE AND CONTROL CAN BE INTRODUCED INTO ALL SERVICE DELIV-
- 55 ERY ENVIRONMENTS;

1 (4) THAT SERVICES THAT SUPPORT THE DIGNITY OF PEOPLE CAN BE LESS COST-
2 LY WHEN PROPERLY DESIGNED; AND

3 (5) THAT THE PROGRAM SHALL BE AVAILABLE TO ALL PERSONS OVER THE AGE OF
4 SIXTY WHO MEET ELIGIBILITY REQUIREMENTS, REGARDLESS OF PAYER OR SOURCE
5 OF PAYMENT.

6 (C) IN DESIGNING THE PROGRAM AND PROVIDING SERVICES, THE OFFICE IS
7 AUTHORIZED TO WAIVE ANY PROVISION OF SECTION THREE HUNDRED SIXTY-SEVEN-B
8 OF THE SOCIAL SERVICES LAW, OR ANY RULE OR REGULATION PROMULGATED PURSU-
9 ANT TO SECTION THREE HUNDRED SIXTY-FIVE-F OF THE SOCIAL SERVICES LAW
10 WHICH IN THE JUDGMENT OF THE OFFICE RESTRICTS ITS ABILITY TO PROVIDE
11 SERVICES AS REQUIRED BY THIS SUBDIVISION, SO LONG AS SUCH WAIVER IS
12 CONSISTENT WITH ANY FEDERAL WAIVER GRANTED PURSUANT TO SECTION 1115 OF
13 THE SOCIAL SECURITY ACT OR ANY SUCCESSOR THERETO.

14 (D) THE OFFICE SHALL SEEK TO EXPAND SOURCE OF PAYMENT FOR THE PROGRAM,
15 INCLUDING PAYMENTS FROM VOLUNTARY AND WILLING PRIVATE SOURCES, INSURANCE
16 PLANS, CHARITIES AND FOUNDATIONS AND INDIVIDUALS.

17 (E) THE OFFICE IS HEREBY EMPOWERED TO PROVIDE OR CONTRACT FOR THE
18 PROVISION OF SUCH CONSUMER DIRECTED SERVICES IN ANY COUNTY WITHIN THE
19 STATE. THE OFFICE SHALL SEEK TO COORDINATE SERVICES WITH ANY CURRENT
20 PROVIDER OF CONSUMER DIRECTED SERVICES. NO STATE AGENCY SHALL IMPOSE A
21 LIMITATION ON THE NUMBER OF ELIGIBLE INDIVIDUALS SERVED BY THIS PROGRAM.

22 (F) THE OFFICE SHALL NOT BE SUBJECT TO AUDIT, ASSESSMENT, SUSPENSION,
23 SANCTION, OR REPORT BY A STATE AGENCY FOR A PROGRAM CONDUCTED PURSUANT
24 TO THE AUTHORITY OF THIS SUBDIVISION, EXCEPT THAT IT SHALL BE SUBJECT TO
25 AUDIT BY THE OFFICE OF THE STATE COMPTROLLER TO THE EXTENT THAT SUCH
26 PROGRAMS WOULD HAVE BEEN SUBJECT TO AUDIT BUT FOR THIS PARAGRAPH.

27 S 2. This act shall take effect immediately.