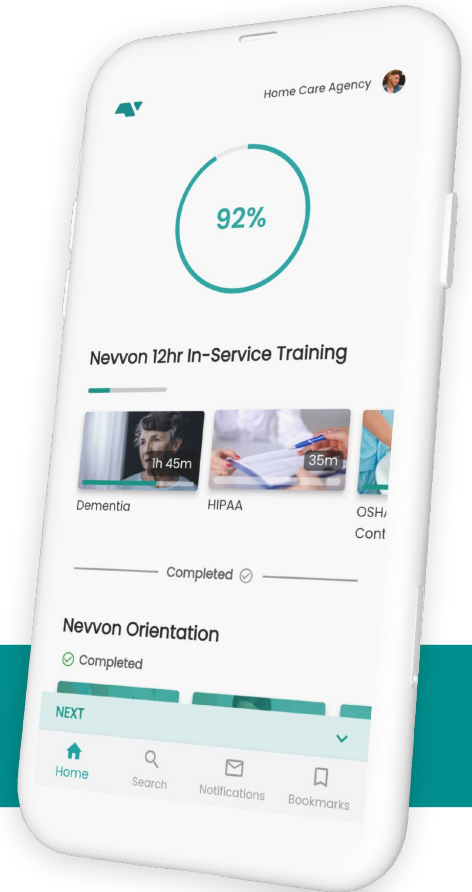


# Unpacking NY's Single FI Changes, What's Next?

A Panel Discussion



# Agenda

**01** Introductions

**02** Background / Establishment of a Single FI State

**03** Subcontracting Consideration

**04** Litigation / Lobby Landscape

**05** What's Next



# Our Panelists



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## Background



# CDPAP Language

## PART HH

Section 1. 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, and three new subparagraphs (ii-a), (ii-b) and (ii-c) are added to read as follows:

(i) "[~~Fiscal~~] Statewide 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~~] paragraph (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.]~~



# CDPAP Language

(ii) Fiscal intermediary services shall include the following services, performed on behalf of the consumer to facilitate [~~his or her~~] the consumer's 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;

(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.



# CDPAP Language

(ii-a) The commissioner shall require any managed care plans, managed long-term care plans, local social service districts, and other appropriate long-term service programs offering consumer directed personal assistance services to contract with the statewide fiscal intermediary set forth in subparagraph (i) of this paragraph to provide all fiscal intermediary services to consumers.

(ii-b) The statewide fiscal intermediary shall subcontract to facilitate the delivery of fiscal intermediary services to an entity that is a service center for independent living under section onethousand one hundred twenty-one of the education law that has been providing fiscal intermediary services since January first, two thousand twenty-four or earlier. The statewide fiscal intermediary shall further subcontract to facilitate the delivery of fiscal intermediary services with at least one entity per rate setting region that has a proven record of delivering services to individuals with disabilities and the senior population, and has been providing fiscal intermediary services since January first, two thousand twelve; provided that such subcontractor shall be required to provide any delegated fiscal intermediary services with cultural and linguistic competency specific to the population of consumers and those of the available workforce, and shall comply with the requirements for registration as a fiscal intermediary set forth in subdivision four-a-one of this section. For purposes of this section, "delegated fiscal intermediary services" are defined as fiscal intermediary services as set forth in subparagraph (ii) of paragraph (a) of this subdivision that the statewide fiscal intermediary includes in a subcontract and which shall include services designed to meet the needs of consumers of the program, which may include assisting consumers with navigation of the program by providing individual consumer assistance and support as needed, consumer peer support, and education and training to consumers on their duties under the program.

(ii-c) The statewide fiscal intermediary shall be responsible for payment to subcontractors for delegated fiscal intermediary services. The payment shall not require a certification by the commissioner if payments are reasonably related to the costs of efficient delivery of such services.



# What It Means?

1. The Commissioner shall require all MLTCs and DSSs to contract with the statewide FI. It does not say that the payors will only be required to contract with the statewide FI, but that is the implication.
2. The statewide FI “shall” contract with centers for independent living that have been providing FI services since January 1, 2024 or earlier.
3. The statewide FI “shall” “further subcontract” ... “with at least one entity” “per rate setting region” ... that has been providing [FI] services since January [1, 2012].”
  1. These subcontractors must register with New York State
  2. These subcontractors will be required to provide “services designed to meet the needs of consumers of the program, which may include assisting consumers with navigation of the program by providing individual consumer assistance and support as needed, consumer peer support, and education and training to consumers on their duties under the program.”
4. The statewide FI shall be responsible for payment to subcontractors for its delegated FI services.





