

5565

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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:

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

3 4-A. FISCAL INTERMEDIARY SERVICES. (A) FOR THE PURPOSES OF THIS SUBDI-
4 VISION:

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

7 (A) A LOCAL DEPARTMENT OF SOCIAL SERVICES,

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

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

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

18 (A) WAGE AND BENEFIT PROCESSING FOR CONSUMER DIRECTED PERSONAL ASSIST-
19 ANTS;

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

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

23 (D) MAINTAINING PERSONNEL RECORDS FOR EACH CONSUMER DIRECTED PERSONAL
24 ASSISTANT, INCLUDING TIME SHEETS AND OTHER DOCUMENTATION NEEDED FOR

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

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1 WAGES AND BENEFIT PROCESSING AND A COPY OF THE MEDICAL DOCUMENTATION
2 REQUIRED PURSUANT TO REGULATIONS ESTABLISHED BY THE COMMISSIONER;

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

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

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

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

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

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

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

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

46 (D) NEITHER PUBLIC NEED, TAX STATUS NOR PROFIT-MAKING STATUS SHALL BE
47 CRITERIA FOR LICENSURE. STATUS AS A LICENSED HOME CARE SERVICES AGENCY
48 OR OTHER HEALTH PROVIDER SHALL NOT POSITIVELY OR NEGATIVELY IMPACT AN
49 APPLICATION. ORGANIZATIONS AUTHORIZED PURSUANT TO ARTICLE FORTY-FOUR OF
50 THE PUBLIC HEALTH LAW SHALL NOT BE GRANTED A LICENSE AS A FISCAL
51 INTERMEDIARY.

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

1 4-B. PROCEEDINGS INVOLVING THE LICENSE OF A FISCAL INTERMEDIARY. (A) A
2 LICENSE OF A FISCAL INTERMEDIARY MAY BE REVOKED, SUSPENDED, LIMITED OR
3 ANNULLED BY THE COMMISSIONER ON PROOF THAT IT HAS FAILED TO COMPLY WITH
4 THE PROVISIONS OF SUBDIVISION FOUR-A OF THIS SECTION OR REGULATIONS
5 PROMULGATED HEREUNDER.

6 (B) NO SUCH LICENSE SHALL BE REVOKED, SUSPENDED, LIMITED, ANNULLED OR
7 DENIED WITHOUT A HEARING. HOWEVER, A LICENSE MAY BE TEMPORARILY
8 SUSPENDED OR LIMITED WITHOUT A HEARING FOR A PERIOD NOT IN EXCESS OF
9 THIRTY DAYS UPON WRITTEN NOTICE TO THE FISCAL INTERMEDIARY FOLLOWING A
10 FINDING BY THE DEPARTMENT THAT THE PUBLIC HEALTH OR SAFETY IS IN IMMI-
11 NENT DANGER. SUCH PERIOD MAY BE RENEWED UPON WRITTEN NOTICE AND A
12 CONTINUED FINDING UNDER THIS PARAGRAPH.

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

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

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