

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the social services law, in relation to the removal of the fiscal intermediary procurement and replacing it with an authorization process; to amend the public health law, in relation to eliminating conflicts of interest between consumer directed personal assistance program fiscal intermediaries and licensed home care services agencies; to amend the social services law, in relation to the consumer directed personal assistance program; and to repeal certain provisions of the social services law relating thereto (Part);

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

1

PART __

2 Section 1. Subparagraphs (i) and (ii) of paragraph (a) of subdivision
3 4-a of section 365-f of the social services law, as amended by section 3
4 of part G of chapter 57 of the laws of 2019, the opening paragraph of
5 subparagraph (i) as amended by section 2 of part PP of chapter 57 of the
6 laws of 2022, are amended to read as follows:

7 (i) "Fiscal intermediary" means an entity that provides fiscal inter-
8 mediary services and has a contract for providing such services with
9 [the department of health and is selected through the procurement proc-
10 ess described in paragraphs (b), (b-1), (b-2) and (b-3) of this subdivi-
11 sion. Eligible applicants for contracts shall be entities that are capa-
12 ble of appropriately providing fiscal intermediary services, performing
13 the responsibilities of a fiscal intermediary, and complying with this
14 section, including but not limited to entities that:

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

3 (B) have been established as fiscal intermediaries prior to January
4 first, two thousand twelve and have been continuously providing such
5 services for eligible individuals under this section.]:

6 (A) a local department of social services;

7 (B) an organization licensed under article forty-four of the public
8 health law; or

9 (C) an accountable care organization certified under article twenty-
10 nine-E of the public health law or an integrated delivery system
11 composed primarily of health care providers recognized by the department
12 as a performing provider system under the delivery system reform incen-
13 tive payment program.

14 (ii) Fiscal intermediary services shall include the following
15 services, performed on behalf of the consumer to facilitate [his or her]
16 the consumer's role as the employer:

17 (A) wage and benefit processing for consumer directed personal assist-
18 ants;

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

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

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

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

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

2 (G) monitoring the consumer's or, if applicable, the designated repre-
3 sentative's continuing ability to fulfill the consumer's responsibil-
4 ities under the program and promptly notifying the authorizing entity of
5 any circumstance that may affect the consumer's or, if applicable, the
6 designated representative's ability to fulfill such responsibilities;

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

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

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

18 § 2. Paragraphs (b) and (c) of subdivision 4-a of section 365-f of the
19 social services law are REPEALED and two new paragraphs (b) and (c) are
20 added to read as follows:

21 (b) As of January first, two thousand twenty-five no entity shall
22 provide, directly or through contract, fiscal intermediary services
23 without an authorization as a fiscal intermediary issued by the commis-
24 sioner in accordance with this subdivision. In establishing authori-
25 zation standards and processes, the commissioner may consider demon-
26 strated compliance with all applicable federal and state laws and
27 regulations, including but not limited to, marketing and labor prac-
28 tices, cost reporting, and electronic visit verification requirements;

1 provided, however, that this shall not be construed to limit the commis-
2 sioner's discretion in establishing such standards and processes.
3 Notwithstanding the preceding requirement for authorization, a fiscal
4 intermediary that is in operation prior to January first, two thousand
5 twenty-four may continue to provide fiscal intermediary services without
6 an authorization until such time as the commissioner determines that the
7 continued provision of services through unauthorized fiscal interme-
8 diaries is no longer necessary to ensure access to services; such deter-
9 mination may be made on a statewide, regional, or county basis.

10 (c) The commissioner is authorized to determine the maximum number of
11 fiscal intermediaries a local department of social services or an organ-
12 ization licensed under article forty-four of the public health law, or
13 an accountable care organization certified under article twenty-nine-E
14 of the public health law or an integrated delivery system composed
15 primarily of health care providers recognized by the department as a
16 performing provider system under the delivery system reform incentive
17 payment program may contract with, provided it is determined that there
18 remains adequate access to services; such determination may be made on a
19 statewide, regional or county level basis.

