

4831

2015-2016 Regular Sessions

I N S E N A T E

April 20, 2015

Introduced by Sen. CARLUCCI -- (at request of the Office of Temporary and Disability Assistance) -- 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 the definition of and the social services districts' engagement of a "volunteer"; the time period to request conciliation for the public assistance employment program; the employment sanctions for a member of a public assistance household which includes a minor child; the time period within which an individual must produce required medical documentation; the social services districts' referrals to licensed health care practitioners; the authority to continue an assigned work activity for a work limited individual pending re-evaluation; and amending references to federal work participation rates and reporting hours of participation in certain work activities to be consistent with federal requirements

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

1 Section 1. Subdivision 4 of section 330 of the social services law, as  
2 amended by section 148 of part B of chapter 436 of the laws of 1997, is  
3 amended, subdivision 5 is renumbered subdivision 6, and a new subdivi-  
4 sion 5 is added to read as follows:  
5 4. "Participant" shall mean an applicant for or recipient of public  
6 assistance who volunteers for or is required AND IS ASSIGNED BY THE  
7 DISTRICT to participate in work activities as provided in this title.  
8 5. "VOLUNTEER" SHALL MEAN AN APPLICANT FOR OR RECIPIENT OF PUBLIC  
9 ASSISTANCE WHO IS EXEMPT FROM MANDATORY PARTICIPATION IN WORK ACTIVITIES  
10 AND WHO ELECTS TO PARTICIPATE IN A WORK ACTIVITY OR AN INDIVIDUAL WHO  
11 ELECTS TO PARTICIPATE BEYOND THE EXTENT REQUIRED BY THE DISTRICT. IN ALL  
12 INSTANCES, A WORK ACTIVITY ASSIGNMENT MUST BE APPROVED BY THE SOCIAL  
13 SERVICES DISTRICT CONSISTENT WITH THE INDIVIDUAL'S ASSESSMENT.

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

LBD09603-01-5

1 S 2. Paragraph (b) of subdivision 2 of section 332 of the social  
2 services law, as amended by section 148 of part B of chapter 436 of the  
3 laws of 1997, is amended to read as follows:

4 (b) allow [and give first consideration to] volunteers [who have not  
5 previously terminated participation in such program without good cause]  
6 to participate in the program[; provided, however, such consideration  
7 shall not preclude a district from requiring applicants or recipients to  
8 participate prior to consideration for or participation by such volun-  
9 teers if such recipients or applicants are determined to be in greater  
10 need of the services provided pursuant to this title in accordance with  
11 criteria established by the district and submitted and approved as part  
12 of its local plan which may include, but not be limited to, length of  
13 time for which a recipient has been in receipt of public assistance  
14 benefits, education, age, health and skills] WITH DISTRICT APPROVAL.

15 S 3. Subdivision 1 of section 341 of the social services law, as  
16 amended by section 1 of part D of chapter 61 of the laws of 2006, is  
17 amended to read as follows:

18 1. (a) Consistent with federal law and regulations and this title, if  
19 a participant has failed or refused to comply with the requirements of  
20 this title, the social services district shall issue a notice in plain  
21 language indicating that such failure or refusal has taken place and of  
22 the right of such participant to conciliation to resolve the reasons for  
23 such failure or refusal to avoid a pro-rata reduction in public assist-  
24 ance benefits for a period of time set forth in section three hundred  
25 forty-two of this title. The notice shall indicate the specific instance  
26 or instances of willful refusal or failure to comply without good cause  
27 with the requirements of this title and the necessary actions that must  
28 be taken to avoid a pro-rata reduction in public assistance benefits.  
29 The notice shall indicate that the participant has [seven] TEN CALENDAR  
30 days to request conciliation with the district regarding such failure or  
31 refusal [in the case of a safety net participant and ten days in the  
32 case of a family assistance participant]. The notice shall also include  
33 an explanation in plain language of what would constitute good cause for  
34 non-compliance and examples of acceptable forms of evidence that may  
35 warrant an exemption from work activities, including evidence of domes-  
36 tic violence, and physical or mental health limitations that may be  
37 provided at the conciliation conference to demonstrate such good cause  
38 for failure to comply with the requirements of this title. If the  
39 participant does not contact the district within the specified number of  
40 days, the district shall issue ten days notice of intent to discontinue  
41 or reduce assistance, pursuant to regulations of the department. Such  
42 notice shall also include a statement of the participant's right to a  
43 fair hearing relating to such discontinuance or reduction. If such  
44 participant contacts the district within [seven] TEN CALENDAR days [in  
45 the case of a safety net participant or within ten days in the case of a  
46 family assistance participant], it will be the responsibility of the  
47 participant to give reasons for such failure or refusal.

