

22

PART ZZ

23 Section 1. The social services law is amended by adding a new
section

24 367-w to read as follows:

25 § 367-w. Health care and mental hygiene worker bonuses. 1.

Purpose

26 and intent. New York's essential front line health care and
mental
27 hygiene workers have seen us through a once-in-a-century public
health
28 crisis and turned our state into a model for battling and
beating
29 COVID-19. To attract talented people into the profession at a time
of
30 such significant strain while also retaining those who have been
working
31 so tirelessly these past two years, we must recognize the efforts of
our
32 health care and mental hygiene workforce and reward them financially
for
33 their service.

34 To do that, the commissioner of health is hereby directed to
seek
35 federal approvals as applicable, and, subject to federal
financial
36 participation, to support with federal and state funding bonuses to
be
37 made available during the state fiscal year of 2023 to recruit,
retain,
38 and reward health care and mental hygiene workers.

39 2. Definitions. As used in this section, the term:

40 (a) "Employee" means certain front line health care and mental
hygiene
41 practitioners, technicians, assistants and aides that provide hands
on
42 health or care services to individuals, without regard to whether
the
43 person works full-time, part-time, on a salaried, hourly, or
temporary
44 basis, or as an independent contractor, that received an annualized
base
45 salary of one hundred twenty-five thousand dollars or less, to
include:

46 (i) Physician assistants, dental hygienists, dental
assistants,
47 psychiatric aides, pharmacists, pharmacy technicians, physical
thera-
48 pists, physical therapy assistants, physical therapy aides,
occupational
49 therapists, occupational therapy assistants, occupational therapy
aides,
50 speech-language pathologists, respiratory therapists, exercise
physiolo-
51 gists, recreational therapists, all other therapists,
orthotists,

52 prosthetists, clinical laboratory technologists and technicians,
diag-
53 nostic medical sonographers, nuclear medicine technologists,
radiologic
54 technologists, magnetic resonance imaging technologists,
ophthalmic

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1 medical technicians, radiation therapists, dietetic technicians,
cardio-
2 vascular technologists and technicians, certified first
responders,
3 emergency medical technicians, advanced emergency medical
technicians,
4 paramedics, surgical technologists, all other health technologists
and
5 technicians, orderlies, medical assistants, phlebotomists, all
other
6 health care support workers, nurse anesthetists, nurse midwives,
nurse
7 practitioners, registered nurses, nursing assistants, and licensed
prac-
8 tical and licensed vocational nurses;
9 (ii) to the extent not already included in subparagraph (i) of
this
10 paragraph, staff who perform functions as described in the
consolidated
11 fiscal report (CFR) manual with respect to the following title codes:
12 Mental Hygiene Worker;
13 Residence/Site Worker;
14 Counselor (OMH);
15 Manager (OMH);
16 Senior Counselor (OMH);
17 Supervisor (OMH);
18 Developmental Disabilities Specialist QIDP - Direct Care (OPWDD);
19 Certified Recovery Peer Advocate;
20 Peer Professional - Non-CRPA (OASAS Only);
21 Job Coach/Employment Specialist (OMH and OPWDD);
22 Peer Specialist (OMH);
23 Counselor - Alcoholism and Substance Abuse (CASAC);
24 Counseling Aide/Assistant - Alcoholism and Substance Abuse;
25 Other Direct Care Staff;
26 Case Manager;
27 Counselor - Rehabilitation;
28 Developmental Disabilities Specialist/Habilitation Specialist QIDP
-
29 Clinical (OPWDD);
30 Emergency Medical Technician;
31 Intensive Case Manager (OMH);
32 Intensive Case Manager/Coordinator (OMH);
33 Nurse - Licensed Practical;
34 Nurse - Registered;
35 Psychologist (Licensed);
36 Psychologist (Master's Level)/Behavioral Specialist;
37 Psychology Worker/Other Behavioral Worker;
38 Social Worker - Licensed (LMSW, LCSW);

