

1 (d) the specimen collection is consistent with an authorized health
2 practitioner's ordered care.

3 § 12. Section 6527 of the education law is amended by adding a new
4 subdivision 11 to read as follows:

5 11. A physician may, in accordance with this subdivision, assign the
6 task of administering tests to determine the presence of SARS-CoV-2 or
7 its antibodies, influenza virus or respiratory syncytial virus, to an
8 individual, provided that:

9 (a) prior to making such assignment the physician shall provide the
10 individual assigned such task with specific instructions for performing
11 the specimen collection and criteria for identifying, reporting and
12 responding to problems or complications;

13 (b) the physician provides training to the individual and personally
14 verifies that the individual can safely and competently perform the
15 tasks assigned;

16 (c) the physician determines that the individual is willing to perform
17 such task; and

18 (d) the specimen collection is consistent with an authorized health
19 practitioner's ordered care.

20 § 13. This act shall take effect immediately and shall be deemed to
21 have been in full force and effect on and after April 1, 2022; provided,
22 however, that sections six, seven and eight of this act shall expire and
23 be deemed repealed two years after it shall have become a law.

24

PART D

25 Section 1. The social services law is amended by adding a new section
26 367-w to read as follows:

27 § 367-w. Health care and mental hygiene worker bonuses. 1. Purpose
28 and intent. New York's essential front line health care and mental
29 hygiene workers have seen us through a once-in-a-century public health
30 crisis and turned our state into a model for battling and beating
31 COVID-19. To attract talented people into the profession at a time of
32 such significant strain while also retaining those who have been working
33 so tirelessly these past two years, we must recognize the efforts of our
34 health care and mental hygiene workforce and reward them financially for
35 their service.

36 To do that, the commissioner of health is hereby directed to seek
37 additional federal spending authority under section 9817 of the American
38 Rescue Plan Act of 2021 to maximize federal financial participation with
39 respect to spending on home and community based services and to seek
40 such other federal approvals as applicable, and, subject to federal
41 financial participation, to support with federal and state funding
42 bonuses to be made available during the state fiscal year of 2023 to
43 recruit, retain, and reward health care and mental hygiene workers.

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

45 (a) "Employee" means certain front line health care and mental hygiene
46 practitioners, technicians, assistants and aides that provide hands on
47 health or care services to individuals, without regard to whether the
48 person works full-time, part-time, on a salaried, hourly, or temporary
49 basis, or as an independent contractor, that received an annualized base
50 salary of one hundred twenty-five thousand dollars or less, to include
51 such titles as determined by the commissioner, in consultation with the
52 commissioner of mental health, the commissioner for people with develop-
53 mental disabilities, the commissioner of addiction services and

1 supports, and the commissioner of children and family services, as
2 applicable, and approved by the director of the budget.

3 (b) "Employer" means a provider enrolled in the medical assistance
4 program under this title that employs at least one employee and that
5 bills for services under the state plan or a home and community based
6 services waiver authorized pursuant to subdivision (c) of section nine-
7 teen hundred fifteen of the federal social security act, or that has a
8 provider agreement to bill for services provided or arranged through a
9 managed care provider under section three hundred sixty-four-j of this
10 title or a managed long term care plan under section forty-four hundred
11 three-f of the public health law, to include:

12 (i) providers and facilities licensed, certified or otherwise author-
13 ized under articles twenty-eight, thirty, thirty-six or forty of the
14 public health law, articles sixteen, thirty-one, thirty-two or thirty-
15 six of the mental hygiene law, article seven of this chapter, fiscal
16 intermediaries under section three hundred sixty-five-f of this title,
17 pharmacies registered under section six thousand eight hundred eight of
18 the education law, school based health centers, a health district as
19 defined in section two of the public health law, or a municipal corpo-
20 ration;

21 (ii) programs funded by the office of mental health, the office of
22 addiction services and supports, or the office for people with develop-
23 mental disabilities; and

24 (iii) other provider types determined by the commissioner and approved
25 by the director of the budget;

26 (iv) provided, however, that unless the provider is subject to a
27 certificate of need process as a condition of state licensure or
28 approval, such provider shall not be an employer under this section
29 unless at least twenty percent of the provider's patients or persons
30 served are eligible for services under this title and title XIX of the
31 federal social security act.

32 (c) Notwithstanding the definition of employer in paragraph (b) of
33 this subdivision, and without regard to the availability of federal
34 financial participation, "employer" shall also include an institution of
35 higher education, a public or nonpublic school, a charter school, an
36 approved preschool program for students with disabilities, a school
37 district or boards of cooperative educational services, programs funded
38 by the office of mental health, programs funded by the office of
39 addiction services and supports, programs funded by the office for
40 people with developmental disabilities, programs funded by the office
41 for the aging, a health district as defined in section two of the public
42 health law, or a municipal corporation, where such program or entity
43 employs at least one employee. Such employers shall be required to
44 enroll in the system designated by the commissioner, or relevant agency
45 commissioners, in consultation with the director of the budget, for the
46 purpose of claiming bonus payments under this section. Such system or
47 process for claiming bonus payments may be different from the system and
48 process used under subdivision three of this section.

