

# STATE OF NEW YORK

9901

## IN SENATE

September 6, 2024

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 social services law, in relation to the licensure of fiscal intermediaries, and to repeal certain provisions of such law relating thereto

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

1 Section 1. Subparagraph (i) of paragraph (a) of subdivision 4-a of  
2 section 365-f of the social services law, as amended by section 1 of  
3 part HH of chapter 57 of the laws of 2024, is amended to read as  
4 follows:

5 (i) "~~[Statewide-fiscal]~~ Fiscal intermediary" means an entity that  
6 provides fiscal intermediary services and has a contract for providing  
7 such services with ~~[the]~~:

8 (A) a local department of social services;

9 (B) a health ~~[and is selected through]~~ maintenance organization certi-  
10 fied pursuant to article forty-four of the ~~[procurement process~~  
11 ~~described in paragraph (b)]~~ public health law; or

12 (C) an accountable care organization certified pursuant to article  
13 twenty-nine-E of ~~[this subdivision]~~ the public health law, or an inte-  
14 grated delivery system that is composed primarily of health care provid-  
15 ers and recognized by the department as a performing provider system  
16 under the delivery system reform incentive payment program.

17 § 2. Subparagraphs (ii-a), (ii-b), and (ii-c) of paragraph (a) and  
18 paragraph (b) of subdivision 4-a of section 365-f of the social services  
19 law are REPEALED.

20 § 3. Paragraph (c) of subdivision 4-a of section 365-f of the social  
21 services law, as added by section 1-a of part K of chapter 57 of the  
22 laws of 2018 and relettered by section 2 of part G of chapter 57 of the  
23 laws of 2019, subparagraph (i) as amended by section 5 of part G of  
24 chapter 57 of the laws of 2019, is relettered paragraph (b) and amended  
25 and two new paragraphs (c) and (d) are added to read as follows:

26 (b) (i) The commissioner shall require ~~[a]~~ each fiscal intermediary,  
27 including but not limited to fiscal intermediaries that contract with a

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

LBD16118-01-4

1 managed care program, as defined by paragraph (c) of subdivision one of  
2 section three hundred sixty-four-j of this article, or an accountable  
3 care organization certified pursuant to article twenty-nine-E of the  
4 public health law, to report annually on:

5 (A) the direct care and administrative costs of personal assistance  
6 services as accounted for by the fiscal intermediary;

7 (B) the number of members serviced;

8 (C) the fiscal intermediary's service area;

9 (D) the number of personal assistants employed by consumers, including  
10 the number of hours worked by each such personal assistant, and period  
11 of employment in personal care of each such personal assistant, and each  
12 such personal assistant's relationship with the consumer;

13 (E) the number of authorized hours per consumer serviced;

14 (F) the number of hours of service billed per consumer;

15 (G) the self-directing status of the consumer; and

16 (H) any other information, as determined by the commissioner.

17 (ii) The department shall specify the format of such reports, deter-  
18 mine the type and amount of information to be submitted, and require the  
19 submission of supporting documentation, provided, however, that the  
20 department shall provide no less than ninety calendar days' notice  
21 before such reports are due.

22 [~~(iii)~~] (iii) If the department determines that the [~~cost~~] report  
23 submitted by a provider is inaccurate or incomplete, the department  
24 shall notify the provider in writing and advise the provider of the  
25 correction or additional information that the provider must submit. The  
26 provider must submit the corrected or additional information within  
27 thirty calendar days from the date the provider receives the notice.

28 [~~(iii)~~] (iv) The department shall grant a provider an additional thir-  
29 ty calendar days to submit the original, corrected or additional [~~cost~~]  
30 report when the provider, prior to the date the report is due, submits a  
31 written request to the department for an extension and establishes to  
32 the department's satisfaction that the provider cannot submit the report  
33 by the date due for reasons beyond the provider's control.

