

STATE OF NEW YORK

7800

2023-2024 Regular Sessions

IN SENATE

December 11, 2023

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

AN ACT to amend the public health law, the social services law, the elder law and the mental hygiene law, in relation to long term care options; and to repeal certain provisions of the public health law relating to managed long term care

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

1 Section 1. Legislative intent. The state, as part of an ambitious
2 effort to move all Medicaid recipients to some form of managed care,
3 moved those in need of home and community-based long term care services
4 for over a one hundred twenty day period into managed long term care
5 plans on a mandatory basis over ten years ago. The original intent of
6 the MLTC program was that the managed long term care plans would develop
7 into fully capitated plans over time. This has not happened.

8 Therefore, it is the intent of the legislature to repeal the partially
9 capitated managed long term care program and instead, provide appropriate
10 home and community-based long term care benefits under a fee-for-
11 service arrangement. Fully capitated programs such as the PACE program
12 shall continue to be an option. This transition shall not be implemented
13 until the commissioner of health is satisfied that all necessary and
14 appropriate transition planning has occurred, and federal approvals have
15 been obtained.

16 § 2. Section 4403-f of the public health law is REPEALED and a new
17 section 4403-f is added to read as follows:

18 **§ 4403-f. Long term care options. 1. The following words or phrases,**
19 **as used in this section, shall have the following meanings:**

20 (b) **"Program of all-inclusive care of the elderly" or "PACE" means a**
21 **fully capitated federally recognized model of comprehensive care for**
22 **persons fifty-five years of age or older that are eligible for medicaid**
23 **and may also be eligible for Medicare, qualifying for nursing home**

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

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1 levels of care who wish to remain in their community (see, Sections 1894
2 and 1934 to Title XVIII of the Social Security Act; 42 CFR 460), which
3 are licensed to operate under article twenty-nine-ee of this chapter.

4 (b) "Medicaid advantage plus program" or "MAP" means a fully capitated
5 state developed model of comprehensive care for persons eighteen years
6 of age or older that are eligible for Medicaid and also eligible for
7 medicare, qualifying for nursing home levels of care.

8 (c) "Care coordination entity" means an entity that has obtained
9 approval from the commissioner based on guidelines established by the
10 department to promote continuity of care and coordination of services
11 for all enrollees. The entity may be organized as a health home
12 specially certified by the commissioner to serve home and community-
13 based services eligible recipients, but this shall not preclude other
14 organizational structures as determined by the commissioner.

15 2. The commissioner shall submit the appropriate waivers, including
16 but not limited to those authorized pursuant to sections eleven hundred
17 fifteen and nineteen hundred fifteen of the federal social security act
18 or successor provisions, and any other waivers necessary to require on
19 or after April first, two thousand twenty-six, medical assistance recip-
20 ients who are eighteen years of age or older and who require long term
21 care services, as specified by the commissioner, for a continuous period
22 of more than one hundred twenty days, to receive such services through
23 an available fully integrated plan including a PACE or MAP plan, or
24 through a fee-for-service based model with services coordinated by a
25 care coordination entity. The commissioner shall establish guidelines on
26 the establishment and operation of care coordination entities. Such
27 guidelines shall address the payment methods that ensure provider
28 accountability for cost effective quality outcomes. Copies of such waiv-
29 er applications and amendments thereto shall be provided to the chairs
30 of the senate finance committee, the assembly ways and means committee
31 and the senate and assembly health committees before their submission to
32 the federal government.

33 3. Persons that are determined eligible to receive long term care
34 services through PACE or MAP, or through a fee-for-service based model
35 with services coordinated by a care coordination entity established
36 pursuant to subdivision two of this section shall have at least thirty
37 days to select a PACE or MAP provider, or care coordination entity and
38 shall be provided with information to make an informed choice. Where a
39 participant has not selected such a provider or care coordination enti-
40 ty, the commissioner shall assign such participant to a care coordi-
41 nation entity taking into account consistency with any prior community-
42 based direct care workers having recently served the recipient, quality
43 performance criteria, capacity and geographic accessibility.

44 § 3. Subdivision 2 of section 365-a of the social services law is
45 amended by adding two new paragraphs (mm) and (nn) to read as follows:

46 (mm) The department shall promulgate regulations for all Medicaid
47 enrollees receiving services through a fee-for-service model pursuant to
48 section forty-four hundred three-f of the public health law that include
49 the establishment and operation of care coordination entities to promote
50 continuity of care and coordination of services to ensure that each
51 enrollee has an ongoing source of care appropriate to their needs as
52 required by 42 CFR § 438.208. The regulations shall include conflict-
53 free case management protections to ensure that assessment and coordi-
54 nation of services are separate from the delivery of those services. In
55 selecting providers of case management services, the department shall

1 prioritize providers with proven experience serving populations receiving
2 home and personal care services.