20 § 3. Paragraphs (b-1), (b-2) and (b-3) of subdivision 4-a of section
21 365-f of the social services law are REPEALED.

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

25 4-b. Actions involving the authorization of a fiscal intermediary.

26 (a) [The department may terminate a fiscal intermediary's contract
27 under this section or suspend or limit the fiscal intermediary's rights
28 and privileges under the contract upon thirty day's written notice to

1 the fiscal intermediary, if the commissioner finds that the fiscal
2 intermediary has failed to comply with the provisions of this section or
3 regulations promulgated hereunder. The written notice shall include:

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

6 (ii) the time frame of the conduct that fails compliance] A fiscal
7 intermediary's authorization may be revoked, suspended, limited, or
8 annulled upon thirty days' written notice to the fiscal intermediary, if
9 the commissioner finds that the fiscal intermediary has failed to comply
10 with the provisions of this subdivision or regulations promulgated here-
11 under.

12 (b) Notwithstanding the foregoing, upon determining that the public
13 health or safety would be imminently endangered by the continued opera-
14 tion or actions of the fiscal intermediary, the commissioner may [termi-
15 nate] revoke, suspend, limit, or annul the fiscal intermediary's
16 [contract or suspend or limit the fiscal intermediary's rights and priv-
17 ileges under the contract] authorization immediately [upon written
18 notice].

19 (c) The commissioner may issue orders and take other actions as neces-
20 sary and appropriate to prohibit and prevent the provision of fiscal
21 intermediary services by an unauthorized entity.

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

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

1 (c) Where a fiscal intermediary is suspending or ceasing operation
2 pursuant to an order under subdivision four-b of this section, or has
3 failed to [submit an offer for a contract] apply for authorization, or
4 has been denied [a contract] authorization under this section, all the
5 provisions of this subdivision shall apply except subparagraph (i) of
6 paragraph (a) of this subdivision, notice of which to all parties shall
7 be provided by the department, with the assistance of any local social
8 services districts or managed care plans with which the fiscal interme-
9 diary contracts, as appropriate.

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

12 § 7. Paragraph (b) of subdivision 5 of section 365-f of the social
13 services law, as added by chapter 81 of the laws of 1995, is amended to
14 read as follows:

15 (b) Notwithstanding any other provision of law, the commissioner is
16 authorized to waive any provision of section three hundred sixty-seven-b
17 of this title related to payment and may promulgate regulations, includ-
18 ing emergency regulations, necessary to carry out the objectives of the
19 program including minimum selection criteria and training requirements
20 for personal assistants, the establishment of limitations on the number
21 of hours a personal assistant may work on a daily and weekly basis, and
22 which describe the responsibilities of the eligible individuals in
23 arranging and paying for services and the protections assured such indi-
24 viduals if they are unable or no longer desire to continue in the
25 program, the fiscal intermediary authorization process, standards, and
26 time frames, and those regulations necessary to ensure adequate access
27 to services, including but not limited to the maximum number of fiscal
28 intermediaries a local department of social services or an organization

1 licensed under article forty-four of the public health law, or an
2 accountable care organization certified under article twenty-nine-E of
3 the public health law or integrated delivery systems composed primarily
4 of health care providers recognized by the department as a performing
5 provider system under the delivery system reform incentive payment
6 program may contract with; such determination may be made on a state-
7 wide, regional, or county basis.

8 § 8. Paragraphs (e) and (f) of subdivision 2 of section 3605-c of the
9 public health law, as added by section 10 of part MM of chapter 56 of
10 the laws of 2020, are amended and a new paragraph (g) is added to read
11 as follows:

12 (e) the commissioner may institute a continuous recruitment process
13 provided that the information required under paragraph (a) of this
14 subdivision remains on the department's website for the entire duration
15 of the recruitment process, until such date as the commissioner may
16 determine upon no less than ten days notice being posted on the website;
17 [and]

18 (f) the commissioner may reoffer contracts under the same terms of
19 this subdivision, if determined necessary by the commissioner, on a
20 statewide or regional basis[.]; and

