

# STATE OF NEW YORK

5475

2017-2018 Regular Sessions

## IN ASSEMBLY

February 9, 2017

Introduced by M. of A. GOTTFRIED, ORTIZ, SEPULVEDA, LENTOL, KEARNS, SIMON, SKOUFIS, MORINELLO, LUPINACCI, TITONE, CAHILL, GIGLIO, JAFFEE, COLTON, THIELE, ENGLEBRIGHT, MOSLEY, COOK, GUNTHER, McDONOUGH, CRESPO, RAIA, DINOWITZ, PEOPLES-STOKES -- Multi-Sponsored by -- M. of A. HEVE-SI, SCHIMMINGER -- read once and referred to the Committee on Health

AN ACT to amend the public health law, the tax law and the social services law, in relation to support of living organ donation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "New York state living donor support act".

3 § 2. The article heading of article 43-B of the public health law, as  
4 added by chapter 589 of the laws of 1990, is amended to read as follows:

5 ORGAN[~~7, TISSUE AND BODY PARTS~~] PROCUREMENT AND [~~STORAGE~~]

### 6 DONOR SUPPORT

7 § 3. Sections 4360 through 4368 of article 43-B of the public health  
8 law are designated title 1, and a new title heading is added to read as  
9 follows:

### 10 ORGAN, TISSUE AND BODY PARTS PROCUREMENT AND STORAGE

11 § 4. Article 43-B of the public health law is amended by adding a new  
12 title 2 to read as follows:

### 13 TITLE 2

### 14 LIVING ORGAN DONATION

### 15 Section 4369. Definitions.

#### 16 4370. Reimbursement of living donor expenses.

#### 17 4371. Transplant education of patients with kidney disease or 18 end stage renal failure.

19 § 4369. Definitions. As used in this title, the following terms shall  
20 have the following meanings, unless the context clearly requires other-  
21 wise:

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

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1 1. "Living donation" means the gift by an individual of an organ of  
2 that individual's body to be transplanted into another individual's  
3 body, the gift to be executed while the donating individual is living  
4 and with the intent that the donating individual will continue to live  
5 after the execution of the gift.

6 2. "Living donor" means an individual who makes a living donation.

7 3. "Living donor expenses" means financial costs incurred by a living  
8 donor that arise due to the act of living donation and its consequences,  
9 that are subject to reimbursement under section forty-three hundred  
10 seventy of this title.

11 4. "Living donor support program" or "program" means the living donor  
12 support program established under section forty-three hundred seventy of  
13 this title.

14 5. "Paired donation" means a living donation in which the living  
15 donor's organ is incompatible with the ultimate intended recipient and  
16 the living donor's organ is transplanted into another recipient, and in  
17 turn another living donor makes a living donation, directly or through  
18 one or more paired donations, to the ultimate recipient.

19 § 4370. Reimbursement of living donor expenses. 1. The living donor  
20 support program is hereby established in the department.

21 2. (a) Subject to appropriations therefor, the program shall pay the  
22 living donor expenses for living donors who are residents of the state  
23 and make a living donation in which the ultimate recipient, either  
24 directly or through paired donation is a resident of the state. The  
25 commissioner through regulations shall establish eligible living donor  
26 expenses that are eligible for reimbursement under the program which  
27 shall include at a minimum: lost wages (including demonstrated lost  
28 non-employment income); the economic value of sick or vacation days  
29 expended; travel and lodging, child care and elder care expenses; and  
30 costs of medications and care associated with the living donation  
31 surgery. The total period of time related to lost wages or expended sick  
32 or vacation days shall not exceed four weeks unless special circum-  
33 stances are demonstrated, such as the nature of physical labor required  
34 for the living donor's employment; provided that the total period shall  
35 in no event exceed eight weeks. The commissioner may by regulation  
36 impose a limitation on: (i) the amount of lost wages for a living donor  
37 making an income in excess of an annual rate of one hundred twenty-five  
38 thousand dollars; or (ii) the amount of living donor expenses above  
39 fourteen thousand dollars for any single living donor; and may include  
40 additional living donor expenses including reimbursement for costs of  
41 care performed by relatives or family members of the living donor.

42 (b) The program shall not pay reimbursement for expenses paid or  
43 required to be paid for by any third-party payer, including wages or  
44 other expenses that were covered under paid medical leave by the living  
45 donor's employer or that are covered by other sources of reimbursement  
46 such as the federal National Living Donor Assistance Program. The  
47 program shall be the payer of last resort with respect to any benefit  
48 under the program.

49 (c) Living donor expenses shall be reimbursed as close in time as  
50 possible to their being incurred by the donor, including by pre-payment  
51 where practicable.

52 3. (a) The commissioner may contract for the administration of  
53 reimbursement under the program. Factors such as cost to the state, ease  
54 of use for the living donor, and ease of use for transplant center  
55 hospitals shall be taken into consideration when awarding such contract.

56 (b) The commissioner shall make regulations to implement this section.

1 (c) This section shall be interpreted so as not to conflict with the  
2 federal National Organ Transplant Act (42 U.S.C. 274e).

3 § 4371. Transplant education of patients with kidney disease or end  
4 stage renal failure. For any patient with chronic kidney disease stage  
5 four or end stage renal disease, a nephrologist managing the patient's  
6 treatment or, if the patient is not under the treatment of a nephrolo-  
7 gist then the patient's primary care practitioner, shall consider wheth-  
8 er the patient is a candidate for transplantation under applicable  
9 professional and legal guidelines, and, if the patient appears to be a  
10 candidate for transplantation, provide the patient with transplant  
11 education materials including those prepared under section two hundred  
12 seven of this chapter.

13 § 5. Paragraph (d) of subdivision 1 of section 207 of the public  
14 health law, as amended by section 16 of part A of chapter 109 of the  
15 laws of 2010, is amended to read as follows:

16 (d) The need for and importance of organ and tissue donation, includ-  
17 ing living donation, including information about being registered as an  
18 organ and tissue donor and executing documents of gift under article  
19 forty-three of this chapter; and information to increase patient under-  
20 standing about the medical option of transplant and its desirability.  
21 In implementing this paragraph, the department shall consult with the  
22 transplant council in the department.

23 § 6. Paragraph 38 of subsection (c) of section 612 of the tax law, as  
24 added by chapter 565 of the laws of 2006, is amended to read as follows:

25 (38) An amount of up to ten thousand dollars if a taxpayer, while  
26 living, donates one or more of his or her human organs to another human  
27 being for human organ transplantation. For purposes of this paragraph,  
28 "human organ" means all or part of a liver, pancreas, kidney, intestine,  
29 lung, or bone marrow. A subtract modification allowed under this para-  
30 graph shall be claimed in the taxable year in which the human organ  
31 transplantation occurs. Provided, however, that this deduction shall  
32 not apply to any donation for which the taxpayer has received benefits  
33 under section forty-three hundred seventy of the public health law.

34 § 7. The social services law is amended by adding a new section 365-o  
35 to read as follows:

36 § 365-o. Provision and coverage of services for living organ donors.  
37 This section applies in the case of a living donor under section forty-  
38 three hundred seventy of the public health law who is otherwise eligible  
39 for medical assistance under this article. Services for that person  
40 covered under that section that would otherwise be health care services  
41 under this article shall be paid for under this article and not under  
42 such section, provided federal financial participation is available.

43 § 8. This act shall take effect on the first of April next succeeding  
44 the date on which it shall have become a law; provided that, effective  
45 immediately, the commissioner of health shall make regulations and take  
46 other actions reasonably necessary to implement this act on that date.