3 (nn) The department shall conduct an evaluation of the viability of
4 utilizing care coordination entities operating pursuant to this section
5 for assessments or reassessments required for determining an individ-
6 ual's needs for services that are controlled by the independent assessor
7 established pursuant to subdivision ten of section three hundred sixty-
8 five-a of this title.

9 § 4. Stakeholder engagement. 1. The commissioner of health shall
10 convene an advisory group composed of stakeholder representatives which
11 shall seek input from representatives of home and community-based long
12 term care services providers, including representative associations,
13 recipients, the department of health, local social services districts,
14 and the direct care workforce, among others, to:

15 (a) further evaluate and promote the transition of persons in receipt
16 of home and community-based long term care services into fee-for-service
17 arrangements, where appropriate, and to develop guidelines for such
18 care; and

19 (b) determine a process to transition providers, including but not
20 limited to licensed home care services agencies, certified home health
21 agencies, and fiscal intermediaries, to a fee-for-service reimbursement
22 system.

23 2. In implementing the transition to a fee-for-service model the
24 commissioner of health, in consultation with the advisory group, shall,
25 to the extent practicable, consider and select programs and policies
26 that seek to maximize continuity of care and minimize disruption to the
27 provider labor workforce, and shall continue to support providers,
28 licensed home care services agencies, and fiscal intermediaries that are
29 based on a commitment to quality and value; provided that nothing in
30 this subdivision shall supersede or invalidate any contracts or awards
31 provided to fiscal intermediaries pursuant to subdivision 4-a of section
32 365-f of the social services law, provided that the provisions of subdivi-
33 sion 4-b of section 365-f of the social services law shall still
34 apply, or contracts or awards provided to licensed home care services
35 agencies pursuant to section 3605-c of the public health law.

36 3. The commissioner of health shall report biannually on the implemen-
37 tation of this section. The reports shall include, but not be limited
38 to: (a) satisfaction of enrollees with care coordination/case management
39 and timeliness of care; (b) service utilization data including changes
40 in the level, hours, frequency, and types of services and providers; (c)
41 enrollment data; (d) quality data; and (e) continuity of care for
42 participants as they move out of managed long term care and into the
43 fee-for-service model. The commissioner shall publish the report on the
44 department's website and provide notice to the temporary president of
45 the senate, the speaker of the assembly, the chair of the senate stand-
46 ing committee on health and the chair of the assembly health committee.

47 4. The commissioner of health shall seek input from representatives of
48 home and community-based long term care services providers, recipients,
49 and the Medicaid managed care advisory review panel, among others, to
50 assist in the development of guidelines for the establishment and opera-
51 tion of care coordination entities pursuant to section 4403-f of the
52 public health law. The guidelines shall be finalized and posted on the
53 department of health's website no later than November first, two thou-
54 sand twenty-five.

1 § 5. Paragraph (o) of subdivision 2 of section 365-a of the social
2 services law, as added by chapter 659 of the laws of 1997, is amended to
3 read as follows:

4 (o) care and services furnished by a [managed long term care plan or
5 approved managed long term care demonstration pursuant to the provisions
6 of] PACE or MAP plan as such terms are defined by section forty-four
7 hundred three-f of the public health law to eligible individuals [~~resid-~~
8 ~~ing in the geographic area~~] served by such entity, when such services
9 are furnished in accordance with an agreement with the department of
10 health and meet the applicable requirements of federal law and regu-
11 lation.

12 § 6. Subparagraph (iii) of paragraph (e) of subdivision 2 of section
13 365-a of the social services law, as amended by section 36-a of part B
14 of chapter 57 of the laws of 2015, is amended to read as follows:

15 (iii) the commissioner shall provide assistance to persons receiving
16 services under this paragraph who are transitioning to receiving care
17 from a [managed long term care plan certified pursuant to] PACE or MAP
18 plan as such terms are defined by section forty-four hundred thirty-one of section
19 the public health law, consistent with subdivision thirty-one of section
20 three hundred sixty-four-j of this title;

21 § 7. Subdivision 10 of section 365-a of the social services law, as
22 amended by section 1 of part QQ of chapter 57 of the laws of 2022, is
23 amended to read as follows:

24 10. The department of health shall establish or procure the services
25 of an independent assessor or assessors no later than October 1, 2022,
26 in a manner and schedule as determined by the commissioner of health, to
27 take over from local departments of social services[~~7~~] and Medicaid
28 Managed Care providers, [~~and Medicaid managed long term care plans29 including a MAP plan, or a PACE plan if the PACE plan elects to utilize
30 the independent assessor as such terms are defined by section forty-four
31 hundred three-f of the public health law, the performance of assessments
32 and reassessments required for determining individuals' needs for
33 personal care services, including as provided through the consumer
34 directed personal assistance program, and other services or programs
35 available pursuant to the state's medical assistance program as deter-
36 mined by such commissioner for the purpose of improving efficiency,
37 quality, and reliability in assessment [~~and to determine individuals'~~
38 ~~eligibility for Medicaid managed long term care plans~~]. Notwithstanding
39 the provisions of section one hundred sixty-three of the state finance
40 law, or sections one hundred forty-two and one hundred forty-three of
41 the economic development law, or any contrary provision of law,
42 contracts may be entered or the commissioner may amend and extend the
43 terms of a contract awarded prior to the effective date and entered into
44 to conduct enrollment broker and conflict-free evaluation services for
45 the Medicaid program, if such contract or contract amendment is for the
46 purpose of procuring such assessment services from an independent asses-
47 sor. Contracts entered into, amended, or extended pursuant to this
48 subdivision shall not remain in force beyond September 30, 2025.~~

49 § 8. Paragraph (d) of subdivision 1 and paragraph (h) of subdivision 3
50 of section 218 of the elder law, as amended by section 1 of chapter 259
51 of the laws of 2018, are amended to read as follows:

52 (d) "Long-term care facilities" shall mean residential health care
53 facilities as defined in subdivision three of section twenty-eight
54 hundred one of the public health law; adult care facilities as defined
55 in subdivision twenty-one of section two of the social services law,
56 including those adult homes and enriched housing programs licensed as

1 assisted living residences, pursuant to article forty-six-B of the
2 public health law; or any facilities which hold themselves out or adver-
3 tise themselves as providing assisted living services and which are
4 required to be licensed or certified under the social services law or
5 the public health law. Within the amounts appropriated therefor, "long-
6 term care facilities" shall also mean [managed long-term care plans and
7 approved managed long-term care or operating demonstrations] a PACE or
8 MAP plan as such terms are defined in section forty-four hundred three-f
9 of the public health law and the term "resident", "residents", "patient"
10 and "patients" shall also include enrollees of such plans.

11 (h) Within the amounts appropriated therefor, the state long-term care
12 ombudsman program shall include services specifically designed to serve
13 persons enrolled in [managed long-term care plans or approved managed
14 long-term care or operating demonstrations authorized under] a PACE or
15 MAP plan as such terms are defined by section forty-four hundred three-f
16 of the public health law, and shall also review and respond to
17 complaints relating to marketing practices by such plans and demon-
18 strations.

19 § 9. Subdivisions (a), (c), (d), (f), the opening paragraph of subdivi-
20 sion (g) and subdivision (h) of section 13.40 of the mental hygiene
21 law, subdivisions (a), (d), (f) and the opening paragraph of subdivision
22 (g) as added by section 72-b of part A of chapter 56 of the laws of
23 2013, subdivision (c) as amended by section 17 of part Z of chapter 57
24 of the laws of 2018, and subdivision (h) as added by section 1 of part D
25 of chapter 58 of the laws of 2014, are amended to read as follows:

26 (a) The commissioner and the commissioner of health shall jointly
27 establish a people first waiver program for purposes of developing a
28 care coordination model that integrates various long-term habilitation
29 supports and/or health care. The people first waiver program shall
30 include the use of developmental disability individual support and care
31 coordination organizations, herein referred to as DISCOs, pursuant to
32 section forty-four hundred three-g of the public health law, health
33 maintenance organizations, herein referred to as HMOs, providing
34 services under subdivision eight of section forty-four hundred three of
35 the public health law, and [managed] long term care [plans, herein
36 referred to as MLTCs] options, providing or coordinating services under
37 [subdivisions twelve, thirteen and fourteen of] section forty-four
38 hundred three-f of the public health law. Services shall be provided as
39 described in section forty-four hundred three-g of the public health
40 law, subdivision eight of section forty-four hundred three of the public
41 health law, and [subdivisions twelve, thirteen and fourteen of] section
42 forty-four hundred three-f of the public health law.

43 (c) No person with a developmental disability who is receiving or
44 applying for medical assistance and who is receiving, or eligible to
45 receive, services operated, funded, certified, authorized or approved by
46 the office, shall be required to enroll in a DISCO, HMO or [MLTC] long
47 term care option in order to receive such services until program
48 features and reimbursement rates are approved by the commissioner and
49 the commissioner of health, and until such commissioners determine that
50 a sufficient number of plans that are authorized to coordinate care for
51 individuals pursuant to this section or that are authorized to operate
52 and to exclusively enroll persons with developmental disabilities pursu-
53 ant to subdivision twenty-seven of section three hundred sixty-four-j of
54 the social services law are operating in such person's county of resi-
55 dence to meet the needs of persons with developmental disabilities, and
56 that such entities meet the standards of this section. No person shall

