

1 exemption from current funds requirements, as renumbered by chapter 699
2 of the laws of 1974, is renumbered section 6 and a new section 5 is
3 added to read as follows:

4 § 5. The appropriation and expenditure of any funds after January 1,
5 2022 for any purposes related to services and expenses for any newly
6 constructed athletic facilities related to professional football in
7 Orchard Park, New York shall be subject to a contractual agreement
8 between the Erie County Stadium Corporation and the lessee of such
9 athletic facilities which provides that such lessee commit to the utili-
10 zation and occupation of any newly constructed athletic facilities
11 (prohibition on relocation) for a minimum duration of thirty years; and
12 provided further, in addition to any other penalties, remedies and fees
13 negotiated in such contract and any ancillary documents and agreements
14 associated therewith between the Erie County Stadium Corporation and the
15 lessee, such contract and any ancillary documents and agreements associ-
16 ated therewith shall provide that the lessee of such athletic facili-
17 ties reimburse the state for a portion of such funds consistent with the
18 terms of the prohibition on relocation provisions included in such
19 contract and any ancillary documents and agreements associated there-
20 with.

21 § 3. This act shall take effect immediately.

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

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);

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-

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;

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-

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

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

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.

15

PART AAA

16 Section 1. Subparagraph 4 of paragraph (b) of subdivision 1 of section
17 366 of the social services law, as added by section 1 of part D of chap-
18 ter 56 of the laws of 2013, is amended to read as follows:

19 (4) An individual who is a pregnant woman or is a member of a family
20 that contains a dependent child living with a parent or other caretaker
21 relative is eligible for standard coverage if [his or her] their MAGI
22 household income does not exceed [the MAGI-equivalent of] one hundred
23 [thirty] thirty-three percent of the [highest amount that ordinarily
24 would have been paid to a person without any income or resources under
25 the family assistance program as it existed on the first day of Novem-
26 ber, nineteen hundred ninety-seven] federal poverty line for the appli-
27 cable family size, which shall be calculated in accordance with guidance
28 issued by the

29 Secretary of the United States department of health and human
30 services; for purposes of this subparagraph, the term dependent child
31 means a person who is under eighteen years of age, or is eighteen years
32 of age and a full-time student, who is deprived of parental support or
33 care by reason of the death, continued absence, or physical or mental
34 incapacity of a parent, or by reason of the unemployment of the parent,
35 as defined by the department of health.

36 § 2. Paragraph (g) of subdivision 1 of section 366 of the social
37 services law is amended by adding a new subparagraph 4 to read as
38 follows:

39 (4) (a) Applicants and recipients who are age sixty-five or older, who
40 are otherwise eligible for medical assistance under this section, but
41 for their immigration status, are eligible for medical assistance
42 according to the following:

43 (b) individuals eligible for medical assistance pursuant to subpara-
44 graph (a) of this paragraph shall participate in and receive covered
45 benefits available through a managed care provider under section three
46 hundred sixty-four-j of this article that is certified pursuant to
47 section forty-four hundred three of the public health law; provided,
48 however, to the extent that any covered benefits available through such
49 managed care providers as of January first, two thousand twenty-three
50 are transitioned to fee-for-service coverage, then such individuals
51 shall continue to be entitled to these benefits in the fee-for-service
52 program, rather than through a managed care provider.

53 § 3. Paragraph (a) of subdivision 2 of section 366 of the social
54 services law, as separately amended by chapter 32 and 588 of the laws of