

# STATE OF NEW YORK

5020--A

2023-2024 Regular Sessions

## IN SENATE

February 21, 2023

Introduced by Sens. COMRIE, ADDABBO, BRESLIN, CLEARE, MARTINEZ, SALAZAR, SANDERS, SCARCELLA-SPANTON, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to certain authorizations to 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. 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~~

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

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~~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;~~

~~(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 authorization 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 assur-

1 ance review, referral, program monitoring or development or establishing  
2 and responding to community needs; such input may be in the form of a  
3 board of directors, committee, survey, or other mechanism, provided that  
4 the majority of input obtained as part of this process must be from  
5 individual consumers and consumer advocates of the fiscal intermediary;

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

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

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

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

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

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

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

33 § 2. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 4-a of  
34 section 365-f of the social services law, as amended by section 3 of  
35 part G of chapter 57 of the laws of 2019, the opening paragraph of  
36 subparagraph (i) as amended by section 2 of part PP of chapter 57 of the  
37 laws of 2022, are amended to read as follows:

38 (i) "Fiscal intermediary" means an entity that provides fiscal inter-  
39 mediary services and has a contract for providing such services with  
40 ~~[the department of health and is selected through the procurement proc-~~  
41 ~~ess described in paragraphs (b), (b-1), (b-2) and (b-3) of this subdivi-~~  
42 ~~sion. Eligible applicants for contracts shall be entities that are capa-~~  
43 ~~ble of appropriately providing fiscal intermediary services, performing~~  
44 ~~the responsibilities of a fiscal intermediary, and complying with this~~  
45 ~~section, including but not limited to entities that]:~~

46 ~~(A) [are a service center for independent living under section one~~  
47 ~~thousand one hundred twenty-one of the education law; or~~

48 ~~(B) have been established as fiscal intermediaries prior to January~~  
49 ~~first, two thousand twelve and have been continuously providing such~~  
50 ~~services for eligible individuals under this section.] a local depart-~~  
51 ~~ment of social services; an organization licensed under article forty-~~  
52 ~~four of the public health law; or~~

53 (B) an accountable care organization certified under article twenty-  
54 nine-E of the public health law or an integrated delivery system  
55 composed primarily of health care providers recognized by the department

1 as a performing provider system under the delivery system reform incen-  
2 tive payment program.

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

6 (A) wage and benefit processing for consumer directed personal assist-  
7 ants;

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

9 (C) complying with workers' compensation, disability and unemployment  
10 requirements;

11 (D) maintaining personnel records for each consumer directed personal  
12 assistant, including time records and other documentation needed for  
13 wages and benefit processing and a copy of the medical documentation  
14 required pursuant to regulations established by the commissioner;

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

18 (F) maintaining records of service authorizations or reauthorizations;

19 (G) monitoring the consumer's or, if applicable, the designated repre-  
20 sentative's continuing ability to fulfill the consumer's responsibil-  
21 ities under the program and promptly notifying the authorizing entity of  
22 any circumstance that may affect the consumer's or, if applicable, the  
23 designated representative's ability to fulfill such responsibilities;

24 (H) complying with regulations established by the commissioner speci-  
25 fying the responsibilities of fiscal intermediaries providing services  
26 under this title; and

27 (I) entering into a department approved memorandum of understanding  
28 with the consumer that describes the parties' responsibilities under  
29 this program[~~, and~~

30 ~~(J) other related responsibilities which may include, as determined by~~  
31 ~~the commissioner, assisting consumers to perform the consumers' respon-~~  
32 ~~sibilities under this section and department regulations in a manner~~  
33 ~~that does not infringe upon the consumer's responsibilities and self-di-~~  
34 ~~rection].~~

35 § 3. Paragraphs (b-1), (b-2) and (b-3) of subdivision 4-a of section  
36 365-f of the social services law are REPEALED.

37 § 4. Subdivision 4-b of section 365-f of the social services law, as  
38 amended by section 8 of part G of chapter 57 of the laws of 2019, is  
39 amended to read as follows:

40 4-b. Actions involving the authorization of a fiscal intermediary.

41 (a) [~~The department may terminate a fiscal intermediary's contract~~  
42 ~~under this section or suspend or limit the fiscal intermediary's rights~~  
43 ~~and privileges under the contract]~~ A fiscal intermediary's authorization  
44 may be revoked, suspended, limited or annulled upon thirty [~~day's~~] days'  
45 written notice to the fiscal intermediary, if the commissioner finds  
46 that the fiscal intermediary has failed to comply with the provisions of  
47 this section or regulations promulgated hereunder. The written notice  
48 shall include:

49 (i) A description of the conduct and the issues related thereto that  
50 have been identified as failure of compliance; and

51 (ii) the time frame of the conduct that fails compliance.

52 (b) Notwithstanding the foregoing, upon determining that the public  
53 health or safety would be imminently endangered by the continued opera-  
54 tion or actions of the fiscal intermediary, the commissioner may [~~termi-~~  
55 ~~nate~~] revoke, suspend, limit or annul the fiscal intermediary's  
56 [~~contract or suspend or limit the fiscal intermediary's rights and priv-~~

1 ~~ileges under the contract~~] authorization immediately upon written  
2 notice.

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

6 § 5. Paragraph (c) of subdivision 4-d of section 365-f of the social  
7 services law, as added by section 7 of part G of chapter 57 of the laws  
8 of 2019, is amended to read as follows:

9 (c) Where a fiscal intermediary is suspending or ceasing operation  
10 pursuant to an order under subdivision four-b of this section, [~~or has~~  
11 ~~failed to submit an offer for a contract, or has been denied a contract~~  
12 ~~under this section,~~] all the provisions of this subdivision shall apply  
13 except subparagraph (i) of paragraph (a) of this subdivision, notice of  
14 which to all parties shall be provided by the department as appropriate.

15 § 6. Paragraph (d) of subdivision 4-d of section 365-f of the social  
16 services law is REPEALED.

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