39 Social Worker - Master's Level (MSW);
40 Licensed Mental Health Counselor (OASAS, OMH, OCFS);
41 Licensed Psychoanalyst (OMH);
42 Therapist - Recreation;
43 Therapist - Activity/Creative Arts;
44 Therapist - Occupational;
45 Dietician/Nutritionist;
46 Therapy Assistant/Activity Assistant;
47 Nurse's Aide/Medical Aide;
48 Behavior Intervention Specialist 1 (OPWDD);
49 Behavior Intervention Specialist 2 (OPWDD);
50 Clinical Coordinator;
51 Intake/Screening;
52 Pharmacist;
53 Marriage and Family Counselor/Therapist;
54 Residential Treatment Facility (RTF) Transition Coordinator (OMH);
55 Crisis Prevention Specialist (OMH);
56 Early Recognition Specialist (OMH);

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1 Other Clinical Staff/Assistants;
2 Nurse Practitioner/Nursing Supervisor;
3 Therapist - Physical;
4 Therapist - Speech;
5 Program or Site Director; and
6 Assistant Program or Assistant Site Director; and
7 (iii) such titles as determined by the commissioner, or relevant
agen-
8 cy commissioner as applicable, and approved by the director of the
budg-
9 et.
10 (b) "Employer" means a provider enrolled in the medical
assistance
11 program under this title that employs at least one employee and
that
12 bills for services under the state plan or a home and community
based
13 services waiver authorized pursuant to subdivision (c) of section
nine-
14 teen hundred fifteen of the federal social security act, or that
has a
15 provider agreement to bill for services provided or arranged through
a
16 managed care provider under section three hundred sixty-four-j of
this
17 title or a managed long term care plan under section forty-four
hundred
18 three-f of the public health law, to include:
19 (i) providers and facilities licensed, certified or otherwise
author-
20 ized under articles twenty-eight, thirty, thirty-six or forty of
the
21 public health law, articles sixteen, thirty-one, thirty-two or
thirty-
22 six of the mental hygiene law, article seven of this chapter,
fiscal

23 intermediaries under section three hundred sixty-five-f of this
title,
24 pharmacies registered under section six thousand eight hundred eight
of
25 the education law, or school based health centers;
26 (ii) programs that participate in the medical assistance program
and
27 are funded by the office of mental health, the office of
addiction
28 services and supports, or the office for people with developmental
disa-
29 bilities; and
30 (iii) other provider types determined by the commissioner and
approved
31 by the director of the budget;
32 (iv) provided, however, that unless the provider is subject
to a
33 certificate of need process as a condition of state licensure
or
34 approval, such provider shall not be an employer under this
section
35 unless at least twenty percent of the provider's patients or
persons
36 served are eligible for services under this title and title XIX of
the
37 federal social security act.
38 (c) Notwithstanding the definition of employer in paragraph (b)
of
39 this subdivision, and without regard to the availability of
federal
40 financial participation, "employer" shall also include an institution
of
41 higher education, a public or nonpublic school, a charter school,
an
42 approved preschool program for students with disabilities, a
school
43 district or boards of cooperative educational services, programs
funded
44 by the office of mental health, programs funded by the office
of
45 addiction services and supports, programs funded by the office
for
46 people with developmental disabilities, programs funded by the
office
47 for the aging, a health district as defined in section two of the
public
48 health law, or a municipal corporation, where such program or
entity
49 employs at least one employee. Such employers shall be required
to
50 enroll in the system designated by the commissioner, or relevant
agency
51 commissioners, in consultation with the director of the budget, for
the
52 purpose of claiming bonus payments under this section. Such system
or

53 process for claiming bonus payments may be different from the system
and
54 process used under subdivision three of this section.

55 (d) "Vesting period" shall mean a series of six-month periods
between
56 the dates of October first, two thousand twenty-one and March
thirty-

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1 first, two thousand twenty-four for which employees that are
continuous-
2 ly employed by an employer during such six-month periods, in
accordance
3 with a schedule issued by the commissioner or relevant agency
commis-
4 sioner as applicable, may become eligible for a bonus pursuant to
subdi-
5 vision four of this section.

6 (e) "Base salary" shall mean, for the purposes of this section,
the
7 employee's gross wages with the employer during the vesting
period,
8 excluding any bonuses or overtime pay.

9 (f) "Municipal corporation" means a county outside the city of
New
10 York, a city, including the city of New York, a town, a village, or
a
11 school district.

