

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  
16 (I) ENTERING INTO A DEPARTMENT APPROVED MEMORANDUM OF UNDERSTANDING WITH  
17 THE CONSUMER THAT DESCRIBES THE PARTIES' RESPONSIBILITIES UNDER THIS PROGRAM.  
18  
19 (III) FISCAL INTERMEDIARIES ARE NOT RESPONSIBLE FOR, AND FISCAL INTERMEDIARY  
20 SERVICES SHALL NOT INCLUDE, FULFILLMENT OF THE RESPONSIBILITIES OF THE CONSUMER  
21 OR, IF APPLICABLE, THE CONSUMER'S DESIGNATED REPRESENTATIVE AS ESTABLISHED BY  
22 THE COMMISSIONER. A FISCAL INTERMEDIARY'S RESPONSIBILITIES SHALL NOT INCLUDE:  
23 MANAGING THE PLAN OF CARE INCLUDING RECRUITING AND HIRING A SUFFICIENT NUMBER  
24 OF INDIVIDUALS WHO MEET THE DEFINITION OF CONSUMER DIRECTED PERSONAL ASSISTANT,  
25 AS SUCH TERM IS DEFINED BY THE COMMISSIONER, TO PROVIDE AUTHORIZED SERVICES  
26 THAT ARE INCLUDED ON THE CONSUMER'S PLAN OF CARE; TRAINING, SUPERVISING AND  
27 SCHEDULING EACH ASSISTANT; TERMINATING THE ASSISTANT'S EMPLOYMENT; AND ASSURING  
28 THAT EACH CONSUMER DIRECTED PERSONAL ASSISTANT COMPETENTLY AND SAFELY PERFORMS  
29 THE PERSONAL CARE SERVICES, HOME HEALTH AIDE SERVICES AND SKILLED NURSING  
30 TASKS THAT ARE INCLUDED ON THE CONSUMER'S PLAN OF CARE. A FISCAL INTERMEDIARY  
31 SHALL EXERCISE REASONABLE CARE IN PROPERLY CARRYING OUT ITS RESPONSIBILITIES  
32 UNDER THE PROGRAM.  
33  
34 (B) NO ENTITY SHALL PROVIDE, DIRECTLY OR THROUGH CONTRACT, FISCAL INTERMEDIARY  
35 SERVICES WITHOUT A LICENSE AS A FISCAL INTERMEDIARY ISSUED BY THE COMMISSIONER  
36 IN ACCORDANCE WITH THIS SUBDIVISION.  
37  
38 (C) AN APPLICATION FOR LICENSURE AS A FISCAL INTERMEDIARY SHALL BE FILED WITH  
39 THE COMMISSIONER, TOGETHER WITH SUCH OTHER FORMS AND INFORMATION AS SHALL BE  
40 PRESCRIBED BY, OR ACCEPTABLE TO THE COMMISSIONER. THE COMMISSIONER SHALL NOT  
41 APPROVE AN APPLICATION FOR LICENSURE UNLESS HE OR SHE IS SATISFIED AS TO THE  
42 CHARACTER, COMPETENCE AND STANDING IN THE COMMUNITY OF THE APPLICANT'S  
43 INCORPORATORS, DIRECTORS, SPONSORS, STOCKHOLDERS OR OPERATORS AND FINDS THAT  
44 THE PERSONNEL, RULES, CONSUMER CONTRACTS OR AGREEMENTS, AND FISCAL INTERMEDIARY  
45 SERVICES ARE FIT AND ADEQUATE, AND THAT THE FISCAL INTERMEDIARY SERVICES  
46 WILL BE PROVIDED IN THE MANNER REQUIRED BY THIS SUBDIVISION AND THE RULES AND  
47 REGULATIONS THEREUNDER, IN A MANNER DETERMINED BY THE COMMISSIONER.  
48  
49 (D) NEITHER PUBLIC NEED, TAX STATUS NOR PROFIT-MAKING STATUS SHALL BE  
50 CRITERIA FOR LICENSURE. STATUS AS A LICENSED HOME CARE SERVICES AGENCY OR  
51 OTHER HEALTH PROVIDER SHALL NOT POSITIVELY OR NEGATIVELY IMPACT AN APPLICATION.  
52 ORGANIZATIONS AUTHORIZED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH  
53 LAW SHALL NOT BE GRANTED A LICENSE AS A FISCAL INTERMEDIARY.  
54  
55 (E) THE COMMISSIONER SHALL CHARGE TO APPLICANTS FOR THE LICENSURE OF 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.