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:

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

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

(A) a local department of **social services;**

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

(C) an accountable care organization certified pursuant to article twenty-nine-E of [~~this subdivision~~] **the public health law, or an integrated delivery system that is composed primarily of health care providers and recognized by the department as a performing provider system under the delivery system reform incentive payment program**.

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and (ii-c) of paragraph (a) and paragraph (b) of subdivision 4-a of section 365-f of the social services law are REPEALED.

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

(b) (i) The commissioner shall require [~~a~~] **each** fiscal intermediary**, 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.

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

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

(B) the number of members serviced;

(C) the fiscal intermediary's service area;

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

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

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

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

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

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

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

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

[~~(iv)~~] (v) All reports shall be certified by the owner, administrator, chief executive officer, or public official responsible for the operation of the provider. The [~~cost~~] report [~~form~~] shall include a certification form, which shall specify who must certify the report.

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

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

ing the character, competence, and standing in the community of the applicant's incorporators, directors, sponsors, stockholders, or operators and finds that the personnel, rules, consumer contracts or agreements, and fiscal intermediary services are fit and adequate.

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

(A) historical compliance with submission of cost reports;

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

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

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

(iv) As a condition of participation in the state's medical assistance program and licensure, no fiscal intermediary shall engage in advertising unless in accordance with regulations promulgated by the commissioner. For the purposes of this subparagraph, "advertisement" shall mean any material produced in any medium that can reasonably be interpreted as intended to market a fiscal intermediary's services to medical assistance recipients.

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

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

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

(ii) It shall be the responsibility of each fiscal intermediary that is granted licensure under this subdivision to register with the department each personal assistant that is employed by each consumer under the program.

(iii) Such registry shall be kept confidential and shall not be available to the public. The department shall utilize such registry to aid in the oversight of the program and fraud and abuse investigations.

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

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

4-b. Actions involving the [~~registration~~] licensure of a fiscal intermediary.

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

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

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

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

(d) 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.

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

4-c. (a) The commissioner shall convene and chair a stakeholder workgroup pertaining to fiscal intermediary services and the needs of consumers. The workgroup shall consist of, at a minimum, representatives of service centers for independent living; statewide associations of fiscal intermediaries; representatives of managed care entities under article forty-four of the public health law and local social service districts; consumers or representatives of such consumers; and representatives of advocacy groups representing consumers of services under this section. The workgroup shall be established no later than May fifteenth, two thousand [~~nineteen~~] twenty-five.

(b) The workgroup shall:

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

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

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

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

(c) No later than December first, two thousand twenty-five, and annually thereafter, the workgroup shall report on its findings and recommendations to the commissioner, the speaker of the assembly, and the

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

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

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

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

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

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

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

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

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

impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section of part thereof directly involved in the controversy on which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 10. This act shall take effect immediately.