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

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:

Section 1. Subdivision 4 of section 330 of the social services law, as amended by section 148 of part B of chapter 436 of the laws of 1997, is amended, subdivision 5 is renumbered subdivision 6, and a new subdivision 5 is added to read a follows:

4. "Participant" shall mean an applicant for or recipient of public assistance who volunteers for or is required AND IS ASSIGNED BY THE DISTRICT to participate in work activities as provided in this title.

5. "VOLUNTEER" SHALL MEAN AN APPLICANT FOR OR RECIPIENT OF PUBLIC ASSISTANCE WHO IS EXEMPT FROM MANDATORY PARTICIPATION IN WORK ACTIVITIES AND WHO ELECTS TO PARTICIPATE IN A WORK ACTIVITY OR AN INDIVIDUAL WHO ELECTS TO PARTICIPATE BEYOND THE EXTENT REQUIRED BY THE DISTRICT. IN ALL INSTANCES, A WORK ACTIVITY ASSIGNMENT MUST BE APPROVED BY THE SOCIAL SERVICES DISTRICT CONSISTENT WITH THE INDIVIDUAL'S ASSESSMENT.

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

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

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

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

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

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

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

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

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

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

(b) If, prior to submitting his or her medical documentation, the individual is referred to a health care practitioner [certified by the office of disability determinations of the office of temporary and disability assistance] LICENSED TO PRACTICE IN NEW YORK STATE or, if applicable, to the contracted agency or institution by or with which such health care practitioner LICENSED TO PRACTICE IN NEW YORK STATE is employed or affiliated for an examination pursuant to subdivision four of this section, such individual shall make best efforts to bring such documentation to the examination, and in no case shall provide such records to the examining health care practitioner [certified by the office of disability determinations] or, if applicable, to the contracted agency or institution by or with which such health care practitioner is employed or affiliated later than [four business] TEN CALENDAR days [after such examination] FROM THE DATE OF THE NOTICE WHICH INFORMED THE INDIVIDUAL OF THE OPPORTUNITY TO PROVIDE MEDICAL DOCUMENTATION; provided that the individual may demonstrate good cause as defined in regulations, for failure to provide such records within the specific time periods.

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

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

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

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

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

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

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

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

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

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

(d)] Calculation of participation rates. The commissioner of the office of temporary and disability assistance shall promulgate regulations which define the participation rate calculation. Such calculation for families receiving assistance funded under the federal temporary assistance for needy families program, AND FOR FAMILIES RECEIVING ASSISTANCE IN THE SAFETY NET ASSISTANCE PROGRAM WHO ARE REQUIRED BY FEDERAL LAW OR REGULATION TO BE INCLUDED IN SUCH RATE, pursuant to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 13. This act shall take effect immediately.