

STATE OF NEW YORK

4995

2017-2018 Regular Sessions

IN SENATE

March 3, 2017

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the social services law, in relation to fiscal intermediary certification under the consumer directed personal assistance program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 365-f of the social services law is amended by
2 adding two new subdivisions 4-a and 4-b to read as follows:

3 4-a. Fiscal intermediary services. (a) For the purposes of this
4 section:

5 (i) "Fiscal intermediary" means an entity that provides fiscal inter-
6 mediary services and has a contract for providing such services with:

7 (A) a local department of social services;

8 (B) an organization licensed under article forty-four of the public
9 health law; or

10 (C) an accountable care organization certified under article twenty-
11 nine-E of the public health law or an integrated delivery system
12 composed primarily of health care providers recognized by the department
13 as a performing provider system under the delivery system reform incen-
14 tive payment program.

15 (ii) Fiscal intermediary services shall include the following
16 services, performed on behalf of the consumer to facilitate his or her
17 role as the employer:

18 (A) wage and benefit processing for consumer directed personal assist-
19 ants;

20 (B) processing all income tax and other required wage withholdings;

21 (C) complying with workers' compensation, disability and unemployment
22 requirements;

23 (D) maintaining personnel records for each consumer directed personal
24 assistant, including time sheets and other documentation needed for

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

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1 wages and benefit processing and a copy of the medical documentation
2 required pursuant to regulations established by the commissioner;

3 (E) ensuring that the health status of each consumer directed personal
4 assistant is assessed prior to service delivery pursuant to regulations
5 issued by the commissioner;

6 (F) maintaining records of authorizations or reauthorizations of
7 services;

8 (G) monitoring the consumer's or, if applicable, the designated repre-
9 sentative's continuing ability to fulfill the consumer's responsibil-
10 ities under the program and promptly notifying the authorizing entity of
11 any circumstance that may affect the consumer's or, if applicable, the
12 designated representative's ability to fulfill such responsibilities;

13 (H) complying with regulations established by the commissioner speci-
14 fying the responsibilities of providers providing services under this
15 title; and

16 (I) entering into a department approved memorandum of understanding
17 with the consumer that describes the parties' responsibilities under
18 this program.

19 (iii) Fiscal intermediaries are not responsible for, and fiscal inter-
20 mediary services shall not include, fulfillment of the responsibilities
21 of the consumer or, if applicable, the consumer's designated represen-
22 tative as established by the commissioner. A fiscal intermediary's
23 responsibilities shall not include, and a fiscal intermediary shall not
24 engage in: managing the plan of care including recruiting and hiring a
25 sufficient number of individuals who meet the definition of consumer
26 directed personal assistant, as such term is defined by the commission-
27 er, to provide authorized services that are included on the consumer's
28 plan of care; training, supervising and scheduling each consumer
29 directed personal assistant; terminating the consumer directed personal
30 assistant's employment; or assuring that each consumer directed personal
31 assistant competently and safely performs the personal care services,
32 home health aide services and skilled nursing tasks that are included on
33 the consumer's plan of care. A fiscal intermediary shall exercise
34 reasonable care in properly carrying out its responsibilities under the
35 program.

36 (b) No entity shall provide, directly or through contract, fiscal
37 intermediary services without a certification as a fiscal intermediary
38 issued by the commissioner in accordance with this subdivision.

39 (c) An application for certification as a fiscal intermediary shall be
40 filed with the commissioner, together with such other forms and informa-
41 tion as shall be prescribed by, or acceptable to the commissioner. Such
42 information shall include, but not be limited to:

43 (i) the name, employer identification number, and Medicaid provider
44 identification number of the organization, including any subsidiary
45 corporations, if applicable, and any name under which the entity does
46 business;

47 (ii) all addresses at which the organization operates;

48 (iii) the names, titles and contact information of all officers and
49 directors in a not-for-profit company or business, or managers in a
50 limited liability company, as well as the name and employment history of
51 the individual ultimately accountable for operation of the fiscal inter-
52 mediary; and for a not-for-profit entity, the number of director posi-
53 tions set by the company's by-laws, and how many are currently filled;

54 (iv) a history of the organization, along with an overview of the
55 organization and all services it offers, including any relationships
56 with outside agencies that may influence in any way the ability of the