1 be required to enroll in a DISCO, HMO or [MLTC] long term care option in
2 order to receive services operated, funded, certified, authorized or
3 approved by the office until there are at least two entities operating
4 under this section in such person's county of residence, unless federal
5 approval is secured to require enrollment when there are less than two
6 such entities operating in such county. Notwithstanding the foregoing or
7 any other law to the contrary, any health care provider: (i) enrolled in
8 the Medicaid program and (ii) rendering hospital services, as such term
9 is defined in section twenty-eight hundred one of the public health law,
10 to an individual with a developmental disability who is enrolled in a
11 DISCO, HMO or [MLTC] long term care option, or a prepaid health services
12 plan operating pursuant to section forty-four hundred three-a of the
13 public health law, including, but not limited to, an individual who is
14 enrolled in a plan authorized by section three hundred sixty-four-j [or]
15 of the social services law, shall accept as full reimbursement the nego-
16 tiated rate or, in the event that there is no negotiated rate, the rate
17 of payment that the applicable government agency would otherwise pay for
18 such rendered hospital services.

19 (d) DISCOs, HMOs and [MLTCs] long term care options operating under
20 this section shall ensure, to the greatest extent practicable, that
21 their assessment, services, and the grievance and appeals processes are
22 culturally and linguistically competent.

23 (f) There shall be a joint advisory council chaired by the commission-
24 er and the commissioner of health that shall be charged with advising
25 both commissioners in regard to the oversight of DISCOs, HMOs providing
26 services under subdivision eight of section forty-four hundred three of
27 the public health law, and [MLTCs] long term care options providing
28 services under [subdivisions twelve, thirteen and fourteen of] section
29 forty-four hundred three-f of the public health law. The joint advisory
30 council may be comprised of the members of existing advisory councils or
31 similar entities serving the office, provided that it shall be comprised
32 of twelve members, including individuals with developmental disabili-
33 ties, family members of, advocates for, and providers of services to
34 people with developmental disabilities. Three members of the joint advi-
35 sory council shall also be members of the special advisory review panel
36 on medicaid managed care established under section three hundred sixty-
37 four-jj of the social services law. The joint advisory council shall
38 review all managed care options provided to individuals with develop-
39 mental disabilities, including: the adequacy of habilitation services;
40 the record of compliance with person-centered planning, person-centered
41 services and community integration; the adequacy of rates paid to
42 providers in accordance with the provisions of [paragraph one of subdi-
43 vision four of] section forty-four hundred three of the public health
44 law, paragraph [a-two] (a-2) of subdivision eight of section forty-four
45 hundred three of the public health law or [paragraph a-two of subdivi-
46 sion twelve of] section forty-four hundred three-f of the public health
47 law; and quality of life, health, safety and community integration of
48 individuals with developmental disabilities enrolled in managed care.
49 The commissioner and commissioner of the office for people with develop-
50 mental disabilities or their designees shall attend all meetings of the
51 joint advisory council. The joint advisory council shall report its
52 findings, recommendations, and any proposed amendments to pertinent
53 sections of the law to the commissioner and the commissioner of health,
54 the senate majority leader and speaker of the assembly. The joint advi-
55 sory council shall have access to any and all information that may be

1 lawfully disclosed to it and that is necessary to perform its functions
2 under this section.

3 Notwithstanding any inconsistent provision of sections one hundred
4 twelve and one hundred sixty-three of the state finance law, or section
5 one hundred forty-two of the economic development law, or any other law
6 to the contrary, the commissioner and the commissioner of health are
7 authorized to enter into a contract or contracts under section forty-
8 four hundred three-g of the public health law, subdivision eight of
9 section forty-four hundred three of the public health law, and [subdi-
10 sion twelve of] section forty-four hundred three-f of the public health
11 law, provided, however, that:

12 (h) Consistent with and subject to the terms of federal approval, the
13 commissioner shall establish the managed care for persons with develop-
14 mental disabilities advocacy program, hereinafter referred to as the
15 advocacy program. The activities of the advocacy program shall be coor-
16 dinated with the independent Medicaid managed care ombuds services
17 provided to persons with disabilities enrolling in Medicaid managed
18 care. The advocacy program shall advise individuals of applicable rights
19 and responsibilities, provide information and assistance to address the
20 needs of individuals with disabilities, and pursue legal, administrative
21 and other appropriate remedies or approaches to ensure the protection of
22 and advocacy for the rights of the enrollees. The advocacy program shall
23 provide support to eligible individuals with developmental disabilities
24 enrolling in developmental disability individual support and care coor-
25 dination organizations pursuant to section forty-four hundred three-g of
26 the public health law, health maintenance organizations providing
27 services pursuant to subdivision eight of section forty-four hundred
28 three of the public health law, [managed long-term care plans] long term
29 care options providing services under [subdivisions twelve, thirteen and
30 fourteen of] section forty-four hundred three-f of the public health
31 law, and fully integrated dual advantage plans providing services under
32 subdivision twenty-seven of section three hundred sixty-four-j of the
33 social services law. The commissioner shall select an independent organ-
34 ization or organizations to provide advocacy services under this subdi-
35 vision.