21 (g) on and after April first, two thousand twenty-four, the department
22 shall not allow the enrollment or re-enrollment of a LHCSA into the
23 medical assistance program if such LHCSA is majority owned by a company
24 which provides fiscal intermediary services, or is majority owned by a
25 company which also has majority ownership over a company that provides
26 fiscal intermediary services, or itself provides fiscal intermediary
27 services in the state consumer directed personal assistance program, or
28 is the majority owner of a company that provides fiscal intermediary

1 services, as defined in section three hundred sixty-five-f of the social
2 services law. For the purposes of this section, "majority owned" or
3 "majority ownership" shall be defined as controlling interest in a
4 company, or being the largest holder of the common stock or ordinary
5 shares of a company.

6 § 9. Paragraphs (g) and (h) of subdivision 1 of section 4403 of the
7 public health law, paragraph (g) as added by chapter 938 of the laws of
8 1976 and paragraph (h) as amended by chapter 805 of the laws of 1984,
9 are amended and two new paragraphs (i) and (j) are added to read as
10 follows:

11 (g) approved mechanisms exist to resolve complaints and grievances
12 initiated by any enrolled member; [and]

13 (h) the contract between the enrollee and the organization meet the
14 requirements of the superintendent as set forth in section forty-four
15 hundred six of this article, as to the provisions contained therein for
16 health services, the procedures for offering, renewing, converting and
17 terminating contracts to enrollees, and the rates for such contracts
18 including but not limited to, compliance with the provisions of section
19 one thousand one hundred nine of the insurance law[.];

20 (i) that the applicant is not controlled, as defined under regulation,
21 by an entity which provides fiscal intermediary services, is not
22 controlled by an entity which also has control over an entity that
23 provides fiscal intermediary services, does not itself provide fiscal
24 intermediary services in the state consumer directed personal assistance
25 program, and does not control an entity that provides fiscal interme-
26 diary services, as defined in section three hundred sixty-five-f of the
27 social services law; and

1 (j) that the applicant is not controlled, as defined under regulation,
2 by an entity which provides licensed home care services, is not
3 controlled by an entity which also has control over a company that
4 provides licensed home care services, does not itself provide licensed
5 home care services, and does not control an entity that provides
6 licensed home care services.

7 § 10. Section 4403 of the public health law is amended by adding a new
8 subdivision 1-a to read as follows:

9 1-a. (a) By April first, two thousand twenty-five, any health mainte-
10 nance organization which provides fiscal intermediary services or
11 licensed home care services, is controlled by an entity which provides
12 fiscal intermediary services or licensed home care services, has control
13 over an entity which provides fiscal intermediary services or licensed
14 home care services, or is controlled by an entity which also has control
15 over an entity that provides fiscal intermediary services or licensed
16 home care services, shall be required to resubmit an application for a
17 certificate of authority pursuant to section four thousand four hundred
18 two of this article.

19 (b) After April first, two thousand twenty-five, no health maintenance
20 organization which provides fiscal intermediary services or licensed
21 home care services, is controlled by an entity which provides fiscal
22 intermediary services or licensed home care services, has control over
23 an entity which provides fiscal intermediary services or licensed home
24 care services, or is controlled by an entity which also has control over
25 an entity that provides fiscal intermediary services or licensed home
26 care services, may maintain certification to operate as a health mainte-
27 nance organization.

1 (c) For the purposes of this subdivision, "control" shall be defined
2 in regulation.

