

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.

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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.