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-

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

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

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

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

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

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

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

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

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

(i) "Fiscal intermediary" means an entity that provides fiscal intermediary services and has a contract for providing such services with [~~the department of health and is selected through the procurement process described in paragraphs (b), (b-1), (b-2) and (b-3) of this subdivision. Eligible applicants for contracts shall be entities that are capable of appropriately providing fiscal intermediary services, performing the responsibilities of a fiscal intermediary, and complying with this section, including but not limited to entities that~~]:

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

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

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

as a performing provider system under the delivery system reform incentive payment program.

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

(A) wage and benefit processing for consumer directed personal assistants;

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

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

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

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

(F) maintaining records of service authorizations or reauthorizations;

(G) monitoring the consumer's or, if applicable, the designated representative's continuing ability to fulfill the consumer's responsibilities under the program and promptly notifying the authorizing entity of any circumstance that may affect the consumer's or, if applicable, the designated representative's ability to fulfill such responsibilities;

(H) complying with regulations established by the commissioner specifying the responsibilities of fiscal intermediaries providing services under this title; and

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

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

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

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

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

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

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

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

(b) Notwithstanding the foregoing, upon determining that the public health or safety would be imminently endangered by the continued operation or actions of the fiscal intermediary, the commissioner may [~~terminate~~] revoke, suspend, limit or annul the fiscal intermediary's [~~contract or suspend or limit the fiscal intermediary's rights and priv-~~

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

(c) 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.

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

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

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

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