# CDPAP Language

§ 2. Paragraph (b) of subdivision 4-a of section 365-f of the social services law, as ...is amended to read as follows:

(b) Notwithstanding ~~[any inconsistent provision of]~~ section one hundred sixty-three of the state finance law, ...the commissioner shall enter into ~~[contracts]~~ a contract under this subdivision with an eligible ~~[contractors]~~ contractor that ~~[submit]~~ submits an offer for a contract, provided, however, that:

(i) the department shall post on its website:

(A) a description of the proposed statewide fiscal intermediary services to be provided pursuant to ~~[contracts]~~ a contract in accordance with this subdivision;

(B) ...the criteria for selection of the statewide fiscal intermediary, which shall include at a minimum that the eligible contractor is capable of performing statewide fiscal intermediary services with demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce, has experience serving individuals with disabilities, and as of April first, two thousand twenty-four is providing services as a fiscal intermediary on a statewide basis with at least one other state;

(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 a timely fashion and that meet the criteria set forth in clause (B) of subparagraph (i) of this paragraph shall be reviewed by the commissioner; and

(iii) the commissioner shall award such ~~[contracts]~~ contract to the ~~[contractors]~~ contractor that ~~[best meet]~~ meets the criteria for selection and ~~[are best suited to serve the purposes of]~~ offers the best value for providing the services required pursuant to this section and the needs of consumers[;



# CDPAP Language

§ 3. Section 365-f of the social services law is amended by adding a new subdivision 4-a-1 to read as follows:

4-a-1. (a) Fiscal intermediary registration. Except for the statewide fiscal intermediary and its subcontractors, as of [April 1, 2025] no entity shall provide, directly or through contract, fiscal intermediary services. All subcontractors of the statewide fiscal intermediary, shall register with the department within [30] days of being selected as a subcontractor.

(b) In selecting its subcontractors, the statewide fiscal intermediary shall consider demonstrated compliance with all applicable federal and state laws and regulations, including but not limited to, marketing and labor practices, cost reporting, and electronic visit verification requirements.

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

4-b. Actions involving the [~~authorization~~] registration of a fiscal intermediary.

...A fiscal intermediary's registration may be revoked, suspended, limited, or annulled by the commissioner upon thirty 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.

(b) ...The commissioner may issue orders and take other actions as necessary and appropriate to prohibit and prevent the provision of fiscal intermediary services by an unregistered entity.

(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.



# CDPAP Language

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

(b) Notwithstanding any other provision of law, the commissioner is authorized to waive any provision of section three hundred sixty-seven-b of this title related to payment and may promulgate regulations necessary to carry out the objectives of the program including minimum safety, and health and immunization criteria and training requirements for personal assistants, and which describe the responsibilities of the eligible individuals in arranging and paying for services and the protections assured such individuals if they are unable or no longer desire to continue in the program, the fiscal intermediary registration process, standards, and time frames, and those regulations necessary to ensure adequate access to services.

§ 8. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2024. PART II





## **Subcontracting Considerations**



# PA to PCA's

## Initial Questions to Ask:

What is the relationship between the Consumer and PA?

18 NYCRR 505.14 - Payment for personal care services shall not be made to a patient's spouse, parent, son, son-in-law, daughter or daughter-in-law, but may be made to another relative if that other relative: (i) is not residing in the patient's home; or (ii) is residing in the patient's home because the amount of care required by the patient makes his presence necessary.



# PA to PCA's

What services is the Consumer receiving?

PCAs are not permitted to perform skilled nursing services so if the consumer is receiving these services, a PA who transitions to a PCA would not be permitted to continue to perform these services.



# PA to PCA's

## Alternative Competency Demonstration

PA must meet the requirements for personal care aides specified in 18 NYCRR 505.14(d)(4).

Related Experience in an institutional or home setting which involves performance of hands-on skills for a minimum of three months duration and has been obtained within 3 years preceding competency testing.

Related Training is training received through other types of formal training programs such as RN, LPN and have had direct patient care experience.

If the candidate meets the Related Training or Related Experience requirements, then they can undertake to pass the ACD.

The ACD elements include:

- Interview
- Written test (which is the same test that is required for passing the PCATP) and
- Skills performance demonstration

Candidates successfully completing the ACD will be considered to have met the Department's basic training course standards for a Personal Care Aide.





## Litigation / Lobby Landscape







**What's Next**



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**Thank you!**