48 (b) Unless the district determines as a result of such conciliation  
49 process that such failure or refusal was willful and was without good  
50 cause, no further action shall be taken. If the district determines that  
51 such failure or refusal was willful and without good cause, the district  
52 shall notify such participant in writing, in plain language and in a  
53 manner distinct from any previous notice, by issuing ten days notice of  
54 its intent to discontinue or reduce assistance. Such notice shall  
55 include the reasons for such determination, the specific instance or  
56 instances of willful refusal or failure to comply without good cause

1 with the requirements of this title, the necessary actions that must be  
2 taken to avoid a pro-rata reduction in public assistance benefits, and  
3 the right to a fair hearing relating to such discontinuance or  
4 reduction. Unless extended by mutual agreement of the participant and  
5 the district, conciliation shall terminate and a determination shall be  
6 made within [fourteen days of the date a request for conciliation is  
7 made in the case of a safety net participant or within] thirty days of  
8 the conciliation notice [in the case of a family assistance partic-  
9 ipant].

10 S 4. The opening paragraph of subdivision 2 of section 342 of the  
11 social services law, as added by section 148 of part B of chapter 436 of  
12 the laws of 1997, is amended to read as follows:

13 In the case of an applicant for or recipient of public assistance who  
14 is a [parent or caretaker of] MEMBER OF A PUBLIC ASSISTANCE HOUSEHOLD  
15 INCLUDING a [dependent] MINOR child the public assistance benefits  
16 otherwise available to the household of which such individual is a  
17 member shall be reduced pro-rata:

18 S 5. Paragraph (b) of subdivision 2 of section 332-b of the social  
19 services law, as amended by chapter 214 of the laws of 1998, is amended  
20 to read as follows:

21 (b) If, prior to submitting his or her medical documentation, the  
22 individual is referred to a health care practitioner [certified by the  
23 office of disability determinations of the office of temporary and disa-  
24 bility assistance] LICENSED TO PRACTICE IN NEW YORK STATE or, if appli-  
25 cable, to the contracted agency or institution by or with which such  
26 health care practitioner LICENSED TO PRACTICE IN NEW YORK STATE is  
27 employed or affiliated for an examination pursuant to subdivision four  
28 of this section, such individual shall make best efforts to bring such  
29 documentation to the examination, and in no case shall provide such  
30 records to the examining health care practitioner [certified by the  
31 office of disability determinations] or, if applicable, to the  
32 contracted agency or institution by or with which such health care prac-  
33 titioner is employed or affiliated later than [four business] TEN CALEN-  
34 DAR days [after such examination] FROM THE DATE OF THE NOTICE WHICH  
35 INFORMED THE INDIVIDUAL OF THE OPPORTUNITY TO PROVIDE MEDICAL DOCUMENTA-  
36 TION; provided that the individual may demonstrate good cause as defined  
37 in regulations, for failure to provide such records within the specific  
38 time periods.

