S T A T E O F N E W Y O R K

7535--B

2015-2016 Regular Sessions

I N A S S E M B L Y

May 18, 2015

Introduced by M. of A. GOTTFRIED, RAIA, WEPRIN, CLARK -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to fiscal intermediaries in the consumer directed personal assistance program

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

Section 1. Section 365-f of the social services law is amended by adding two new subdivisions 4-a and 4-b to read as follows:

4-A. FISCAL INTERMEDIARY SERVICES. (A) FOR THE PURPOSES OF THIS SUBDIVISION:

(I) "FISCAL INTERMEDIARY" MEANS AN ENTITY THAT PROVIDES FISCAL INTERMEDIARY SERVICES AND HAS A CONTRACT FOR PROVIDING SUCH SERVICES WITH:

(A) A LOCAL DEPARTMENT OF SOCIAL SERVICES,

(B) AN ORGANIZATION LICENSED UNDER ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW, OR

(C) AN ACCOUNTABLE CARE ORGANIZATION CERTIFIED UNDER ARTICLE TWENTY-NINE-E OF THE PUBLIC HEALTH LAW OR AN INTEGRATED DELIVERY SYSTEM COMPOSED PRIMARILY OF HEALTH CARE PROVIDERS RECOGNIZED BY THE DEPARTMENT AS A PERFORMING PROVIDER SYSTEM UNDER THE DELIVERY SYSTEM REFORM INCENTIVE PAYMENT PROGRAM.

(II) FISCAL INTERMEDIARY SERVICES SHALL INCLUDE THE FOLLOWING SERVICES, PERFORMED ON BEHALF OF THE CONSUMER TO FACILITATE HIS OR HER ROLE AS THE EMPLOYER:

(A) WAGE AND BENEFIT PROCESSING FOR CONSUMER DIRECTED PERSONAL ASSISTANTS;

(B) PROCESSING ALL INCOME TAX AND OTHER REQUIRED WAGE WITHHOLDINGS;

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

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(C) COMPLYING WITH WORKERS' COMPENSATION, DISABILITY AND UNEMPLOYMENT REQUIREMENTS;

(D) MAINTAINING PERSONNEL RECORDS FOR EACH CONSUMER DIRECTED PERSONAL ASSISTANT, INCLUDING TIME SHEETS AND OTHER DOCUMENTATION NEEDED FOR WAGES AND BENEFIT PROCESSING AND A COPY OF THE MEDICAL DOCUMENTATION REQUIRED PURSUANT TO REGULATIONS ESTABLISHED BY THE COMMISSIONER;

(E) ENSURING THAT THE HEALTH STATUS OF EACH CONSUMER DIRECTED PERSONAL ASSISTANT IS ASSESSED PRIOR TO SERVICE DELIVERY PURSUANT TO REGULATIONS ISSUED BY THE COMMISSIONER;

(F) MAINTAINING RECORDS OF AUTHORIZATIONS OR REAUTHORIZATIONS OF SERVICES;

(G) MONITORING THE CONSUMER'S OR, IF APPLICABLE, THE DESIGNATED REPRESENTATIVE'S CONTINUING ABILITY TO FULFILL THE CONSUMER'S RESPONSIBILITIES UNDER THE PROGRAM AND PROMPTLY NOTIFYING THE AUTHORIZING ENTITY OF ANY CIRCUMSTANCE THAT MAY AFFECT THE CONSUMER'S OR, IF APPLICABLE, THE DESIGNATED REPRESENTATIVE'S ABILITY TO FULFILL SUCH RESPONSIBILITIES;

(H) COMPLYING WITH REGULATIONS ESTABLISHED BY THE COMMISSIONER SPECIFYING THE RESPONSIBILITIES OF PROVIDERS PROVIDING SERVICES UNDER THIS TITLE; AND

(I) ENTERING INTO A DEPARTMENT APPROVED MEMORANDUM OF UNDERSTANDING WITH THE CONSUMER THAT DESCRIBES THE PARTIES' RESPONSIBILITIES UNDER THIS PROGRAM.

(III) FISCAL INTERMEDIARIES ARE NOT RESPONSIBLE FOR, AND FISCAL INTERMEDIARY SERVICES SHALL NOT INCLUDE, FULFILLMENT OF THE RESPONSIBILITIES OF THE CONSUMER OR, IF APPLICABLE, THE CONSUMER'S DESIGNATED REPRESENTATIVE AS ESTABLISHED BY THE COMMISSIONER. A FISCAL INTERMEDIARY'S RESPONSIBILITIES SHALL NOT INCLUDE: MANAGING THE PLAN OF CARE INCLUDING RECRUITING AND HIRING A SUFFICIENT NUMBER OF INDIVIDUALS WHO MEET THE DEFINITION OF CONSUMER DIRECTED PERSONAL ASSISTANT, AS SUCH TERM IS DEFINED BY THE COMMISSIONER, TO PROVIDE AUTHORIZED SERVICES THAT ARE INCLUDED ON THE CONSUMER'S PLAN OF CARE; TRAINING, SUPERVISING AND SCHEDULING EACH ASSISTANT; TERMINATING THE ASSISTANT'S EMPLOYMENT; AND ASSURING THAT EACH CONSUMER DIRECTED PERSONAL ASSISTANT COMPETENTLY AND SAFELY PERFORMS THE PERSONAL CARE SERVICES, HOME HEALTH AIDE SERVICES AND SKILLED NURSING TASKS THAT ARE INCLUDED ON THE CONSUMER'S PLAN OF CARE. A FISCAL INTERMEDIARY SHALL EXERCISE REASONABLE CARE IN PROPERLY CARRYING OUT ITS RESPONSIBILITIES UNDER THE PROGRAM.