36 § 10. Paragraph (c) of subdivision 6 of section 2801-e of the public
37 health law, as amended by chapter 257 of the laws of 2005, is amended to
38 read as follows:

39 (c) The commissioner may, as necessary, waive existing methodologies
40 for determining public need under this article, article thirty-six of
41 this chapter and article seven of the social services law[as well as
42 enrollment limitations under section forty-four hundred three-f of this
43 chapter] to accommodate permanent conversions of beds to other programs
44 or services on the basis that any such increases in capacity are linked
45 to commensurate reductions in the number of residential health care
46 facility beds.

47 § 11. The opening paragraph of paragraph (ccc) of subdivision 1 of
48 section 2807-v of the public health law, as amended by section 12 of
49 part C of chapter 57 of the laws of 2023, is amended to read as follows:

50 Funds shall be deposited by the commissioner, within amounts appropri-
51 ated, and the state comptroller is hereby authorized and directed to
52 receive for the deposit to the credit of the state special revenue funds
53 - other, HCRA transfer fund, medical assistance account, or any succes-
54 sor fund or account, for purposes of funding the state share of
55 increases in the rates for certified home health agencies, long term
56 home health care programs, AIDS home care programs, hospice programs and

1 [managed] long term care [plans and approved managed long term care
2 operating demonstrations as defined in] options in section forty-four
3 hundred three-f of this chapter for recruitment and retention of health
4 care workers pursuant to subdivisions nine and ten of section thirty-six
5 hundred fourteen of this chapter from the tobacco control and insurance
6 initiatives pool established for the following periods in the following
7 amounts:

8 § 12. Section 2807-x of the public health law is REPEALED.

9 § 13. Subdivision 8 of section 3605 of the public health law, as
10 amended by section 49 of part D of chapter 56 of the laws of 2012, is
11 amended to read as follows:

12 8. Agencies licensed pursuant to this section but not certified pursuant
13 to section [three thousand six hundred eight] thirty-six hundred
14 eight of this article, shall not be qualified to participate as a home
15 health agency under the provisions of title XVIII or XIX of the federal
16 Social Security Act provided, however, an agency which has a contract
17 with a state agency or its locally designated office or, as specified by
18 the commissioner, with a managed care organization participating in the
19 managed care program established pursuant to section three hundred
20 sixty-four-j of the social services law or with a [managed long term
21 care plan established pursuant to] PACE or MAP plan as such terms are
22 defined by section forty-four hundred three-f of this chapter, may
23 receive reimbursement under title XIX of the federal Social Security
24 Act.

25 § 14. The opening paragraph of subdivision 9 of section 3614 of the
26 public health law, as amended by section 56 of part A of chapter 56 of
27 the laws of 2013, is amended to read as follows:

28 Notwithstanding any law to the contrary, the commissioner shall,
29 subject to the availability of federal financial participation, adjust
30 medical assistance rates of payment for certified home health agencies
31 for such services provided to children under eighteen years of age and
32 for services provided to a special needs population of medically complex
33 and fragile children, adolescents and young disabled adults by a CHHA
34 operating under a pilot program approved by the department, long term
35 home health care programs, AIDS home care programs established pursuant
36 to this article, hospice programs established under article forty of
37 this chapter and for [managed] long term care [plans and approved
38 managed long term care operating demonstrations as defined in] options
39 under section forty-four hundred three-f of this chapter. Such adjustments
40 shall be for purposes of improving recruitment, training and
41 retention of home health aides or other personnel with direct patient
42 care responsibility in the following aggregate amounts for the following
43 periods:

44 § 15. Paragraph (a) of subdivision 10 of section 3614 of the public
45 health law, as amended by section 57 of part A of chapter 56 of the laws
46 of 2013, is amended to read as follows:

47 (a) Such adjustments to rates of payments shall be allocated proportionally based on each certified home health agency, long term home health care program, AIDS home care and hospice program's home health aide or other direct care services total annual hours of service provided to medicaid patients, as reported in each such agency's most recently available cost report as submitted to the department or for the purpose of the [managed] long term care [program] option a suitable proxy developed by the department in consultation with the interested parties. Payments made pursuant to this section shall not be subject to subsequent adjustment or reconciliation; provided that such adjustments

1 to rates of payments to certified home health agencies shall only be for
2 that portion of services provided to children under eighteen years of
3 age and for services provided to a special needs population of medically
4 complex and fragile children, adolescents and young disabled adults by a
5 CHHA operating under a pilot program approved by the department.