39 S 6. The opening paragraph of subdivision 4 of section 332-b of the  
40 social services law, as added by section 148 of part B of chapter 436 of  
41 the laws of 1997, is amended to read as follows:

42 In instances where the district determines either that the documenta-  
43 tion is insufficient to support an exemption from or limitation on work  
44 activities or that further medical evaluation is appropriate, the indi-  
45 vidual shall be referred to a health care practitioner [certified by the  
46 Office of Disability Determinations of the Department of Social  
47 Services] LICENSED TO PRACTICE IN NEW YORK STATE for an examination of  
48 such individual's medical condition.

49 S 7. Subdivision 5 of section 332-b of the social services law, as  
50 added by section 148 of part B of chapter 436 of the laws of 1997, is  
51 amended to read as follows:

52 5. When an applicant or recipient has requested or a social services  
53 official has directed a determination pursuant to this section, no  
54 assignment to work activities may be made until completion of such  
55 determination, unless the applicant or recipient agrees to a limited  
56 work assignment not inconsistent with the medical condition alleged by

1 such person, EXCEPT THAT WHEN A DISTRICT DIRECTS A RE-EVALUATION OF A  
2 WORK LIMITED PARTICIPANT'S HEALTH STATUS, THE DISTRICT MAY REQUIRE THE  
3 WORK LIMITED PARTICIPANT TO CONTINUE TO PARTICIPATE IN ASSIGNED WORK  
4 ACTIVITIES CONSISTENT WITH THE INDIVIDUAL'S DOCUMENTED MEDICAL LIMITA-  
5 TIONS WHILE A RE-EVALUATION OF THE INDIVIDUAL'S EMPLOYABILITY STATUS IS  
6 COMPLETED IN ACCORDANCE WITH THIS SECTION.

7 S 8. Subdivision 1 of section 335-b of the social services law, as  
8 amended by section 2 of part J of chapter 58 of the laws of 2006, is  
9 amended to read as follows:

10 1. Each social services district shall meet or exceed the minimum  
11 participation rate for recipients of assistance funded under the federal  
12 temporary assistance for needy families program, AND FOR FAMILIES  
13 RECEIVING ASSISTANCE IN THE SAFETY NET ASSISTANCE PROGRAM WHO ARE  
14 REQUIRED BY FEDERAL LAW OR REGULATION TO BE INCLUDED IN SUCH RATE,  
15 participating in work activities as specified below with respect to  
16 families receiving such assistance. Each such district shall also meet  
17 or exceed the minimum participation rates for households WITHOUT DEPEND-  
18 ENT CHILDREN in which there is an adult OR MINOR HEAD OF HOUSEHOLD who  
19 is receiving safety net assistance. Work activities for which such rates  
20 apply are described in section three hundred thirty-six of this title.

21 (a) [Such] CONSISTENT WITH FEDERAL REQUIREMENTS SUCH rate for all  
22 families receiving assistance funded under the federal temporary assist-  
23 ance for needy families program, AND FOR FAMILIES RECEIVING ASSISTANCE  
24 IN THE SAFETY NET ASSISTANCE PROGRAM WHO ARE REQUIRED BY FEDERAL LAW OR  
25 REGULATION TO BE INCLUDED IN SUCH RATE, shall be [as follows: for feder-  
26 al fiscal year nineteen hundred ninety-seven, twenty-five percent; nine-  
27 teen hundred ninety-eight, thirty percent; nineteen hundred ninety-nine,  
28 thirty-five percent; two thousand, forty percent; two thousand one,  
29 forty-five percent; two thousand two and thereafter,] fifty percent.  
30 Such [rates] RATE shall apply unless the state is required to meet a  
31 different rate as imposed by the federal government, in which case such  
32 different rate shall apply in accordance with a methodology approved by  
33 the commissioner of the office of temporary and disability assistance.