1 organization to provide fiscal intermediary services consistent with the
2 manner described in its application;

3 (v) all policies and procedures of the fiscal intermediary, including
4 any contracts or other documents used in communications with consumers;

5 (vi) plans to solicit and consider input from the fiscal interme-
6 diary's consumers, staff, personal assistants and other interested
7 parties which may be charged with roles including, but not limited to,
8 quality assurance review, referral, program monitoring or development or
9 establishing and responding to community needs; such input may be in the
10 form of a board of directors, committee, survey, or other mechanism,
11 provided that the majority of input obtained as part of this process
12 must be from individual consumers and consumer advocates of the fiscal
13 intermediary;

14 (vii) the organization's plan to address the needs of consumers and
15 their personal assistants in a timely manner, regardless of where they
16 live, including, but not limited to, input from consumers, obtaining
17 physicals and other health information from personal assistants, obtain-
18 ing time records for payroll, and timely processing of payroll; and

19 (viii) a written sworn statement by an officer of the entity disclos-
20 ing any pending litigation, unsatisfied judgments or penalties,
21 convictions for fraud or sanctions imposed by government authorities.

22 (d) The entity shall reasonably promptly notify the department of any
23 change in the information submitted to the department for certification
24 under this subdivision.

25 (e) The commissioner shall not approve an application for certifi-
26 cation unless he or she is satisfied as to the character, competence
27 and standing in the community of the applicant's incorporators, direc-
28 tors, sponsors, stockholders or operators and finds that the personnel,
29 rules, consumer contracts or agreements, and fiscal intermediary
30 services are fit and adequate, and that the fiscal intermediary services
31 will be provided in the manner required by this subdivision and the
32 rules and regulations hereunder, in a manner determined by the commis-
33 sioner.

34 (f) The commissioner may contract with an entity with appropriate
35 knowledge, expertise and experience possessing extensive knowledge of
36 consumer directed personal assistance fiscal intermediary services and
37 which has a history of providing similar services in relation to a self-
38 directed program to develop and to assist the commissioner in evaluating
39 applicants for certifications or readiness reviews to be a fiscal inter-
40 mediary.

41 (g) Neither public need, tax status nor profit-making status shall be
42 a criterion for certification under this subdivision. Status as a
43 licensed home care services agency or other health provider shall not
44 positively or negatively affect an application for certification under
45 this subdivision. An organization authorized pursuant to article
46 forty-four of the public health law shall not be a fiscal intermediary.

47 (h) A certification under this subdivision shall last for a period of
48 five years. Upon application for a renewal, the fiscal intermediary
49 shall submit up to date information to the commissioner.

50 (i) The commissioner shall charge applicants for the certification an
51 application fee of one thousand dollars.

52 4-b. Proceedings involving the certification of a fiscal intermediary.

53 (a) A certification of a fiscal intermediary may be revoked, suspended,
54 limited or annulled by the commissioner on proof that it has failed to
55 comply with the provisions of this subdivision or regulations promulgat-
56 ed hereunder.

1 (b) No such certification shall be revoked, suspended, limited,
2 annulled or denied without a hearing. However, a certification may be
3 temporarily suspended or limited without a hearing for a period not in
4 excess of thirty days upon written notice to the fiscal intermediary
5 following a finding by the department that the public health or safety
6 is in imminent danger. Such period may be renewed upon written notice
7 and a continued finding under this paragraph.

8 (c) The commissioner shall fix a time and place for the hearing. A
9 copy of the charges, together with the notice of the time and place of
10 the hearing, shall be served in person or mailed by registered or certi-
11 fied mail to the fiscal intermediary at least twenty-one days before the
12 date fixed for the hearing. The fiscal intermediary shall file with the
13 department not less than eight days prior to the hearing, a written
14 answer to the charges.

15 (d) All orders or determinations under this subdivision shall be
16 subject to review as provided in article seventy-eight of the civil
17 practice law and rules.

18 § 2. This act shall take effect on the first of January after it shall
19 have become a law; provided that prior to that date, the commissioner of
20 health shall make regulations and take other actions reasonably neces-
21 sary to implement this act on that date; and provided further that any
22 entity operating as a fiscal intermediary prior to this act becoming a
23 law may continue to do so for one year after this act takes effect, and
24 may continue to do so after that time only upon obtaining certification
25 under this act.