

# STATE OF NEW YORK

146--A

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GOTTFRIED, SIMON, MORINELLO, CAHILL, J. M. GIGLIO, COLTON, THIELE, ENGLEBRIGHT, COOK, GUNTHER, McDONOUGH, DINOWITZ, PEOPLES-STOKES, PERRY, STECK, GOODELL, L. ROSENTHAL, QUART, RODRIGUEZ, KIM, PALMESANO, ABINANTI, RA, DiPIETRO, HYNDMAN, JEAN-PIERRE, BENEDETTO, GALEF, WEPRIN, WILLIAMS, LAVINE, BARRON, WOERNER, DICKENS, BRONSON, NIOU, CUSICK, NORRIS, CARROLL, SOLAGES, SEAWRIGHT, ZEBROWSKI, DE LA ROSA, TAYLOR, SAYEGH, SALKA -- Multi-Sponsored by -- M. of A. AUBRY, BARCLAY, BRAUNSTEIN, CYMBROWITZ, DeSTEFANO, FITZPATRICK, HEVESI, PICHARDO, PRETLOW, RAMOS, REILLY -- read once and referred to the Committee on Health -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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[~~, TISSUE AND BODY PARTS~~] PROCUREMENT AND [~~STORAGE~~]

6 DONOR SUPPORT

7 § 3. Sections 4360 through 4369 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 II

14 LIVING ORGAN DONATION

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

LBD00054-03-1

1 Section 4370. Definitions.

2 4371. Reimbursement of living donor expenses.

3 4372. Transplant education of patients with kidney disease or  
4 end stage renal failure.

5 § 4370. Definitions. As used in this title, the following terms shall  
6 have the following meanings, unless the context clearly requires other-  
7 wise:

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

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

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

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

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

26 § 4371. Reimbursement of living donor expenses. 1. The living donor  
27 support program is hereby established in the department.

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

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

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

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

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

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

11 § 4372. Transplant education of patients with kidney disease or end  
12 stage renal failure. For any patient with chronic kidney disease stage  
13 four or end stage renal disease, a nephrologist managing the patient's  
14 treatment or, if the patient is not under the treatment of a nephrolo-  
15 gist then the patient's primary care practitioner, shall consider wheth-  
16 er the patient is a candidate for transplantation under applicable  
17 professional and legal guidelines, and, if the patient appears to be a  
18 candidate for transplantation, provide the patient with transplant  
19 education materials including those prepared under section two hundred  
20 seven of this chapter.

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

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

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

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

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

44 § 365-o. Provision and coverage of services for living organ donors.  
45 This section applies in the case of a living donor under section forty-  
46 three hundred seventy-one of the public health law who is otherwise  
47 eligible for medical assistance under this article. Services for that  
48 person covered under that section that would otherwise be health care  
49 services under this article shall be paid for under this article and not  
50 under such section, provided federal financial participation is avail-  
51 able.

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