34 (b) [Such] CONSISTENT WITH FEDERAL REQUIREMENTS SUCH rate for two-par-  
35 ent families receiving assistance funded under the federal temporary  
36 assistance for needy families program, AS WELL AS FOR SUCH TWO-PARENT  
37 FAMILIES IN WHICH THERE IS AN ADULT OR MINOR HEAD OF HOUSEHOLD AND WHICH  
38 ARE RECEIVING ASSISTANCE FUNDED UNDER THE SAFETY NET ASSISTANCE PROGRAM  
39 WHO ARE REQUIRED BY FEDERAL LAW OR REGULATION TO BE INCLUDED IN SUCH  
40 RATE, shall be [as follows: for federal fiscal years nineteen hundred  
41 ninety-seven and nineteen hundred ninety-eight, seventy-five percent;  
42 nineteen hundred ninety-nine and thereafter,] ninety percent. Such rate  
43 shall apply unless the state is required to meet a different rate as  
44 imposed by the federal government, in which case such different rate  
45 shall apply in accordance with a methodology approved by the commission-  
46 er of the office of temporary and disability assistance.

47 (c) [Such rate for households with dependent children in which there  
48 is an adult or minor head of household and which is receiving safety net  
49 assistance shall be fifty percent.

50 (d) Calculation of participation rates. The commissioner of the  
51 office of temporary and disability assistance shall promulgate regu-  
52 lations which define the participation rate calculation. Such calcu-  
53 lation for families receiving assistance funded under the federal tempo-  
54 rary assistance for needy families program, AND FOR FAMILIES RECEIVING  
55 ASSISTANCE IN THE SAFETY NET ASSISTANCE PROGRAM WHO ARE REQUIRED BY  
56 FEDERAL LAW OR REGULATION TO BE INCLUDED IN SUCH RATE, pursuant to

1 [article] TITLE IV-A of the social security act shall be consistent with  
2 that established in federal law.

3 [(e)] (D) Minimum work hours. In order for individuals to be included  
4 in the participation rates specified in this subdivision, such individ-  
5 uals must be engaged in work as defined in title IV-A of the social  
6 security act and in this section for a minimum average weekly number of  
7 hours as specified below.

8 (i) For all families, if the month is in federal fiscal year: nineteen  
9 hundred ninety-seven and nineteen hundred ninety-eight, twenty hours per  
10 week; nineteen hundred ninety-nine, twenty-five hours per week; two  
11 thousand and thereafter, thirty hours per week.

12 (ii) For two-parent families or households without dependent children,  
13 in any federal or state fiscal year, thirty-five hours per week.

14 (iii) In the case of a two-parent family receiving federally funded  
15 child care assistance and a parent in the family is not disabled or  
16 caring for a severely disabled child, the individual and the other  
17 parent in the family are participating in work activities for a total of  
18 at least fifty-five hours per week during the month, not fewer than  
19 fifty hours of which are attributable to activities described in para-  
20 graphs (a) through (h) and (l) of subdivision one of section three  
21 hundred thirty-six of this title.

22 [(f)] (E) Such rate for households without dependent children in which  
23 there is an adult or minor head of household and which is receiving  
24 safety net assistance shall be fifty percent.

25 S 9. Subdivision 2 of section 335-b of the social services law, as  
26 amended by chapter 380 of the laws of 2004, is amended to read as  
27 follows:

28 2. Engaged in work for a month shall mean participating in work activ-  
29 ities identified in subdivision one of section three hundred thirty-six  
30 of this title for the required number of hours specified in this section  
31 provided, however, that at least twenty hours of such participation, or  
32 thirty hours for two-parent families, or fifty hours for two-parent  
33 families receiving federally funded child care as set forth in subpara-  
34 graph (iii) of paragraph (d) of subdivision one of this section, shall  
35 be attributable to the activities described in paragraphs (a) through  
36 (h) and (l) of subdivision one of section three hundred thirty-six of  
37 this title, or for households without dependent children at least twenty  
38 hours of participation shall be attributable to the activities set forth  
39 in paragraphs (a) through (h) and (l) of subdivision one of section  
40 three hundred thirty-six of this title, and further provided that  
41 participation in job search and job readiness assistance as identified  
42 in paragraph (f) of subdivision one of section three hundred thirty-six  
43 of this title shall only be determined as engaged in work for [a maximum  
44 period of six weeks, only four of which may be consecutive as otherwise  
45 limited by federal law] THE MAXIMUM PERIODS ESTABLISHED BY FEDERAL LAW  
46 OR REGULATION; and that individuals in all families and in two parent  
47 families may be engaged in work for a month by reason of participation  
48 in vocational training to the extent allowed by federal law. Any non-  
49 graduate student participating or approved by CUNY, SUNY or another  
50 degree granting institution, or any other state or local district  
51 approved education, training or vocational rehabilitation agency to  
52 participate in work-study, or in internships, externships, or other work  
53 placements that are part of the curriculum of that student, shall not be  
54 unreasonably denied the ability to participate in such programs and each  
55 hour of participation shall count toward satisfaction of such student's  
56 work activity requirements of this title provided that the district may