6 § 16. Paragraph (b) of subdivision 2 of section 4409 of the public
7 health law, as added by section 5 of part NN of chapter 57 of the laws
8 of 2023, is amended to read as follows:

9 (b) The department is authorized to address to any health maintenance
10 organization, and [~~managed long-term care plan with a certificate of~~
~~authority pursuant to~~] a PACE or MAP plan as such terms are defined by
11 section forty-four hundred three-f of this article, or officers thereof,
12 any inquiry in relation to its contracts with providers and other enti-
13 ties providing covered services to the health maintenance
14 organization's, or [~~managed long-term care plan's~~] PACE or MAP plans'
15 enrollees, including but not limited to the rates of payment and payment
16 terms and conditions therein. Every entity or person so addressed shall
17 reply in writing to such inquiry promptly and truthfully, and such reply
18 shall be, if required by the department, signed by such individual, or
19 by such officer or officers of a corporation, as the department shall
20 designate, and affirmed by them as true under penalty of perjury. Fail-
21 ure to comply with the requirements of this section shall be subject to
22 civil penalties under section twelve of this chapter. Each day after the
23 deadline established by the department for reply until such time that
24 the provider submits a good faith response shall be considered a sepa-
25 rate and subsequent violation. In accordance with the process outlined
26 in this paragraph, employers shall provide any documents or materials in
27 the employer's possession, custody, or control that are requested by the
28 department as needed to support or verify the employer's reply.

30 § 17. Subparagraph (i) of paragraph (e) of subdivision 3 of section
31 364-j of the social services law, as amended by section 38 of part A of
32 chapter 56 of the laws of 2013, is amended to read as follows:

33 (i) an individual dually eligible for medical assistance and benefits
34 under the federal Medicare program; provided, however, nothing herein
35 shall: (a) require an individual enrolled in a [~~managed~~] long term care
36 [~~plan~~] option, pursuant to section forty-four hundred three-f of the
37 public health law, to disenroll from such program; or (b) make enroll-
38 ment in a Medicare managed care plan a condition of the individual's
39 participation in the managed care program pursuant to this section, or
40 affect the individual's entitlement to payment of applicable Medicare
41 managed care or [~~fee-for-service~~] fee-for-service coinsurance and deduc-
42 tibles by the individual's managed care provider.

43 § 18. Paragraphs (b) and (c) of subdivision 27 of section 364-j of
44 the social services law, as added by section 72 of part A of chapter 56
45 of the laws of 2013, are amended to read as follows:

46 (b) The FIDA program shall provide targeted populations of
47 [~~medicare/medicaid~~] Medicare/Medicaid dually eligible persons with
48 comprehensive health services that include the full range of [~~medicare~~]
49 Medicare and [~~medicaid~~] Medicaid covered services, including but not
50 limited to primary and acute care, prescription drugs, behavioral health
51 services, care coordination services, and long-term supports and
52 services, as well as other services, through managed care providers, as
53 defined in subdivision one of this section[~~, including managed long-term~~
54 ~~care plans, certified pursuant to section forty-four hundred three-f of~~
55 ~~the public health law~~].

1 (c) Under the FIDA program established pursuant to this subdivision,
2 up to three managed [~~long-term~~] care plans may be authorized to exclu-
3 sively enroll individuals with developmental disabilities, as such term
4 is defined in section 1.03 of the mental hygiene law. The commissioner
5 of health may waive any of the department's regulations as such commis-
6 sioner, in consultation with the commissioner of the office for people
7 with developmental disabilities, deems necessary to allow such managed
8 [~~long-term~~] care plans to provide or arrange for service for individuals
9 with developmental disabilities that are adequate and appropriate to
10 meet the needs of such individuals and that will ensure their health and
11 safety. The commissioner of the office for people with developmental
12 disabilities may waive any of the office for people with developmental
13 disabilities' regulations as such commissioner, in consultation with the
14 commissioner of health, deems necessary to allow such managed [~~long~~
15 ~~term~~] care plans to provide or arrange for services for individuals with
16 developmental disabilities that are adequate and appropriate to meet the
17 needs of such individuals and that will ensure their health and safety.

18 § 19. Subdivision 31 of section 364-j of the social services law, as
19 added by section 36-b of part B of chapter 57 of the laws of 2015, is
20 amended to read as follows:

21 31. [~~(a)~~] The commissioner shall require managed care providers under
22 this section, [~~managed long-term care plans~~] a PACE or MAP plan as such
23 terms are defined under section forty-four hundred three-f of the public
24 health law and other appropriate long-term service programs to adopt
25 expedited procedures for approving personal care services for a medical
26 assistance recipient who requires immediate personal care or consumer
27 directed personal assistance services pursuant to paragraph (e) of
28 subdivision two of section three hundred sixty-five-a of this title or
29 section three hundred sixty-five-f of this title, respectively, or other
30 long-term care, and provide such care or services as appropriate, pend-
31 ing approval by such provider or program.

