THE STATE BUDGET: WHAT IT MEANS FOR HOME CARE AND FIS

Home Care Alert
April 1, 2019

Certain sections of the final State FY 2019-2020 Budget were released over the weekend. Below is a preliminary summary of the Budget relating to home care and fiscal intermediary providers:

1. Wage Parity
Agencies in New York City, Westchester, Nassau and Suffolk counties that provide services under the NHTD and TBI waiver will be required to pay wage parity rates and benefits to aides working on those cases. It appears that these changes are effective for services rendered on April 1, 2019 and thereafter.

2. NPI Number
The proposal to require all home care aides to receive a National Provider Identification ("NPI") number has not been adopted.

3. Fiscal Intermediaries
Regarding fiscal intermediaries, the State did not adopt the restrictive definitions for fiscal intermediaries as originally proposed by the Governor in January 2019, however, the Budget states that fiscal intermediary will mean an "entity that provides [FI] services and has a contract for providing such services with the [DOH] and is selected through the procurement process…" Eligible applicants who may seek permission to operate a FI will "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 or (B) have been established as a fiscal intermediary" prior to January 1, 2012 and have been "continuously" providing fiscal intermediary services.

The Budget outlines the procurement process, by which the DOH will approve or disapprove a provider as a fiscal intermediary, as follows:

a. The DOH will post on its website a description of the services to be provided by the contractor (i.e., the fiscal intermediary);
b. The DOH will specify that that the selection of contractors shall be based on criteria reasonably related to the contractors' ability to provide fiscal intermediary services, including but not limited to: (1) ability to appropriately serve individuals participating in the program; (2) geographic distribution that would ensure access in

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rural and underserved areas; (3) demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce; (4) ability to provide timely consumer assistance; (5) experience serving individuals with disabilities; (6) the availability of consumer peer support; and (7) demonstrated compliance with all applicable federal and state laws and regulations, including but
not limited to those relating to wages and labor;
c. The DOH will state the manner by which they can apply to be a fiscal intermediary, which may include submission of an application electronically.
d. The DOH will specify that "all reasonable and responsive offers" that are received by applicants "in a timely fashion" will be reviewed by the Commissioner of Health.
e. The Commissioner will award fiscal intermediary contract to "contractors that best meet the criteria for selection and are best suited to serve the purposes" of the State and the consumers.

For existing FIs (existing FIs are those providing services on or before April 1, 2019), the Budget states that they may continue to operate the FIs , but they must submit an "offer for a contract" within 60 days after the DOH publishes the initial offer on the DOH's website. Existing FIs "shall be deemed authorized to provide [FI] services unless (a) they fail to submit an offer for a contract within 60 days or (b) the entity's offer for a contract is denied."

The Budget contemplates that the Commissioner of Health will convene a "stakeholder workgroup" no later than May 15, 2019, to discuss transition plans for consumers, the best practices for delivery of fiscal intermediary services, to inform the criteria for use by the DOH to select fiscal intermediaries, and other issues.

The Budget establishes a "closure" plan for fiscal intermediaries.

Social Services Law, the "CDPAP law," was amended to state that FIs are required to maintain "time records" for personal assistant services. As fiscal intermediaries will know, until this amendment, the CDPAP law required that FIs maintain "timesheets" of personal assistants' services, making it questionable and problematic from an OMIG standpoint to use EVV for CDPAP services.

The current DOH process for granting fiscal intermediary authorizations was deleted from the law. Thus, it appears that all fiscal intermediary application processing will cease.

The funding for fiscal intermediaries seems uncertain. On March 27, 2019, as the State Budget was being finalized, the State Department of Health published a notice proposing to amend CDPAP funding, effective April 1, 2019, from a per hour billing methodology to a per member per month basis and to maintain an "hourly/daily reimbursement for service delivery." In view of the final budget language, it is unclear whether this change will proceed. We are reviewing all the bills being issued as part of the final Budget to determine whether this issue is resolved through the Budget process. It is possible, however, that the reimbursement methodology and figures for fiscal intermediary services will be handled outside of the Budget process, through the DOH.

4. Managed Care Funds are Medicaid Funds

The Budget confirms that, for purposes of OMIG compliance and OMIG authority to recoup, money paid through a managed care plan is deemed Medicaid funding.

The Budget states that OMIG will conduct reviews of the contractual performance of each MCO as it relates to the MCO's program integrity obligations. The Medicaid Inspector General, in consultation with the Commissioner of Health, will establish contractual obligations pursuant to which MCO's program integrity performance will be evaluated. The reviews will be done "no more often" than annually. The Inspector General may conduct more frequent reviews if deemed necessary.

The Budget also provides that the State may recover from providers any overpayments and, if the State is unsuccessful in recovering the overpayment, then the State may require that the MCO recover the Medicaid overpayment on behalf of the State. The MCO must remit to the State the full amount of the identified overpayment no later than 6 months after receiving notice of the overpayment of the State.