12 3. Tracking and submission of claims for bonuses. (a) The
commission-
13 er, in consultation with the commissioner of labor and the
Medicaid
14 inspector general, and subject to any necessary approvals by the
federal
15 centers for Medicare and Medicaid services, shall develop such forms
and
16 procedures as may be needed to identify the number of hours
employees
17 worked and to provide reimbursement to employers for the purposes
of
18 funding employee bonuses in accordance with hours worked during
the
19 vesting period.

20 (b) Using the forms and processes developed by the commissioner
under
21 this subdivision, employers shall, for a period of time specified by
the
22 commissioner:
23 (i) track the number of hours that employees work during the
vesting
24 period and, as applicable, the number of patients served by the
employer
25 who are eligible for services under this title; and
26 (ii) submit claims for reimbursement of employee bonus payments.

In

27 filling out the information required to submit such claims,
employers
28 shall use information obtained from tracking required pursuant to
para-
29 graph (a) of this subdivision and provide such other information as
may
30 be prescribed by the commissioner. In determining an employee's
annual-
31 ized base salary, the employer shall use information based on
payroll
32 records.

33 (c) Employers shall be responsible for determining whether an
employee
34 is eligible under this section and shall maintain and make
available
35 upon request all records, data and information the employer relied
upon
36 in making the determination that an employee was eligible, in
accordance
37 with paragraph (d) of this subdivision.

38 (d) Employers shall maintain contemporaneous records for all
tracking
39 and claims related information and documents required to
substantiate
40 claims submitted under this section for a period of no less than
six
41 years. Employers shall furnish such records and information,
upon
42 request, to the commissioner, the Medicaid inspector general,
the
43 commissioner of labor, the secretary of the United States Department
of
44 Health and Human Services, and the deputy attorney general for
Medicaid
45 fraud control.

46 4. Payment of worker bonuses. (a) Upon issuance of a vesting
schedule
47 by the commissioner, or relevant agency commissioner as
applicable,
48 employers shall be required to pay bonuses to employees pursuant to
such
49 schedule based on the number of hours worked during the vesting
period.

50 The schedule shall provide for total payments not to exceed three
thou-
51 sand dollars per employee in accordance with the following:
52 (i) employees who have worked an average of at least twenty but
less
53 than thirty hours per week over the course of a vesting period
would
54 receive a five hundred dollar bonus for the vesting period;

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1 (ii) employees who have worked an average of at least thirty but
less

2 than thirty-five hours per week over the course of a vesting
period
3 would receive a one thousand dollar bonus for such vesting period;
4 (iii) employees who have worked an average of at least thirty-
five
5 hours per week over the course of a vesting period would receive a
one
6 thousand five hundred dollar bonus for such vesting period.
7 (iv) full-time employees who are exempt from overtime compensation
as
8 established in the labor commissioner's minimum wage orders or
otherwise
9 provided by New York state law or regulation over the course of a
vest-
10 ing period would receive a one thousand five hundred dollar bonus
for
11 such vesting period.
12 (b) Notwithstanding paragraph (a) of this subdivision, the
commission-
13 er may through regulation specify an alternative number of vesting
peri-
14 ods, provided that total payments do not exceed three thousand
dollars
15 per employee.
16 (c) Employees shall be eligible for bonuses for no more than two
vest-
17 ing periods per employer, in an amount equal to but not greater
than
18 three thousand dollars per employee across all employers.
19 (d) Upon completion of a vesting period with an employer, an
employee
20 shall be entitled to receive the bonus and the employer shall
be
21 required to pay the bonus no later than the date specified under
this
22 subdivision, provided however that prior to such date the employee
does
23 not terminate, through action or inaction, the employment
relationship
24 with the employer, in accordance with any employment agreement,
includ-
25 ing a collectively bargained agreement, if any, between the employee
and
26 employer.
27 (e) Any bonus due and payable to an employee under this section
shall
28 be made by the employer no later than thirty days after the bonus
is
29 paid to the employer.
30 (f) an employer shall be required to submit a claim for a bonus to
the
31 department no later than thirty days after an employee's eligibility
for
32 a bonus vests, in accordance with and upon issuance of the
schedule
33 issued by the commissioner or relevant agency commissioner.