34 [~~(iv)~~] (v) All reports shall be certified by the owner, administrator,  
35 chief executive officer, or public official responsible for the opera-  
36 tion of the provider. The [~~cost~~] report [~~form~~] shall include a certif-  
37 ication form, which shall specify who must certify the report.

38 (c) (i) On and after April first, two thousand twenty-six, no entity  
39 shall provide, directly or through contract, fiscal intermediary  
40 services without a license as a fiscal intermediary issued by the  
41 commissioner in accordance with this subdivision. The commissioner may  
42 grant an entity that has filed for licensure prior to such date tempo-  
43 rary authority to continue operating as a fiscal intermediary pending  
44 such entity's application review and a final determination by the  
45 commissioner. The commissioner shall make regulations and issue guidance  
46 to ensure the orderly transition of consumers and personal care assist-  
47 ants that are receiving fiscal intermediary services from a fiscal  
48 intermediary that will not be licensed on or after April 1, 2026. Such  
49 regulations and guidance may, at the commissioner's discretion, include  
50 authorization for a fiscal intermediary that is not licensed to continue  
51 operating on a temporary basis as consumers and personal care assistants  
52 transition to a licensed fiscal intermediary.

53 (ii) An application for licensure as a fiscal intermediary, and such  
54 other forms and information as prescribed by the commissioner, shall be  
55 filed with the commissioner. The commissioner shall not approve an  
56 application for licensure unless such commissioner is satisfied regard-

1 ing the character, competence, and standing in the community of the  
2 applicant's incorporators, directors, sponsors, stockholders, or opera-  
3 tors and finds that the personnel, rules, consumer contracts or agree-  
4 ments, and fiscal intermediary services are fit and adequate.

5 (iii) In determining character and competence pursuant to subparagraph  
6 (ii) of this paragraph, the commissioner shall consider, but shall not  
7 be limited to, the following factors:

8 (A) historical compliance with submission of cost reports;

9 (B) demonstrated cultural and language competencies specific to the  
10 population of consumers and those of the available workforce;

11 (C) demonstrated ability to comply with electronic visit verification  
12 requirements; and

13 (D) demonstrated compliance with all applicable federal and state laws  
14 and regulations.

15 (iv) As a condition of participation in the state's medical assistance  
16 program and licensure, no fiscal intermediary shall engage in advertis-  
17 ing unless in accordance with regulations promulgated by the commis-  
18 ioner. For the purposes of this subparagraph, "advertisement" shall mean  
19 any material produced in any medium that can reasonably be interpreted  
20 as intended to market a fiscal intermediary's services to medical  
21 assistance recipients.

22 (v) Fiscal intermediaries granted licensure under this subdivision  
23 shall comply with all rules and regulations, as determined by the  
24 commissioner. Failure to comply with this section shall result in the  
25 imposition of penalties, reduction of rates, or actions involving the  
26 license, as the commissioner deems appropriate.

27 (vi) The commissioner shall charge applicants for licensure as a  
28 fiscal intermediary a one-time application fee of ten thousand dollars.

29 (d) (i) The department shall establish and maintain a personal assist-  
30 ant registry for personal assistants employed by each consumer under the  
31 program. The department shall determine the method of registration and  
32 the documentation required to register. The department shall assess no  
33 fee or charge for such registration.

34 (ii) It shall be the responsibility of each fiscal intermediary that  
35 is granted licensure under this subdivision to register with the depart-  
36 ment each personal assistant that is employed by each consumer under the  
37 program.

38 (iii) Such registry shall be kept confidential and shall not be avail-  
39 able to the public. The department shall utilize such registry to aid in  
40 the oversight of the program and fraud and abuse investigations.

41 § 4. Subdivision 4-a-1 of section 365-f of the social services law is  
42 REPEALED.