3 § 11. Paragraphs (h) and (i) of subdivision 3 of section 4403-f of the
4 public health law, as amended by section 41-a of part H of chapter 59 of
5 the laws of 2011, are amended and two new paragraphs (j) and (k) are
6 added to read as follows:

7 (h) that the contractual arrangements for providers of health and long
8 term care services in the benefit package are sufficient to ensure the
9 availability and accessibility of such services to the proposed enrolled
10 population consistent with guidelines established by the commissioner;
11 with respect to individuals in receipt of such services prior to enroll-
12 ment, such guidelines shall require the managed long term care plan to
13 contract with agencies currently providing such services, in order to
14 promote continuity of care. In addition, such guidelines shall require
15 managed long term care plans to offer and cover consumer directed
16 personal assistance services for eligible individuals who elect such
17 services pursuant to section three hundred sixty-five-f of the social
18 services law; [and]

19 (i) that the applicant is financially responsible and may be expected
20 to meet its obligations to its enrolled members[.];

21 (j) that the applicant is not controlled, as defined under regulation,
22 by an entity which provides fiscal intermediary services, is not
23 controlled by an entity which also has control over an entity that
24 provides fiscal intermediary services, does not itself provide fiscal
25 intermediary services in the state consumer directed personal assistance
26 program, and does not control an entity that provides fiscal interme-
27 diary services, as defined in section three hundred sixty-five-f of the
28 social services law; and

1 (k) that the applicant is not controlled, as defined under regulation,
2 by an entity which provides licensed home care services, is not
3 controlled by an entity which also has control over a company that
4 provides licensed home care services, does not itself provide licensed
5 home care services, and does not control an entity that provides
6 licensed home care services.

7 § 12. Section 4403-f of the public health law is amended by adding a
8 new subdivision 3-a to read as follows:

9 3-a. (a) By April first, two thousand twenty-five, any managed long
10 term care plan which provides fiscal intermediary services or licensed
11 home care services, is controlled by an entity which provides fiscal
12 intermediary services or licensed home care services, has control over
13 an entity which provides fiscal intermediary services or licensed home
14 care services, or is controlled by an entity which also has control over
15 an entity that provides fiscal intermediary services or licensed home
16 care services, shall be required to resubmit an application for a
17 certificate of authority pursuant to subdivision two of this section.

18 (b) After April first, two thousand twenty-five, no managed long term
19 care plan which provides fiscal intermediary services or licensed home
20 care services, is controlled by an entity which provides fiscal interme-
21 diary services or licensed home care services, has control over an enti-
22 ty which provides fiscal intermediary services or licensed home care
23 services, or is controlled by an entity which also has control over an
24 entity that provides fiscal intermediary services or licensed home care
25 services, may maintain certification to operate as a managed long term
26 care plan.

27 (c) For the purposes of this subdivision, "control" shall have the
28 same meaning as defined in regulation.

1 § 13. Subparagraphs (v) and (vi) of paragraph (e) of subdivision 2 of
2 section 365-a of the social services law are renumbered subparagraphs
3 (vi) and (vii) and a new subparagraph (v) is added to read as follows:

4 (v) the commissioner of health may issue regulations, including emer-
5 gency regulations, to establish the maximum daily and weekly hours any
6 individual aide providing personal care services available pursuant to
7 this paragraph shall work;

8 § 14. Paragraph (c) of subdivision 2 of section 365-f of the social
9 services law, as amended by section 3 of part MM of chapter 56 of the
10 laws of 2020, is amended to read as follows:

11 (c) has been determined by the social services district, pursuant to
12 an assessment of the person's appropriateness for the program, conducted
13 with an appropriate long term home health care program, a certified home
14 health agency, or an AIDS home care program or pursuant to the personal
15 care program, as being in need of home care services or private duty
16 nursing and as needing at least limited assistance with physical maneu-
17 vering with more than two activities of daily living, or for persons
18 with a dementia or Alzheimer's diagnosis, as needing at least super-
19 vision with more than one activity of daily living, provided that the
20 provisions related to activities of daily living in this paragraph shall
21 only apply to persons who initially seek eligibility for the program on
22 or after October first, two thousand twenty, and who is able and willing
23 [or has a designated representative, including a legal guardian able and
24 willing] to make informed choices, [or a designated relative or other
25 adult who is able and willing to assist in making informed choices,] as
26 to the type and quality of services, including but not limited to such
27 services as nursing care, personal care, transportation and respite
28 services; and

1 § 15. Subdivision 3 of section 365-f of the social services law, as
2 amended by section 9 of part QQ of chapter 56 of the laws of 2020, is
3 amended to read as follows:

4 3. Division of responsibilities. (a) Eligible individuals who elect to
5 participate in the program assume the responsibility for services under
6 such program as mutually agreed to by the eligible individual and
7 provider and as documented in the eligible individual's record, includ-
8 ing, but not limited to, recruiting, hiring and supervising their
9 personal assistants. [For the purposes of this section,]

10 (b) A personal assistant [shall mean], for the purposes of this
11 section, is an adult who:

12 (1) has obtained an individual unique identifier from the state by or
13 before a date determined by the commissioner of health in consultation
14 with the Medicaid inspector general[,]; and

15 (2) provides services under this section to the eligible individual
16 under the eligible individual's instruction, supervision, and direction
17 [or under the instruction, supervision and direction of the eligible
18 individual's designated representative, provided that a].

19 (c) A person legally responsible for an eligible individual's care and
20 support, an eligible individual's spouse [or designated representative],
21 may not be the personal assistant for the eligible individual; however,
22 a personal assistant may include any other adult relative of the eligi-
23 ble individual, provided, however, that the program determines that the
24 services provided by such relative are consistent with an individual's
25 plan of care and that the aggregate cost for such services does not
26 exceed the aggregate costs for equivalent services provided by a non-re-
27 lative personal assistant.

1 (d) Any personal information submitted to obtain [such] a unique iden-
2 tifier under this subdivision shall be maintained as confidential pursu-
3 ant to article six-A of the public officers law ("New York state privacy
4 protection law"). Such individuals shall be assisted as appropriate with
5 service coverage, supervision, advocacy and management.

6 (e) Providers shall not be liable for fulfillment of responsibilities
7 agreed to be undertaken by the eligible individual. This subdivision,
8 however, shall not diminish the participating provider's liability for
9 failure to exercise reasonable care in properly carrying out its respon-
10 sibilities under this program, which shall include monitoring such indi-
11 vidual's continuing ability to fulfill those responsibilities documented
12 in his or her records. Failure of the individual to carry out his or her
13 agreed to responsibilities may be considered in determining such indi-
14 vidual's continued appropriateness for the program.

15 § 16. Clause (G) of subparagraph (ii) of paragraph (a) of subdivision
16 4-a of section 365-f of the social services law, as amended by section 3
17 of part G of chapter 57 of the laws of 2019, is amended to read as
18 follows:

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

25 § 17. Subparagraph (iii) of paragraph (a) subdivision 4-a of section
26 365-f of the social services law, as added by section 1 of part E of
27 chapter 57 of the laws of 2017, is amended to read as follows:

1 (iii) Fiscal intermediaries are not responsible for, and fiscal inter-
2 mediary services shall not include, fulfillment of the responsibilities
3 of the consumer [or, if applicable, the consumer's designated represen-
4 tative] as established by the commissioner. A fiscal intermediary's
5 responsibilities shall not include, and a fiscal intermediary shall not
6 engage in: managing the plan of care including recruiting and hiring a
7 sufficient number of individuals who meet the definition of consumer
8 directed personal assistant, as such term is defined by the commission-
9 er, to provide authorized services that are included on the consumer's
10 plan of care; training, supervising and scheduling each consumer
11 directed personal assistant; terminating the consumer directed personal
12 assistant's employment; or assuring that each consumer directed personal
13 assistant competently and safely performs the personal care services,
14 home health aide services and skilled nursing tasks that are included on
15 the consumer's plan of care. A fiscal intermediary shall exercise
16 reasonable care in properly carrying out its responsibilities under the
17 program.

18 § 18. This act shall take effect immediately and shall be deemed to
19 have been in full force and effect on and after April 1, 2024; provided,
20 however, that sections thirteen, fourteen, fifteen, sixteen and seven-
21 teen of this act shall take effect October 1, 2024; and provided,
22 further, that the amendments to section 4403-f of the public health law
23 made by sections eleven and twelve of this act shall not affect the
24 repeal of such section and shall be deemed repealed therewith.