

5565--A

2015-2016 Regular Sessions

I N   S E N A T E

May 14, 2015

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Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee and committed to the Committee on Finance -- 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.