43 § 5. Subdivision 4-b of section 365-f of the social services law, as  
44 amended by section 5 of part HH of chapter 57 of the laws of 2024, is  
45 amended to read as follows:

46 4-b. Actions involving the [~~registration~~] licensure of a fiscal inter-  
47 mediary.

48 (a) A fiscal intermediary's [~~registration~~] license may be revoked,  
49 suspended, limited, or annulled by the commissioner upon [~~thirty-days-~~  
50 ~~written notice to the fiscal intermediary, if~~] the [~~commissioner finds~~]  
51 commissioner's receipt of proof that the fiscal intermediary has failed  
52 to comply with the provisions of subdivision four-a of this section or  
53 regulations promulgated hereunder.

54 (b) [~~The commissioner~~] No such license shall be revoked, suspended,  
55 limited, annulled, or denied pursuant to paragraph (a) of this subdivi-  
56 sion without a hearing. However, a license may [~~issue orders~~] be tempo-

1 rarily suspended or limited without a hearing for a period not in excess  
2 of forty-five days upon written notice to the fiscal intermediary  
3 following a finding by the department that the public health or safety  
4 is in imminent danger. Such period may be renewed for up to two addi-  
5 tional periods not exceeding thirty days, respectively, upon written  
6 notice, including an opportunity to submit evidence and [~~take other~~  
7 actions as necessary] written argument in opposition to the renewal, and  
8 [appropriate] a continued finding pursuant to [~~prohibit and prevent the~~  
9 provision of fiscal intermediary services by an unregistered entity]  
10 this paragraph.

11 (c) The commissioner shall fix a time and place for the hearing. A  
12 copy of the charges, together with the notice of the time and place of  
13 the hearing, shall be served in person or mailed by registered or certi-  
14 fied mail to the fiscal intermediary at least twenty-one days prior to  
15 the date fixed for the hearing. The fiscal intermediary shall file with  
16 the department a written answer to the charges at least ten days prior  
17 to the date fixed for the hearing.

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

21 § 6. Subdivision 4-c of section 365-f of the social services law, as  
22 added by section 6 of part G of chapter 57 of the laws of 2019, is  
23 amended to read as follows:

24 4-c. (a) The commissioner shall convene and chair a stakeholder work-  
25 group pertaining to fiscal intermediary services and the needs of  
26 consumers. The workgroup shall consist of, at a minimum, represen-  
27 tatives of service centers for independent living; statewide associ-  
28 ations of fiscal intermediaries; representatives of managed care enti-  
29 ties under article forty-four of the public health law and local social  
30 service districts; consumers or representatives of such consumers; and  
31 representatives of advocacy groups representing consumers of services  
32 under this section. The workgroup shall be established no later than May  
33 fifteenth, two thousand ~~nineteen~~ twenty-five.

34 (b) The workgroup shall:

35 (i) identify and develop best practices pertaining to the delivery of  
36 fiscal intermediary services; [~~inform the criteria for use by the~~  
37 ~~department for the selection]~~

38 (ii) analyze trends on authorization of [~~entities under subdivision~~  
39 ~~four-a of this section, identify whether]~~ services [~~differ for certain~~  
40 ~~consumers and]~~ under [~~what circumstances, inform criteria in relation~~  
41 ~~to]~~ the [~~development of quality reporting requirements, and work with~~  
42 ~~the department]~~ program to [~~develop transition plans for consumers that~~  
43 ~~may need]~~ determine whether authorized hours are consistent with the  
44 plan of care and assessment;

45 (iii) analyze key indices or metrics under the program compared to  
46 [~~transition]~~ personal care services delivered through licensed home care  
47 agencies; and

48 (iv) issue recommendations for areas of potential improvement or chal-  
49 lenges relating to [~~another fiscal intermediary]~~ access, delivery, qual-  
50 ity, outcomes, administrative costs, efficiencies, cost savings, and  
51 other impacts on enrollees that may result from the implementation of  
52 any such recommendations, including how such recommendations may impact  
53 enrollees' ability to self-direct such enrollees' own services.

