

HEALTH CARE INFORMATION MEMO

MAY 1, 2024

Enacted Budget Makes Major Changes to Consumer Directed Personal Assistance Program

The Fiscal Year 2025 enacted budget will significantly change the Consumer Directed Personal Assistance Program (CDPAP), a program of self-directed home care that allows seniors and individuals with disabilities to hire their own personal assistants and direct their own care. The program currently supports over 250,000 seniors and individuals with disabilities through a network of hundreds of fiscal intermediaries. These fiscal intermediaries collectively employ nearly 20,000 New Yorkers. The enacted budget will replace the current fiscal intermediaries with a single, statewide fiscal intermediary as of April 1, 2025, placing the \$8 billion of Medicaid spending for CDPAP services under the oversight of a single entity.

The enacted law allows DOH to contract for a single statewide fiscal intermediary without following competitive procurement rules. Chap. 57, Part HH, § 2. The law further defines the criteria for DOH's selection of the statewide fiscal intermediary, requiring that the eligible contractor be capable of performing statewide fiscal intermediary services and have experience serving individuals with disabilities. *Id.* In addition, the law requires that the statewide fiscal intermediary must have prior experience providing services as a fiscal intermediary on a statewide basis with at least one other state. *Id.* This last provision appears to exclude any existing New York fiscal intermediary from becoming the statewide fiscal intermediary unless it already provides fiscal intermediary services on a statewide basis with another state. It is not known whether any existing New York fiscal intermediary will qualify to submit a bid under this provision.

In addition to defining the process for selection of the single statewide fiscal intermediary, the law does provide for some limited subcontracting. The enacted statutory language state that the single statewide fiscal intermediary must subcontract with an independent living center, provided that the independent living center has been providing fiscal intermediary services since January first, two thousand twenty-four or earlier Chap. 57, Part HH, § 1. In addition, the new law requires that the single statewide fiscal intermediary subcontract with at least one entity per DOH rate setting region that has a proven record of delivering services to individuals with disabilities and the senior population, but only if such entity has been providing fiscal intermediary services since January first, two thousand twelve. The law also requires that selected subcontractors have cultural and linguistic competency specific to the population of consumers and those of the available workforce, in apparent recognition of the difficulty a statewide fiscal intermediary will have in delivering culturally and linguistically competent services. *Id.* The number of subcontractors and the amount these subcontractors will be paid is left to the determination of the statewide fiscal intermediary. *Id.*

There are very few details as to how the Department of Health (DOH) will implement this major change in only 11 months. Whether the Department can is a fair question. The enacted Budget envisions the selection of the statewide fiscal intermediary, the selection of subcontracting fiscal

intermediaries, and the transition of 250,000 Consumers and thousands of their personal assistants to occur by April 1, 2025. Although the transition is not intended to occur under the 2025-26 Fiscal Year, the Budget also includes savings of \$200 million in the current fiscal year associated with the change. No information is currently available as to how the 2024-25 Fiscal Year savings are to be achieved.

Under the enacted law, all current fiscal intermediaries will need to cease operations by April 1, 2025 in favor of the single statewide fiscal intermediary. The law does not address the authority of the existing fiscal intermediaries to continue to provide services if the single statewide fiscal intermediary is not in place or is unable to transition CDPAP consumers by that date. Remarkably, existing provisions of law that require fiscal intermediaries cooperate and plan for their demise remain in place.

We are currently exploring the legal avenues to challenge the law. To discuss this further, please contact [Roger Bearden](#), [Hermes Fernandez](#) or the attorney at the firm with whom you are regularly in contact.