32 § 20. Paragraphs (a) and (c) of subdivision 32 of section 364-j of the
33 social services law, as amended by section 1 of part KKK of chapter 56
34 of the laws of 2020, are amended to read as follows:

35 (a) The commissioner, or for the purposes of subparagraph (iv) of
36 paragraph (c) of this subdivision, the Medicaid inspector general in
37 consultation with the commissioner, may, in his or her discretion, apply
38 penalties to managed care organizations subject to this section and
39 article forty-four of the public health law, including [~~managed long~~
40 ~~term care plans~~] a PACE or MAP plan as such terms are defined by section
41 forty-four hundred three-f of the public health law, for untimely or
42 inaccurate submission of encounter data; provided however, no penalty
43 shall be assessed if the managed care organization or a PACE or MAP plan
44 submits, in good faith, timely and accurate data and a material amount
45 of such data is not successfully received by the department as a result
46 of department system failures or technical issues that are beyond the
47 control of the managed care organization.

48 (c) (i) Penalties assessed pursuant to this subdivision against a
49 managed care organization other than a [~~managed long-term care plan~~
50 ~~certified pursuant to~~] PACE or MAP plan as such terms are defined by
51 section forty-four hundred three-f of the public health law shall be as
52 follows:

53 (A) for encounter data submitted or resubmitted past the deadlines set
54 forth in the model contract, the Medicaid capitated premiums shall be
55 reduced by one-third percent; [~~and~~]

1 (B) for incomplete or inaccurate encounter data, evaluated at a category of service level, that fails to conform to department developed benchmarks for completeness and accuracy, the Medicaid capitated premiums shall be reduced by one and one-third percent; and

5 (C) for submitted data that results in a rejection rate in excess of ten percent of department developed volume benchmarks, the Medicaid capitated premiums shall be reduced by one-third percent.

8 (ii) Penalties assessed pursuant to this [subdivisions] subdivision against a [managed] long term care [plan] option certified pursuant to section forty-four hundred three-f of the public health law shall be as follows:

12 (A) for encounter data submitted or resubmitted past the deadlines set forth in the model contract, the Medicaid capitated premiums shall be reduced by one-quarter percent;

15 (B) for incomplete or inaccurate encounter data, evaluated at a category of service level, that fails to conform to department developed benchmarks for completeness and accuracy, the Medicaid capitated premiums shall be reduced by one percent; and

19 (C) for submitted data that results in a rejection rate in excess of ten percent of department developed volume benchmarks, the Medicaid capitated premiums shall be reduced by one-quarter percent.

22 (iii) For incomplete or inaccurate encounter data, identified in the course of an audit, investigation or review by the Medicaid inspector general, the Medicaid capitated premiums shall be reduced by an additional one percent.

26 § 21. Paragraph (x) of subdivision (b) of section 364-jj of the social services law, as amended by section 39 of part C of chapter 60 of the laws of 2014, is amended to read as follows:

29 (x) in accordance with the recommendations of the joint advisory council established pursuant to section 13.40 of the mental hygiene law, advise the commissioners of health and developmental disabilities with respect to the oversight of DISCOs and of health maintenance organizations and [managed] long term care [plans] options providing services authorized, funded, approved or certified by the office for people with developmental disabilities, and review all managed care options provided to persons with developmental disabilities, including: the adequacy of support for habilitation services; the record of compliance with requirements for person-centered planning, person-centered services and community integration; the adequacy of rates paid to providers in accordance with the provisions of [paragraph 1 of] subdivision four of section forty-four hundred three of the public health law, paragraph (a-2) of subdivision eight of section forty-four hundred three of the public health law or [paragraph (a-2) of subdivision twelve of] section forty-four hundred three-f of the public health law; and the quality of life, health, safety and community integration of persons with developmental disabilities enrolled in managed care; and

47 § 22. Subdivision 6 of section 365-f of the social services law, as added by section 50 of part D of chapter 56 of the laws of 2012, is amended to read as follows:

50 6. Notwithstanding any inconsistent provision of this section or any other contrary provision of law, managed care programs established pursuant to section three hundred sixty-four-j of this title and [managed] long term care [plans] options and other care coordination models established pursuant to section [four thousand four] forty-four hundred three-f of the public health law shall offer consumer directed personal assistance programs to enrollees.

1 § 23. Paragraph (a) of subdivision 4 of section 365-h of the social
2 services law, as amended by section 2 of part LL of chapter 56 of the
3 laws of 2020, is amended to read as follows:

