

STATE OF NEW YORK

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2025-2026 Regular Sessions

IN SENATE

January 8, 2025

Introduced by Sens. RIVERA, BORRELLO, CLEARE, COMRIE, FELDER, FERNANDEZ, GALLIVAN, GIANARIS, GONZALEZ, GRIFFO, HARCKHAM, HELMING, HINCHEY, JACKSON, KRUEGER, MAYER, MYRIE, RAMOS, RHOADS, SALAZAR, STEC -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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19 law are REPEALED.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

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

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1 laws of 2018 and relettered by section 2 of part G of chapter 57 of the
2 laws of 2019, subparagraph (i) as amended by section 5 of part G of
3 chapter 57 of the laws of 2019, is relettered paragraph (b) and amended
4 and two new paragraphs (c) and (d) are added to read as follows:

5 (b) (i) The commissioner shall require [~~a~~] each fiscal intermediary,
6 including but not limited to fiscal intermediaries that contract with a
7 managed care program, as defined by paragraph (c) of subdivision one of
8 section three hundred sixty-four-j of this article, or an accountable
9 care organization certified pursuant to article twenty-nine-E of the
10 public health law, to report annually on:

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

13 (B) the number of members serviced;

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

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

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

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

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

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

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

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

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

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

44 (c) (i) On and after April first, two thousand twenty-seven, no entity
45 shall provide, directly or through contract, fiscal intermediary
46 services without a license as a fiscal intermediary issued by the
47 commissioner in accordance with this subdivision. The commissioner may
48 grant an entity that has filed for licensure prior to such date tempo-
49 rary authority to continue operating as a fiscal intermediary pending
50 such entity's application review and a final determination by the
51 commissioner. The commissioner shall make regulations and issue guidance
52 to ensure the orderly transition of consumers and personal care assist-
53 ants that are receiving fiscal intermediary services from a fiscal
54 intermediary that will not be licensed on or after April 1, 2027. Such
55 regulations and guidance may, at the commissioner's discretion, include
56 authorization for a fiscal intermediary that is not licensed to continue

1 operating on a temporary basis as consumers and personal care assistants
2 transition to a licensed fiscal intermediary.

3 (ii) An application for licensure as a fiscal intermediary, and such
4 other forms and information as prescribed by the commissioner, shall be
5 filed with the commissioner. The commissioner shall not approve an
6 application for licensure unless such commissioner is satisfied regard-
7 ing the character, competence, and standing in the community of the
8 applicant's incorporators, directors, sponsors, stockholders, or opera-
9 tors and finds that the personnel, rules, consumer contracts or agree-
10 ments, and fiscal intermediary services are fit and adequate.

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

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

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

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

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

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

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

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

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

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

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

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

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

52 4-b. Actions involving the [~~registration~~] licensure of a fiscal inter-
53 mediary.

54 (a) A fiscal intermediary's [~~registration~~] license may be revoked,
55 suspended, limited, or annulled by the commissioner upon [~~thirty days~~]
56 ~~written notice to the fiscal intermediary, if~~ the [~~commissioner finds~~]

1 commissioner's receipt of proof that the fiscal intermediary has failed
2 to comply with the provisions of subdivision four-a of this section or
3 regulations promulgated hereunder.

4 (b) [~~The commissioner~~] No such license shall be revoked, suspended,
5 limited, annulled, or denied pursuant to paragraph (a) of this subdivi-
6 sion without a hearing. However, a license may [~~issue orders~~] be tempo-
7 rarily suspended or limited without a hearing for a period not in excess
8 of forty-five days upon written notice to the fiscal intermediary
9 following a finding by the department that the public health or safety
10 is in imminent danger. Such period may be renewed for up to two addi-
11 tional periods not exceeding thirty days, respectively, upon written
12 notice, including an opportunity to submit evidence and [~~take other~~
13 ~~actions as necessary~~] written argument in opposition to the renewal, and
14 [~~appropriate~~] a continued finding pursuant to [~~prohibit and prevent the~~
15 ~~provision of fiscal intermediary services by an unregistered entity~~]
16 this paragraph.

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

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

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

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

40 (b) The workgroup shall:

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

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

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

54 (iv) issue recommendations for areas of potential improvement or chal-
55 lenges relating to [~~another fiscal intermediary~~] access, delivery, qual-
56 ity, outcomes, administrative costs, efficiencies, cost savings, and

1 other impacts on enrollees that may result from the implementation of
2 any such recommendations, including how such recommendations may impact
3 enrollees' ability to self-direct such enrollees' own services.

4 (c) No later than December first, two thousand twenty-six, and annual-
5 ly thereafter, the workgroup shall report on its findings and recommen-
6 dations to the commissioner, the speaker of the assembly, and the tempo-
7 rary president of the senate. The commissioner shall gather and disclose
8 such data contained in such annual reports as the workgroup members or
9 the commissioner determines necessary to facilitate the efforts of the
10 workgroup.

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

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

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

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

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

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

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

5 § 9. Severability clause. If any clause, sentence, paragraph, subdivi-
6 sion, section or part of this act shall be adjudged by any court of
7 competent jurisdiction to be invalid, such judgment shall not affect,
8 impair, or invalidate the remainder thereof, but shall be confined in
9 its operation to the clause, sentence, paragraph, subdivision, section
10 of part thereof directly involved in the controversy on which such judg-
11 ment shall have been rendered. It is hereby declared to be the intent of
12 the legislature that this act would have been enacted even if such
13 invalid provisions had not been included herein.

14 § 10. This act shall take effect immediately.