§ 367-i. Personal care services provider assessments. 1. Providers of personal care services, excepting those certified under article thirty-six of the public health law, are charged assessments on their gross receipts received from all personal care services and other operating income on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. Such assessments shall be submitted by or on behalf of such personal care services providers to the commissioner of health or his/her designee.

2. (a) The assessment shall be six-tenths of one percent of each such provider's gross receipts received from all personal care services and other operating income on a cash basis beginning January first, nineteen hundred ninety-one; provided, however, that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be two-tenths of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(b) Notwithstanding any contrary provisions of this section or any other contrary provision of law or regulation, the assessment shall be thirty-five hundredths of one percent of each such provider's gross receipts from all personal care services and other operating income on a cash basis for periods on and after April first, two thousand nine.

3. Gross receipts received from all personal care services and other operating income for purposes of the assessments pursuant to this section shall include, but not be limited to, all monies received for or on account of personal care services, provided, however, that subject to the provisions of subdivision eleven of this section income received from grants, charitable contributions, donations and bequests and governmental deficit financing shall not be included, and provided further, however, that moneys received from a certified home health agency or a provider of a long term home health care program assessed on such moneys pursuant to section thirty-six hundred fourteen-a of the public health law shall not be included.

4. Estimated payments by or on behalf of such personal care services providers to the commissioner of health or his/her designee of funds due

from the assessments pursuant to subdivision two of this section shall be made on a monthly basis. Estimated payments shall be due on or before the fifteenth day following the end of a calendar month to which an assessment applies.

5. (a) If an estimated payment made for a month to which an assessment applies is less than seventy percent of an amount the commissioner of health determines is due, based on evidence of prior period moneys received by a personal care services provider or evidence of moneys received by such personal care services provider for that month, the commissioner of health may estimate the amount due from such personal care services provider and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for a month to which an assessment applies is less than ninety percent of an amount the commissioner of health determines is due, based on evidence of prior period moneys received by a personal care services provider or evidence of moneys received by such personal care services provider for that month, and at least two previous estimated payments within the preceding six months were less than ninety percent of the amount due, based on similar evidence, the commissioner of health may estimate the amount due from such personal care services provider and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of health of a provider's deficiency under this section, the comptroller or a fiscal intermediary designated by the director of the budget, or the commissioner of social services, or a corporation organized and operating in accordance with article forty-three of the insurance law, or an organization operating in accordance with article forty-four of the public health law shall withhold from the amount of any payment to be made by the state or by such article forty-three corporation or article forty-four organization to the provider the amount of the deficiency determined under paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision six of this section. Upon withholding such amount, the comptroller or a designated fiscal intermediary, or the commissioner of social services, or corporation organized and operating in accordance with article forty-three of the insurance law or

organization operating in accordance with article forty-four of the public health law shall pay the commissioner of health, or his designee, such amount withheld on behalf of the provider.

(d) The commissioner of health shall provide a provider with notice of any estimate of an amount due for an assessment pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision six of this section at least three days prior to collection of such amount by the commissioner of health. Such notice shall contain the financial basis for the commissioner of health's estimate.

(e) In the event a provider objects to an estimate by the commissioner of health pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision six of this section of the amount due for an assessment, the provider, within sixty days of notice of an amount due, may request a public hearing. If a hearing is requested, the commissioner of health shall provide the provider an opportunity to be heard and to present evidence bearing on the amount due for an assessment within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later. An administrative hearing is not a prerequisite to seeking judicial relief.

(f) The commissioner of health may direct that a hearing be held without any request by a personal care services provider.

6. (a) Every personal care services provider shall submit reports on a cash basis of actual gross receipts received from all patient care services and operating income for each month as follows:

(i) for the period January first, nineteen hundred ninety-one through January thirty-first, nineteen hundred ninety-one, the report shall be filed on or before March fifteenth, nineteen hundred ninety-one; and

(ii) for the quarter year ending March thirty-first, nineteen hundred ninety-one and for each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of such quarter.

(b) Every personal care services provider shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all patient care services and operating income.

(c) The reports shall be in such form as may be prescribed by the commissioner of health to accurately disclose information required to implement this section.

(d) Final payments shall be due for all personal care services providers for the assessments pursuant to subdivision two of this section upon the due date for submission of the applicable quarterly report.

(e) The commissioner of health may recoup deficiencies in final payments pursuant to paragraph (c) of subdivision five of this section.

7. (a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner of health on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus four percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner of health pursuant to paragraph (c) of subdivision five of this section in the same manner as an assessment pursuant to subdivision two of this section.

(b) If an estimated payment made for a month to which an assessment applies is less than seventy percent of the actual amount due for such month, a penalty shall be due and payable to the commissioner of health of five percent of the difference between the amount paid and the amount due for such month when the failure to pay is for a duration of not more than one month after the due date of the payment with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. A penalty may be collected by the commissioner of health pursuant to paragraph (c) of subdivision five of this section in the same manner as an assessment pursuant to subdivision two of this section.

(c) Overpayment by a personal care services provider of an estimated payment shall be applied to any other payment due from the personal care services provider pursuant to this section, or, if no payment is due, at the election of the personal care services provider shall be applied to

future estimated payments or refunded to the personal care services provider. Interest shall be paid on overpayments from the date of overpayment to the date of crediting or refund at the rate determined in accordance with paragraph (a) of this subdivision if the overpayment was made at the direction of the commissioner of health. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

8. Funds accumulated, including income from invested funds, from the assessments specified in this section, including interest and penalties, shall be deposited by the commissioner of health and credited to the general fund.

9. Notwithstanding any inconsistent provision of law or regulation to the contrary, the assessments pursuant to this section shall not be an allowable cost in the determination of reimbursement rates pursuant to this article.

10. The assessment shall not be collected in excess of twelve million dollars from such providers for the period of January first, nineteen hundred ninety-one through March thirty-first, nineteen hundred ninety-two. The amount of the assessment collected pursuant to subdivision two of this section in excess of twelve million dollars shall be refunded to providers by the commissioner of health based on the ratio which a provider's assessment for such period bears to the total of the assessments for such period paid by such providers.

11. Each exclusion of sources of gross receipts received from the assessments effective on or after April first, nineteen hundred ninety-two established pursuant to this section shall be contingent upon either: (a) qualification of the assessments for waiver pursuant to federal law and regulation; or (b) consistent with federal law and regulation, not requiring a waiver by the secretary of the department of health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of the revenues received by the state pursuant to the assessments not reducing the amount expended by the

state as medical assistance for purposes of federal financial participation. The commissioner of health shall collect the assessments relying on such exclusions, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, then the exclusion shall be deemed to have been null and void as of April first, nineteen hundred ninety-two, and the commissioner of health shall collect any retroactive amount due as a result, without interest or penalty provided the personal care services provider pays the retroactive amount due within ninety days of notice from the commissioner of health to the provider that an exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner of health to the provider.