STATE OF NEW YORK

1339

2019-2020 Regular Sessions

IN SENATE

January 14, 2019

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed 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:

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

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

ORGAN[~~, TISSUE AND BODY PARTS~~] PROCUREMENT AND [~~STORAGE~~] **DONOR SUPPORT**

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

ORGAN, TISSUE AND BODY PARTS PROCUREMENT AND STORAGE

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

TITLE 2
LIVING ORGAN DONATION

Section 4369. Definitions.
4370. Reimbursement of living donor expenses.
4371. Transplant education of patients with kidney disease or end stage renal failure.

§ 4369. Definitions. As used in this title, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1. "Living donation" means the gift by an individual of an organ of that individual's body to be transplanted into another individual's body, the gift to be executed while the donating individual is living

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

LBD03533-01-9

and with the intent that the donating individual will continue to live after the execution of the gift.

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

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

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

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

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

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

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

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

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

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

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

§ 4371. Transplant education of patients with kidney disease or end stage renal failure. For any patient with chronic kidney disease stage four or end stage renal disease, a nephrologist managing the patient's treatment or, if the patient is not under the treatment of a nephrologist then the patient's primary care practitioner, shall consider whether the patient is a candidate for transplantation under applicable professional and legal guidelines, and, if the patient appears to be a candidate for transplantation, provide the patient with transplant education materials including those prepared under section two hundred seven of this chapter.

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

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

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

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

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

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

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