# STATE OF NEW YORK

5281

2023-2024 Regular Sessions

# IN ASSEMBLY

March 7, 2023

Introduced by M. of A. SAYEGH -- read once and referred to the Committee on Health

AN ACT to amend the social services law, in relation to certain authorizations to fiscal intermediaries

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

Section 1. Paragraph (b) of subdivision 4-a of section 365-f of the social services law, as amended by section 4 of part G of chapter 57 of the laws of 2019, subparagraph (vi) as amended by section 1 of part LL of chapter 57 of the laws of 2021, is amended to read as follows:

(b) [~~Notwithstanding any inconsistent provision of section one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law the commissioner shall enter into contracts under this subdivision with eligible contractors that submit an offer for a contract, provided, however, that:~~

~~(i) the department shall post on its website:~~

~~(A) a description of the proposed services to be provided pursuant to contracts in accordance with this subdivision;~~

~~(B) that the selection of contractors shall be based on criteria reasonably related to the contractors' ability to provide fiscal intermediary services including but not limited to: ability to appropriately serve individuals participating in the program, geographic distribution that would ensure access in rural and underserved areas, demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce, ability to provide timely consumer assistance, experience serving individuals with disabilities, the availability of consumer peer support, and demonstrated compliance with all applicable federal and state laws and regulations, including but not limited to those relating to wages and labor;~~

~~(C) the manner by which prospective contractors may seek such selection, which may include submission by electronic means;~~

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

LBD09732-01-3

~~(ii) all reasonable and responsive offers that are received from prospective contractors in timely fashion shall be reviewed by the commissioner;~~

~~(iii) the commissioner shall award such contracts to the contractors that best meet the criteria for selection and are best suited to serve the purposes of this section and the needs of consumers;~~

~~(iv) all entities providing fiscal intermediary services on or before April first, two thousand nineteen, shall submit an offer for a contract under this section within sixty days after the commissioner publishes the initial offer on the department's website. Such entities shall be deemed authorized to provide such services unless: (A) the entity fails to submit an offer for a contract under this section within the sixty days; or (B) the entity's offer for a contract under this section is denied;~~

~~(v) all decisions made and approaches taken pursuant to this paragraph shall be documented in a procurement record as defined in section one hundred sixty-three of the state finance law; and~~

~~(vi) the commissioner is authorized to either reoffer contracts or utilize the previous offer, to ensure that all provisions of this section are met.~~] **The commissioner shall provide authorizations under this subdivision to all fiscal intermediaries that timely submit a request for authorization prior to January first, two thousand twenty-four, and meet the requirements of this section. No entity shall provide, directly or through contract, fiscal intermediary services without having received an authorization as a fiscal intermediary issued by the commissioner in accordance with this subdivision, or that has a pending auithorization timely submitted and currently in processing, review, appeal, or legal challenge.**

**(i) An application for authorization as a fiscal intermediary shall be filed with the commissioner, together with such other forms and information as shall be prescribed by, or acceptable to the commissioner. Such information shall consist of the following:**

**(A) the name and employer identification number, of the entity, including any subsidiary corporations, if applicable, and any name under which the entity does business;**

**(B) all addresses at which the organization operates;**

**(C) the names, titles and contact information of all officers and directors in a not-for-profit company or business, or managers in a limited liability company, as well as the name and employment history of the individual ultimately accountable for operation of the fiscal intermediary; and for a not-for-profit entity, the number of director positions set by the company's by-laws, and how many are currently filled;**

**(D) a history of the organization, along with an overview of the organization and all services it offers, including any relationships with outside agencies that may influence in any way the ability of the organization to provide fiscal intermediary services consistent with the manner described in its application;**

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

**(F) plans to solicit and consider input from the fiscal intermediary's consumers, staff, personal assistants and other interested parties which may be charged with roles including, but not limited to, quality assurance review, referral, program monitoring or development or establishing and responding to community needs; such input may be in the form of a board of directors, committee, survey, or other mechanism, provided that**

the majority of input obtained as part of this process must be from individual consumers and consumer advocates of the fiscal intermediary;

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

(H) a written sworn statement by an officer of the entity disclosing any pending litigation, unsatisfied judgments or penalties, convictions for fraud or sanctions imposed by government authorities.

(ii) The entity shall reasonably promptly notify the department of any change in the information submitted to the department for authorization under this subdivision.

(iii) The commissioner shall not withhold approval of any application for authorization that demonstrates the fiscal intermediary's ability to provide fiscal intermediary services, in accordance with the manner required by this subdivision and the rules and regulations hereunder. All such applications shall be approved by the commissioner.

(iv) If the commissioner denies an application for authorization, he or she shall include a narrative explanation of the reason or reasons for its denial and provide the fiscal intermediary with sixty days to submit additional information for reconsideration by the commissioner.

(v) The commissioner shall consider and evaluate any response received by the fiscal intermediary before reaching a final determination, which likewise shall be accompanied by a narrative explanation, if the application is still denied.

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

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2023.