49 (d) "Vesting period" shall mean a series of six-month periods between
50 the dates of October first, two thousand twenty-one and March thirty-
51 first, two thousand twenty-four for which employees that are continuous-
52 ly employed by an employer during such six-month periods, in accordance
53 with a schedule issued by the commissioner or relevant agency commis-
54 sioner as applicable, may become eligible for a bonus pursuant to subdi-
55 vision four of this section.

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

4 (f) "Municipal corporation" means a county outside the city of New
5 York, a city, including the city of New York, a town, a village, or a
6 school district.

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

15 (b) Using the forms and processes developed by the commissioner under
16 this subdivision, employers shall, for a period of time specified by the
17 commissioner:

18 (i) track the number of hours that employees work during the vesting
19 period and, as applicable, the number of patients served by the employer
20 who are eligible for services under this title; and

21 (ii) submit claims for reimbursement of employee bonus payments. In
22 filling out the information required to submit such claims, employers
23 shall use information obtained from tracking required pursuant to para-
24 graph (a) of this subdivision and provide such other information as may
25 be prescribed by the commissioner. In determining an employee's annual-
26 ized base salary, the employer shall use information based on payroll
27 records.

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

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

41 4. Payment of worker bonuses. (a) Upon issuance of a vesting schedule
42 by the commissioner, or relevant agency commissioner as applicable,
43 employers shall be required to pay bonuses to employees pursuant to such
44 schedule based on the number of hours worked during the vesting period.
45 The schedule shall provide for total payments not to exceed three thou-
46 sand dollars per employee in accordance with the following:

47 (i) employees who have worked an average of at least twenty but less
48 than thirty hours per week over the course of a vesting period would
49 receive a five hundred dollar bonus for the vesting period;

50 (ii) employees who have worked an average of at least thirty but less
51 than thirty-five hours per week over the course of a vesting period
52 would receive a one thousand dollar bonus for such vesting period;

53 (iii) employees who have worked an average of at least thirty-five
54 hours per week over the course of a vesting period would receive a one
55 thousand five hundred dollar bonus for such vesting period.

1 (iv) full-time employees who are exempt from overtime compensation as
2 established in the labor commissioner's minimum wage orders or otherwise
3 provided by New York state law or regulation over the course of a vest-
4 ing period would receive a one thousand five hundred dollar bonus for
5 such vesting period.

6 (b) Notwithstanding paragraph (a) of this subdivision, the commissioner
7 may through regulation specify an alternative number of vesting peri-
8 ods, provided that total payments do not exceed three thousand dollars
9 per employee.

10 (c) Employees shall be eligible for bonuses for no more than two vest-
11 ing periods per employer, in an amount equal to but not greater than
12 three thousand dollars per employee across all employers.

13 (d) Upon completion of a vesting period with an employer, an employee
14 shall be entitled to receive the bonus and the employer shall be
15 required to pay the bonus no later than the date specified under this
16 subdivision, provided however that prior to such date the employee does
17 not terminate, through action or inaction, the employment relationship
18 with the employer, in accordance with any employment agreement, includ-
19 ing a collectively bargained agreement, if any, between the employee and
20 employer.

21 (e) Any bonus due and payable to an employee under this section shall
22 be made by the employer no later than thirty days after the bonus is
23 paid to the employer.

24 (f) an employer shall be required to submit a claim for a bonus to the
25 department no later than thirty days after an employee's eligibility for
26 a bonus vests, in accordance with and upon issuance of the schedule
27 issued by the commissioner or relevant agency commissioner.

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

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

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

44 5. Audits, investigations and reviews. (a) The Medicaid inspector
45 general shall, in coordination with the commissioner, conduct audits,
46 investigations and reviews of employers required to submit claims under
47 this section. Such claims, inappropriately paid, under this section
48 shall constitute overpayments as that term is defined under the regu-
49 lations governing the medical assistance program. The Medicaid inspector
50 general may recover such overpayments to employers as it would an over-
51 payment under the medical assistance program, impose sanctions up to and
52 including exclusion from the medical assistance program, impose penal-
53 ties, and take any other action authorized by law where:

54 (i) an employer claims a bonus not due to an employee or a bonus
55 amount in excess of the correct bonus amount due to an employee;

1 (ii) an employer claims, receives and fails to pay any part of the
 2 bonus due to a designated employee;

3 (iii) an employer fails to claim a bonus due to an employee.