1 consider, among other factors, (a) whether the student has voluntarily  
2 terminated his or her employment or voluntarily reduced his or her earn-  
3 ings to qualify for public assistance pursuant to subdivision ten of  
4 section one hundred thirty-one of this article; (b) whether a comparable  
5 job or on the job training position can reasonably be expected to exist  
6 in the private, public or not-for-profit sector; (c) that the student  
7 has a cumulative C average or its equivalent, which may be waived by the  
8 district for undue hardship based on (1) the death of a relative of the  
9 student, (2) the personal injury or illness of the student, or (3) other  
10 extenuating circumstances; and (d) whether the institution cooperates in  
11 monitoring students attendance and performance and reports to the local  
12 social services department monthly on each student. Failure of the  
13 institution to monitor and report monthly to local social services  
14 districts on attendance and performance of the student's work study,  
15 internship, externship or other work placement shall be cause for the  
16 department to reasonably deny the student's ability to participate in  
17 such programs. Students shall be subject to sanctions equivalent to  
18 those associated with failure to adequately satisfy their other required  
19 work activities. In assigning a non-graduate student participating in  
20 work-study, internships, externships or other work placements, pursuant  
21 to this section, to other work activities the district shall make  
22 reasonable effort to assign the student to hours that do not conflict  
23 with the student's academic schedule.

24 S 10. Paragraph (m) of subdivision 1 of section 336 of the social  
25 services law, as amended by section 148 of part B of chapter 436 of the  
26 laws of 1997, is amended to read as follows:

27 (m) job search and job readiness assistance once the individual has  
28 exceeded the [six week limit] LIMITS ON SUCH ACTIVITIES set in federal  
29 law OR REGULATION;

30 S 11. Subdivision 8 of section 336 of the social services law, as  
31 added by chapter 534 of the laws of 2000, is amended to read as follows:

32 8. The hours of participation in federal work study programs completed  
33 pursuant to section three hundred thirty-five-b of this title shall be  
34 included as a work activity within the definition of unsubsidized  
35 employment, subsidized private sector employment or subsidized public  
36 sector employment pursuant to paragraphs (a), (b) and (c) of subdivision  
37 one of this section, and the hours of participation in internships,  
38 externships and other work placements completed pursuant to section  
39 three hundred thirty-five-b of this title shall be included as a work  
40 activity within the definition of [on-the-job training] WORK EXPERIENCE  
41 pursuant to paragraph [(e)] (D) of subdivision one of this section OR  
42 OTHER WORK ACTIVITY CONSISTENT WITH FEDERAL LAW OR REGULATION.

43 S 12. Severability clause. If any clause, sentence, paragraph, subdi-  
44 vision, section or part of this act shall be adjudged by any court of  
45 competent jurisdiction to be invalid, such judgment shall not affect,  
46 impair, or invalidate the remainder thereof, but shall be confined in  
47 its operation to the clause, sentence, paragraph, subdivision, section  
48 or part thereof directly involved in the controversy in which such judg-  
49 ment shall have been rendered. It is hereby declared to be the intent of  
50 the legislature that this act would have been enacted even if such  
51 invalid provisions had not been included herein.

52 S 13. This act shall take effect immediately.