34 (g) No portion of any dollars received from claims under
subparagraph
35 (ii) of paragraph (b) of subdivision three of this section for
employee
36 bonuses shall be returned to any person other than the employee to
whom
37 the bonus is due or used to reduce the total compensation an employer
is
38 obligated to pay to an employee under section thirty-six hundred
four-
39 teen-c of the public health law, section six hundred fifty-two of
the
40 labor law, or any other provisions of law or regulations, or pursuant
to
41 any collectively bargained agreement.

42 (h) No portion of any bonus available pursuant to this
subdivision
43 shall be payable to a person who has been suspended or excluded
under
44 the medical assistance program during the vesting period and at the
time
45 an employer submits a claim under this section.

46 (i) The use of any accruals or other leave, including but not
limited
47 to sick, vacation, or time used under the family medical leave
act,
48 shall be credited towards and included in the calculation of the
average
49 number of hours worked per week over the course of the vesting
period.

50 5. Audits, investigations and reviews. (a) The Medicaid
inspector
51 general shall, in coordination with the commissioner, conduct
audits,
52 investigations and reviews of employers required to submit claims
under
53 this section. Such claims, inappropriately paid, under this
section
54 shall constitute overpayments as that term is defined under the
regu-
55 lations governing the medical assistance program. The Medicaid
inspector

56 general may recover such overpayments to employers as it would an
over-

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1 payment under the medical assistance program, impose sanctions up to
and
2 including exclusion from the medical assistance program, impose
penal-
3 ties, and take any other action authorized by law where:
4 (i) an employer claims a bonus not due to an employee or a
bonus
5 amount in excess of the correct bonus amount due to an employee;
6 (ii) an employer claims, receives and fails to pay any part of
the

7 bonus due to a designated employee;
8 (iii) an employer fails to claim a bonus due to an employee.
9 (b) Any employer identified in paragraph (a) of this subdivision
who
10 fails to identify, claim and pay any bonus for more than ten percent
of
11 its employees eligible for the bonus shall also be subject to
additional
12 penalties under subdivision four of section one hundred forty-five-b
of
13 this article.
14 (c) Any employer who fails to pay any part of the bonus payment to
a
15 designated employee shall remain liable to pay such bonus to
that
16 employee, regardless of any recovery, sanction or penalty the
Medicaid
17 inspector general may impose.
18 (d) In all instances recovery of inappropriate bonus payments shall
be
19 recovered from the employer. The employer shall not have the right
to
20 recover any inappropriately paid bonus from the employee.
21 (e) Where the Medicaid inspector general sanctions an employer
for
22 violations under this section, they may also sanction any affiliates
as
23 defined under the regulations governing the medical assistance
program.
24 6. Rules and regulations. The commissioner, in consultation with
the
25 Medicaid inspector general as it relates to subdivision five of
this
26 section, may promulgate rules, to implement this section pursuant
to
27 emergency regulation; provided, however, that this provision shall
not
28 be construed as requiring the commissioner to issue regulations
to
29 implement this section.
30 § 2. Subparagraphs (iv) and (v) of paragraph (a) of subdivision 4
of
31 section 145-b of the social services law, as amended by section 1
of
32 part QQ of chapter 56 of the laws of 2020, are amended to read
as
33 follows:
34 (iv) such person arranges or contracts, by employment, agreement,
or
35 otherwise, with an individual or entity that the person knows or
should
36 know is suspended or excluded from the medical assistance program at
the
37 time such arrangement or contract regarding activities related to
the
38 medical assistance program is made[-];

39 (v) such person had an obligation to identify, claim, and pay a
bonus
40 under subdivision three of section three hundred sixty-seven-w of
this
41 article and such person failed to identify, claim and pay such bonus.
42 (vi) For purposes of this paragraph, "person" as used in
subparagraph
43 (i) of this paragraph does not include recipients of the medical
assist-
44 ance program; and "person" as used in subparagraphs (ii) [~~---~~], (iii)
and
45 (iv) of this paragraph, is as defined in paragraph (e) of
subdivision
46 [~~(6)~~] six of section three hundred sixty-three-d of this [~~chapter~~]
arti-
47 cle; and "person" as used in subparagraph (v) of this paragraph
includes
48 employers as defined in section three hundred sixty-seven-w of
this
49 article.