54 (c) No later than December first, two thousand twenty-five, and annu-  
55 ally thereafter, the workgroup shall report on its findings and recom-  
56 mendations to the commissioner, the speaker of the assembly, and the

1 temporary president of the senate. The commissioner shall gather and  
2 disclose such data contained in such annual reports as the workgroup  
3 members or the commissioner determines necessary to facilitate the  
4 efforts of the workgroup.

5 § 7. Subdivision 5 of section 365-f of the social service law is  
6 amended by adding a new paragraph (c) to read as follows:

7 (c) (i) Notwithstanding any other provision of law, the commissioner  
8 is authorized to promulgate regulations regarding minimum training  
9 requirements for personal assistants. Such training requirements shall  
10 meet a curriculum determined by the commissioner and shall, at a mini-  
11 imum, provide basic core knowledge and skills that personal assistants  
12 need to learn and understand to effectively and safely provide care to  
13 consumers. Such training shall take into account certain criteria,  
14 including but not limited to the relationship of the personal assistant  
15 to the consumer, the level of care that the consumer needs and that the  
16 personal assistant will provide, and any certifications that the  
17 personal assistant holds. The training may vary in competencies and  
18 minimum required hours based on such criteria.

19 (ii) Such training may be delivered through an organization or inde-  
20 pendent contractor, free of charge to the personal assistant, and  
21 conducted in person or in a virtual environment. Fiscal intermediaries  
22 shall certify, in a manner determined by the commissioner, that personal  
23 assistants providing services to enrollees have completed such required  
24 training.

25 (iii) The commissioner shall develop regulations to waive such train-  
26 ing requirements for certain individuals who have already attained such  
27 requisite training through appropriate licensure, registration, or  
28 certification in connection to another healthcare, as determined by the  
29 commissioner. Such individuals shall still be registered as personal  
30 care assistants with the department pursuant to subdivision four-a of  
31 this section.

32 § 8. Section 365-f of the social services law is amended by adding a  
33 new subdivision 5-a to read as follows:

34 5-a. (a) To ensure compliance with this section, the comptroller shall  
35 have the authority to review contracts entered into by fiscal interme-  
36 diaries and any entity subject to the provisions of this section to  
37 ensure that services and payments under this section are being provided  
38 in compliance with state and federal law. The comptroller, in consulta-  
39 tion with the Medicaid fraud control unit, may develop and promulgate a  
40 process to ensure such audits comply with state and federal law. In the  
41 event that the comptroller finds evidence that fiscal intermediaries or  
42 any entity subject to the provisions of this section are acting in an  
43 unlawful manner, the commissioner will refer such instances to the  
44 department and the Medicaid fraud control unit for enforcement. If the  
45 department or the Medicaid fraud control unit chooses not to pursue  
46 action related to this referral, the department or the Medicaid fraud  
47 control unit shall inform the comptroller's office, in writing, as to  
48 the reasons why. Such reports, and the department's responses, shall be  
49 made publicly available on the comptroller's website.

50 (b) Fiscal intermediaries and any other entity subject to the  
51 provisions of this section shall be subject to the provisions of section  
52 one hundred forty-five-b of this chapter, section three hundred sixty-  
53 six-b of this article, and article thirteen of the state finance law.

54 § 9. Severability clause. If any clause, sentence, paragraph, subdivi-  
55 sion, section or part of this act shall be adjudged by any court of  
56 competent jurisdiction to be invalid, such judgment shall not affect,

1 impair, or invalidate the remainder thereof, but shall be confined in  
2 its operation to the clause, sentence, paragraph, subdivision, section  
3 of part thereof directly involved in the controversy on which such judg-  
4 ment shall have been rendered. It is hereby declared to be the intent of  
5 the legislature that this act would have been enacted even if such  
6 invalid provisions had not been included herein.  
7 § 10. This act shall take effect immediately.