4 (b) Any employer identified in paragraph (a) of this subdivision who
 5 fails to identify, claim and pay any bonus for more than ten percent of
 6 its employees eligible for the bonus shall also be subject to additional
 7 penalties under subdivision four of section one hundred forty-five-b of
 8 this article.

9 (c) Any employer who fails to pay any part of the bonus payment to a
 10 designated employee shall remain liable to pay such bonus to that
 11 employee, regardless of any recovery, sanction or penalty the Medicaid
 12 inspector general may impose.

13 (d) In all instances recovery of inappropriate bonus payments shall be
 14 recovered from the employer. The employer shall not have the right to
 15 recover any inappropriately paid bonus from the employee.

16 (e) Where the Medicaid inspector general sanctions an employer for
 17 violations under this section, they may also sanction any affiliates as
 18 defined under the regulations governing the medical assistance program.

19 6. Rules and regulations. The commissioner, in consultation with the
 20 Medicaid inspector general as it relates to subdivision five of this
 21 section, may promulgate rules, to implement this section pursuant to
 22 emergency regulation; provided, however, that this provision shall not
 23 be construed as requiring the commissioner to issue regulations to
 24 implement this section.

25 § 2. Subparagraphs (iv) and (v) of paragraph (a) of subdivision 4 of
 26 section 145-b of the social services law, as amended by section 1 of
 27 part QQ of chapter 56 of the laws of 2020, are amended to read as
 28 follows:

29 (iv) such person arranges or contracts, by employment, agreement, or
 30 otherwise, with an individual or entity that the person knows or should
 31 know is suspended or excluded from the medical assistance program at the
 32 time such arrangement or contract regarding activities related to the
 33 medical assistance program is made~~[-]~~;

34 (v) such person has an obligation to identify, claim, and pay a bonus
 35 under subdivision three of section three hundred sixty-seven-w of this
 36 article and such person failed to identify, claim and pay such bonus.

37 (vi) For purposes of this paragraph, "person" as used in subparagraph
 38 (i) of this paragraph does not include recipients of the medical assist-
 39 ance program; and "person" as used in subparagraphs (ii) ~~[-]~~, (iii) and
 40 (iv) of this paragraph, is as defined in paragraph (e) of subdivision
 41 ~~[(6)]~~ six of section three hundred sixty-three-d of this ~~chapter~~ arti-
 42 cle; and "person" as used in subparagraph (v) of this paragraph includes
 43 employers as defined in section three hundred sixty-seven-w of this
 44 article.

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

48 (iii) For subparagraph (v) of paragraph (a) of this subdivision, a
 49 monetary penalty shall be imposed for conduct described in subparagraphs
 50 (i), (ii) and (iii) of paragraph (a) of subdivision five of section
 51 three hundred sixty-seven-w of this article and shall not exceed one
 52 thousand dollars per failure to identify, claim and pay a bonus for each
 53 employee.

54 § 4. Health care and mental hygiene worker bonuses for state employ-
 55 ees. 1. An employee who is employed by a state operated facility, an
 56 institutional or direct-care setting operated by the executive branch of

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1 the State of New York or a public hospital operated by the state univer-
2 sity of New York and who is deemed substantially equivalent to the defi-
3 nition of employee pursuant to paragraph (a) of subdivision 2 of section
4 367-w of the social services law as determined by the commissioner of
5 health, in consultation with the chancellor of the state university of
6 New York, the commissioner of the department of civil service, the
7 director of the office of employee relations, and the commissioners of
8 other state agencies, as applicable, and approved by the director of the
9 budget, shall be eligible for the health care and mental hygiene worker
10 bonus. Notwithstanding the definition of base salary pursuant to para-
11 graph (d) of subdivision 2 of section 367-w, such bonus shall only be
12 paid to employees that receive an annualized base salary of one hundred
13 twenty-five thousand dollars or less.

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

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

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

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

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

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

42 § 7. This act shall take effect immediately.

43

PART E

44 Section 1. Subdivision 1 of section 605 of the public health law, as
45 amended by section 20 of part E of chapter 56 of the laws of 2013, is
46 amended to read as follows:

47 1. A state aid base grant shall be reimbursed to municipalities for
48 the core public health services identified in section six hundred two of
49 this title, in an amount of the greater of [~~sixty-five~~] one dollar and
50 thirty cents per capita, [~~for each person in the municipality,~~] or [~~six~~
51 ~~hundred fifty thousand dollars~~] seven hundred fifty thousand dollars,
52 provided that the municipality expends at least [~~six hundred fifty thou-~~
53 ~~sand dollars~~] seven hundred fifty thousand dollars, for such core public
54 health services. A municipality must provide all the core public health