

7535--A

2015-2016 Regular Sessions

I N A S S E M B L Y

May 18, 2015

Introduced by M. of A. GOTTFRIED, RAIA -- 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

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 two new subdivisions 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;

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

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

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

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

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

15 (H) COMPLYING WITH REGULATIONS ESTABLISHED BY THE COMMISSIONER SPECI-
16 FYING THE RESPONSIBILITIES OF PROVIDERS PROVIDING SERVICES UNDER THIS
17 TITLE; AND

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

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

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

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

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

55 (E) THE COMMISSIONER SHALL CHARGE TO APPLICANTS FOR THE LICENSURE OF
56 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.