4 (a) The commissioner of health is authorized to assume responsibility
5 from a local social services official for the provision and reimburse-
6 ment of transportation costs under this section. If the commissioner
7 elects to assume such responsibility, the commissioner shall notify the
8 local social services official in writing as to the election, the date
9 upon which the election shall be effective and such information as to
10 transition of responsibilities as the commissioner deems prudent. The
11 commissioner is authorized to contract with a transportation manager or
12 managers to manage transportation services in any local social services
13 district, other than transportation services provided or arranged for
14 enrollees of [~~managed long term care plans issued certificates of~~
15 ~~authority under~~] a PACE or MAP plan as defined by section forty-four
16 hundred three-f of the public health law. Any transportation manager or
17 managers selected by the commissioner to manage transportation services
18 shall have proven experience in coordinating transportation services in
19 a geographic and demographic area similar to the area in New York state
20 within which the contractor would manage the provision of services under
21 this section. Such a contract or contracts may include responsibility
22 for: review, approval and processing of transportation orders; manage-
23 ment of the appropriate level of transportation based on documented
24 patient medical need; and development of new technologies leading to
25 efficient transportation services. If the commissioner elects to assume
26 such responsibility from a local social services district, the commis-
27 sioner shall examine and, if appropriate, adopt quality assurance meas-
28 ures that may include, but are not limited to, global positioning track-
29 ing system reporting requirements and service verification mechanisms.
30 Any and all reimbursement rates developed by transportation managers
31 under this subdivision shall be subject to the review and approval of
32 the commissioner.

33 § 24. Subparagraph (vi) of paragraph (b) of subdivision 4 of section
34 365-h of the social services law, as added by section 2 of part LL of
35 chapter 56 of the laws of 2020, is amended to read as follows:

36 (vi) Responsibility for transportation services provided or arranged
37 for enrollees of [~~managed~~] long term care [~~plans issued certificates of~~
38 ~~authority~~] options under section forty-four hundred three-f of the
39 public health law, not including a program designated as a Program of
40 All-Inclusive Care for the Elderly (PACE) as authorized by Federal
41 Public law 1053-33, subtitle I of title IV of the Balanced Budget Act of
42 1997, and, at the commissioner's discretion, other plans that integrate
43 benefits for dually eligible Medicare and Medicaid beneficiaries based
44 on a demonstration by the plan that inclusion of transportation within
45 the benefit package will result in cost efficiencies and quality
46 improvement, shall be transferred to a transportation management broker
47 that has a contract with the commissioner in accordance with this para-
48 graph. Providers of adult day health care may elect to, but shall not be
49 required to, use the services of the transportation management broker.

50 § 25. Subdivision 14 of section 366 of the social services law, as
51 amended by section 1 of part NN of chapter 57 of the laws of 2021, is
52 amended to read as follows:

53 14. The commissioner of health may make any available amendments to
54 the state plan for medical assistance submitted pursuant to section
55 three hundred sixty-three-a of this title, or, if an amendment is not
56 possible, develop and submit an application for any waiver or approval

1 under the federal social security act that may be necessary to disregard
2 or exempt an amount of income, for the purpose of assisting with housing
3 costs, for individuals receiving coverage of nursing facility services
4 under this title, other than short-term rehabilitation services, and for
5 individuals in receipt of medical assistance while in an adult home, as
6 defined in subdivision twenty-five of section two of this chapter, who:
7 are (i) discharged to the community; and (ii) if eligible, enrolled or
8 required to enroll and have initiated the process of enrolling in a
9 ~~plan certified~~ long term care option pursuant to section forty-four
10 hundred three-f of the public health law; and (iii) do not meet the
11 criteria to be considered an "institutionalized spouse" for purposes of
12 section three hundred sixty-six-c of this title.

13 § 26. This act shall take effect immediately; provided, however, that:
14 (i) sections two, five, six, seven, eight, nine, ten, eleven, twelve,
15 thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen,
16 twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-
17 five of this act shall take effect April 1, 2026.

18 (ii) the amendments to paragraph (o) of subdivision 2 of section 365-a
19 of the social services law made by section five of this act shall not
20 affect the expiration and/or repeal of such paragraph and shall be
21 deemed to expire therewith;

22 (iii) the amendments to paragraph (h) of subdivision 3 of section 218
23 of the elder law made by section eight of this act shall be subject to
24 the repeal of such paragraph and shall expire and be deemed repealed
25 therewith;

26 (iv) the amendments to subparagraph (i) of paragraph (e) of subdivi-
27 sion 3, paragraphs (b) and (c) of subdivision 27, subdivision 31 and
28 paragraphs (a) and (c) of subdivision 32 of section 364-j of the social
29 services law made by sections seventeen, eighteen, nineteen and twenty
30 of this act shall be subject to the repeal of such section and shall
31 expire and be deemed repealed therewith;

32 (v) the amendments to paragraph (x) of subdivision (b) of section
33 364-jj of the social services law made by section twenty-one of this act
34 shall be subject to the expiration of such section and shall expire and
35 be deemed repealed therewith; and

36 (vi) the amendments to section 365-h of the social services law made
37 by sections twenty-three and twenty-four of this act shall be subject to
38 the expiration of such section and shall expire and be deemed repealed
39 therewith.

40 Effective immediately, the commissioner of health shall promulgate any
41 rules and regulations and take steps, including requiring the submission
42 of reports or surveys, submission and receipt of state plans, and neces-
43 sary federal waivers, as may be necessary for the timely implementation
44 of this act on such effective date.