50 § 3. Paragraph (c) of subdivision 4 of section 145-b of the
social
51 services law is amended by adding a new subparagraph (iii) to read
as

52 follows:
53 (iii) For subparagraph (v) of paragraph (a) of this subdivision,
a
54 monetary penalty shall be imposed for conduct described in
subparagraphs
55 (i), (ii) and (iii) of paragraph (a) of subdivision five of
section
56 three hundred sixty-seven-w of this article and shall not exceed
one

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1 thousand dollars per failure to identify, claim and pay a bonus for
each
2 employee.

3 § 4. Health care and mental hygiene worker bonuses for state
employ-
4 ees. 1. An employee who is employed by a state operated facility,
an
5 institutional or direct-care setting operated by the executive branch
of
6 the State of New York or a public hospital operated by the state
univer-
7 sity of New York and who is deemed substantially equivalent to the
defi-
8 nition of employee pursuant to paragraph (a) of subdivision 2 of
section
9 367-w of the social services law as determined by the commissioner
of
10 health, in consultation with the chancellor of the state university
of
11 New York, the commissioner of the department of civil service,
the

12 director of the office of employee relations, and the commissioners
of
13 other state agencies, as applicable, and approved by the director of
the
14 budget, shall be eligible for the health care and mental hygiene
worker
15 bonus. Notwithstanding the definition of base salary pursuant to
para-
16 graph (e) of subdivision 2 of section 367-w, such bonus shall only
be
17 paid to employees that receive an annualized base salary of one
hundred
18 twenty-five thousand dollars or less.

19 2. Employees shall be eligible for health care and mental
hygiene
20 worker bonuses in an amount up to but not exceeding three
thousand
21 dollars per employee. The payment of bonuses shall be paid based on
the
22 total number of hours worked during two vesting periods based on
the
23 employee's start date with the employer. No employee's first
vesting
24 period may begin later than March thirty-first, two thousand
twenty-
25 three, and in total both vesting periods may not exceed one year
in
26 duration. For each vesting period, payments shall be in accordance
with
27 the following:

28 (a) employees who have worked an average of at least twenty but
less
29 than thirty hours per week over the course of a vesting period
shall
30 receive a five hundred dollar bonus for the vesting period;

31 (b) employees who have worked an average of at least thirty but
less
32 than thirty-seven and one half hours per week over the course of a
vest-
33 ing period shall receive a one thousand dollar bonus for such
vesting
34 period; and

35 (c) employees who have worked an average of at least thirty-seven
and
36 one half hours per week over the course of a vesting period
shall
37 receive a one thousand five hundred dollar bonus for such vesting
peri-
38 od.

39 § 5. An employee under this act shall be limited to a bonus of
three
40 thousand dollars per employee without regard to which section
or
41 sections such employee may be eligible or whether the employee is
eligi-
42 ble to receive a bonus from more than one employer.

43 § 6. Notwithstanding any provision of law to the contrary, any
bonus
44 payment paid pursuant to this act, to the extent includible in
gross
45 income for federal income tax purposes, shall not be subject to state
or
46 local income tax.

47 § 7. Bonuses under this act shall not be considered income
for
48 purposes of public benefits or other public assistance.

49 § 8. Paragraph (a) of subdivision 8 of section 131-a of the
social
50 services law is amended by adding a new subparagraph (x) to read
as
51 follows:

52 (x) all of the income of a head of household or any person in
the
53 household, who is receiving such aid or for whom an application for
such
54 aid has been made, which is derived from the health care and
mental
55 hygiene worker bonuses under section three hundred sixty-seven-w of
this

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1 article or under the chapter of the laws of two thousand twenty-
two
2 which added this subparagraph.

3 § 9. The department of health shall request any necessary waiver
or
4 waivers from the centers for medicare and medicaid services to
ensure
5 that the payments required by this act shall not be included in
the
6 calculation of federal disproportionate share payments as determined
by
7 42 CFR § 412.106, or in the calculation of the upper payment limit
as
8 determined by 42 CFR § 447.272 and 42 CFR § 447.321, for any
applicable

9 employer types that receive disproportionate share payments,
upper
10 payment limit supplemental payments, or similar supplemental
payments
11 where the centers for medicare and medicaid services has a waiver
or
12 similar process for the exclusion of the payments required by this
act
13 from such calculations.

14 § 10. This act shall take effect immediately.