(B) NO ENTITY SHALL PROVIDE, DIRECTLY OR THROUGH CONTRACT, FISCAL INTERMEDIARY SERVICES WITHOUT A LICENSE AS A FISCAL INTERMEDIARY ISSUED BY THE COMMISSIONER IN ACCORDANCE WITH THIS SUBDIVISION.

(C) AN APPLICATION FOR LICENSURE AS A FISCAL INTERMEDIARY SHALL BE FILED WITH THE COMMISSIONER, TOGETHER WITH SUCH OTHER FORMS AND INFORMATION AS SHALL BE PRESCRIBED BY, OR ACCEPTABLE TO THE COMMISSIONER. THE COMMISSIONER SHALL NOT APPROVE AN APPLICATION FOR LICENSURE UNLESS HE OR SHE IS SATISFIED AS TO THE CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY OF THE APPLICANT'S INCORPORATORS, DIRECTORS, SPONSORS, STOCKHOLDERS OR OPERATORS AND FINDS THAT THE PERSONNEL, RULES, CONSUMER CONTRACTS OR AGREEMENTS, AND FISCAL INTERMEDIARY SERVICES ARE FIT AND ADEQUATE, AND THAT THE FISCAL INTERMEDIARY SERVICES WILL BE PROVIDED IN THE MANNER REQUIRED BY THIS SUBDIVISION AND THE RULES AND REGULATIONS THEREUNDER, IN A MANNER DETERMINED BY THE COMMISSIONER.

(D) NEITHER PUBLIC NEED, TAX STATUS, PROFIT-MAKING STATUS, NOR LICENSURE OR CERTIFICATION PURSUANT TO ARTICLE THIRTY-SIX OF THE PUBLIC HEALTH LAW SHALL BE CRITERIA FOR LICENSURE. ORGANIZATIONS AUTHORIZED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW SHALL NOT BE GRANTED A LICENSE AS A FISCAL INTERMEDIARY.

(E) THE COMMISSIONER SHALL CHARGE TO APPLICANTS FOR THE LICENSURE OF FISCAL INTERMEDIARIES AN APPLICATION FEE OF TWO THOUSAND DOLLARS.

4-B. PROCEEDINGS INVOLVING THE LICENSE OF A FISCAL INTERMEDIARY. (A) A LICENSE OF A FISCAL INTERMEDIARY MAY BE REVOKED, SUSPENDED, LIMITED OR ANNULLED BY THE COMMISSIONER ON PROOF THAT IT HAS FAILED TO COMPLY WITH THE PROVISIONS OF SUBDIVISION FOUR-A OF THIS SECTION OR REGULATIONS PROMULGATED HEREUNDER.

(B) NO SUCH LICENSE SHALL BE REVOKED, SUSPENDED, LIMITED, ANNULLED OR DENIED WITHOUT A HEARING. HOWEVER, A LICENSE MAY BE TEMPORARILY SUSPENDED OR LIMITED WITHOUT A HEARING FOR A PERIOD NOT IN EXCESS OF THIRTY DAYS UPON WRITTEN NOTICE TO THE FISCAL INTERMEDIARY FOLLOWING A FINDING BY THE DEPARTMENT THAT THE PUBLIC HEALTH OR SAFETY IS IN IMMINENT DANGER. SUCH PERIOD MAY BE RENEWED FOR UP TO TWO ADDITIONAL PERIODS NOT IN EXCESS OF THIRTY DAYS, EACH UPON WRITTEN NOTICE, INCLUDING AN OPPORTUNITY TO SUBMIT EVIDENCE AND WRITTEN ARGUMENT IN OPPOSITION TO THE RENEWAL, AND A CONTINUED FINDING UNDER THIS PARAGRAPH.

(C) THE COMMISSIONER SHALL FIX A TIME AND PLACE FOR THE HEARING. A COPY OF THE CHARGES, TOGETHER WITH THE NOTICE OF THE TIME AND PLACE OF THE HEARING, SHALL BE SERVED IN PERSON OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE FISCAL INTERMEDIARY AT LEAST TWENTY-ONE DAYS BEFORE THE DATE FIXED FOR THE HEARING. THE FISCAL INTERMEDIARY SHALL FILE WITH THE DEPARTMENT NOT LESS THAN EIGHT DAYS PRIOR TO THE HEARING, A WRITTEN ANSWER TO THE CHARGES.

(D) ALL ORDERS OR DETERMINATIONS UNDER THIS SUBDIVISION SHALL BE SUBJECT TO REVIEW AS PROVIDED IN ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 2. This act shall take effect on the first of July after it shall have become a law; provided that, effective immediately, the commissioner of health shall make regulations and take other actions, including issuing licenses under section 365-f of the social services law as amended by this act, to implement this act on that date.