



New York budget bill is set to alter CDPAP Fiscal Intermediary approval process

By Philip Rosenberg and Caitlin Donovan

Consumer Directed Personal Assistant Program Fiscal Intermediaries (CDPAP FIs) may be surprised, and perhaps dismayed, to learn that there will soon be an additional hurdle to continue operating. A New York budget bill amending Social Services Law § 365-f establishes a procurement process where the Department of Health (DOH) will select entities with which it will contract to provide CDPAP FI services. The budget bill authorizes DOH to begin the procurement process now, with contracts to be executed on or after January 1, 2020. In addition, effective January 1, 2020, the bill repeals the prior authorization process through which CDPAP FIs are currently navigating. It is unclear what will happen to the pending applications in the interim.

All CDPAP FIs that provided services on or before April 1, 2019, will be required to apply for a contract within sixty days after DOH posts the contracting information on its website. If a CDPAP FI does not submit an application by that time or if a CDPAP FI's application is denied, it will be unauthorized to provide CDPAP FI services. Entities eligible to submit applications include, but will not be limited to, service centers for independent living (pursuant to section 1121 of the New York Education Law) and CDPAP FIs that were established prior to January 1, 2012, and which have been continuously providing services. (Although not entirely clear, in light of the fact the law also acknowledges that all CDPAP FIs providing services on or before April 1, 2019, may apply to continue as CDPAP FIs, it appears that the law might be affording preferential treatment under the procurement process to existing CDPAP FIs that have been operational for the last seven years.)

The criteria to be considered by DOH include: the ability to appropriately serve individuals in the program; geographic distribution that would ensure access in rural and underserved areas; demonstrated cultural and language competencies specific to the population of the 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 with all applicable federal and state laws and regulations, including those relating to wage and labor.

The law also requires DOH to empanel a workgroup by May 15, 2019. The workgroup will identify and develop best practices for CDPAP FIs, elaborate on the criteria to be used by DOH in selection of applicants, identify whether services differ for different consumers and under what

circumstances, and help develop transition plans for consumers transitioning from one CDPAP FI to another.

The law also sets forth requirements regarding the cessation of operations and the transfer of consumers between CDPAP FIs. A CDPAP FI ceasing operations or no longer servicing a consumer shall:

- Provide written notice 45 days in advance of the cessation of services to the consumers, consumer representatives, personal assistants, DOH and any local social service districts of MCOs. It is then the responsibility of the social services district or MCO to provide the consumer a list of alternative CDPAP FIs or MCOs within five business days of receipt of the cessation of services notice;
- Facilitate the transfer of all the consumer's records to the designated successor entity; and
- Not take any action that would prevent a personal assistant from moving to a new CDPAP FI nor require the consumer or the personal assistant to switch to a personal care or home health care program.

The local social services district or MCO is to supervise the transition of services and transfer of records and maintain the services by the personal assistant chosen by the consumer.

The oversight and approval of CDPAP FIs will likely be stricter moving forward, as the DOH will have the ability to terminate a CDPAP FI's contract upon thirty days' written notice for failure to comply with the requirements and to terminate the contract immediately if DOH finds that the public health or safety would be immediately endangered.

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