

NYS DOH Releases Request for Offers for FIs in CDPAP – RESPONSES DUE FEBRUARY 18, 2020

As we alerted HCP members earlier this week, on the evening of December 18, 2019, the New York State Department of Health (DOH/the Department), under the authority and provisions of section 365-f of the Social Services Law, paragraphs (a) and (b) of subdivision (4-a), issued the long-awaited Request for Offers, (RFO) #20039, for New York State Fiscal Intermediaries in the Consumer Directed Personal Assistance Program.

A full version of the RFO can be found at this [link](#).

CAUTION:

Rules for contacting the DOH about the RFO are detailed in Section 5.1 - Restricted period. ***Failure to comply fully with this information may result in disqualification of your application.***

Beginning with the earliest written notice, advertisement, or solicitation of a Request for Offers (“RFO”), intending to result in a contract with DOH and ending with the final contract award and approval by DOH offerers must only contact designated contact and or permissible subject matter contact, as follows below.

This prohibition applies to any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence this procurement. Violation of any of the requirements described in this Section may be grounds for a determination that the Offeror is non-responsible and therefore ineligible for this contract award.

- **DESIGNATED CONTACT**

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contact to whom all communications attempting to influence the Department of Health’s conduct or decision regarding this procurement must be made.

Elizabeth Wood
Bureau of Contracts
New York State Department of Health
Corning Tower, Room 2827
Albany, New York 12237
Telephone: 518-474-7896
Email Address: elizabeth.wood@health.ny.gov

The New York State Association of Health Care Providers, Inc. (HCP) is a statewide trade association representing the full spectrum of home and community-based care providers through information, advocacy, and education. HCP represents licensed home care services agencies, certified home health agencies, hospices, and related health organizations. Through a strong network of regional chapters and an active State office in Albany, HCP is a primary authority of the home health care industry.

- **PERMISSIBLE SUBJECT MATTER CONTACT:**

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health identifies the following allowable contact for communications related to the submission of written offers, written questions, pre-bid questions, and debriefings.

Michael Lewandowski
New York State Department of Health
Bureau of Programmatic Support Division of Employee and Program Support
Office of Health Insurance Programs
One Commerce Plaza, Room 1450
Albany, NY 12237
Telephone: 518-473-4657
Email Address: OHIPContracts@health.ny.gov .

Entities eligible to submit an offer under this RFO in accordance with SSL § 365-f include:

- a) A service center for independent living (ILC) under Section 1121 of the New York State Education Law; OR
- b) An entity that has been established as a Fiscal Intermediary prior to January 1, 2012 and has been continuously providing services for CDPAP consumers under section 365-f of the Social Services Law; OR
- c) Entities capable of appropriately providing fiscal intermediary services, performing the responsibilities of a fiscal intermediary and complying with SSL § 365-f.

Important Deadlines

- Submission of Written Questions to DOH by **January 3, 2020**;
- DOH Response to Written Questions on or about **January 17, 2020**;
- Deadline for Submission of Offers **February 18, 2020**;
- Anticipated Contract Start Date **July 1, 2020**.

Background

As has been expected since the 2019-2020 State Budget passed, the Department has announced that it is seeking offers from qualified entities to enter into contract to provide Fiscal Intermediary (FI) services under the Consumer Directed Personal Assistance Program (CDPAP), as outlined in SSL § 365-f (4-a)(a)(ii), 18 NYCRR § 505.28(i) and 10 NYCRR § 766.11(c)-(d), for persons enrolled in **fee-for-service Medicaid and the Medicaid managed care program (NY Medicaid)**.

Per the provisions of section 365-f (4-a)(b)(iv) all entities providing FI services to NY Medicaid on or before April 1, 2019 (**current FIs**) **must submit an offer to contract with the Department to provide FI services by responding to this RFO within 60 days of its issuance and posting to the Department's website, which is February 18, 2020.**

The Department will release transition policies and procedures for current FIs that do not respond to this RFO, providing at least 45 calendar days written notice that it must cease operations.

Entities chosen to contract with the Department for FI services under this RFO will agree to provide FI services to any CDPAP consumers enrolled in NY Medicaid in the FIs authorized service area. Entities chosen to contract with the Department may also enter into administrative service agreements/contracts with Managed Care Organizations (MCOs) to serve CDPAP members enrolled in managed care plans. Entities under contract with the Department for FI services will not be required to enter into additional contracts directly with Local Departments of Social Services (LDSS) to serve CDPAP fee-for-service members located in counties in their authorized service area. The Department will make available and post to its website a list of all approved and contracted FIs.

A full version of the RFO can be found at this [link](#).

Key aspects of the proposal:

- Those awarded contracts will have a contract term of five years.
- **When responding to the RFO applicants must complete a Joint Employment Attestation, accepting and acknowledging the role of joint employer with the CDPAP consumer, as follows:**
 - a) Ensuring full and timely payment of wages established by the Contractor, per applicable labor laws, preferably by direct deposit, and providing all statements and maintaining all records required by the New York State Labor Law;
 - b) Maintaining all documentation needed to process and submit all required income tax and other required withholdings and any optional deductions;
 - c) Tabulating appropriate hours for employee paychecks when services are rendered for multiple consumers by a single PA and/or multiple PAs for a single consumer.
 - d) Complying with all applicable social security, Worker's Compensation, disability and unemployment insurance employer requirements.
 - e) Ensuring all PA employment forms are completed correctly and adequately and identify the FI as the employer of record, including but not limited to: • I-9 Employment Eligibility Verification • NYS 100 Registration for Unemployment Insurance Withholding Tax and Wage Reporting • W-4 Federal Employee's withholding Allowance Certificate and • IT-2104 State Employee's Withholding Allowance certificate.
 - f) Coordinating PA benefits, including annual leave, health insurance and employee benefits as applicable;
 - g) Reporting wages paid and taxes withheld using appropriate forms (e.g., Form W-2, Wage and Tax Statement, Form NYS-45)
 - h) Maintaining and making available to the Consumer information detailing the wage rates and benefits of PAs;
 - i) Auditing Consumer's PA billing records, and resolving any anomalies;
 - j) Processing termination documentations once notified by the Consumer that their PA has been terminated; and

k) Processing wage verification requests, Paid Family Leave (PFL) claims and Family Medical Leave Act (FMLA) claims.

- **Collaborations:** The Department invites offers in which an eligible Offeror, acting as a Lead FI, partners with entities that meet the eligibility qualifications described in section 3.1 of the RFO to deliver FI services. Such collaborations may be formed to best meet the needs of consumers, provide operational efficiencies, provide geographic distribution that would ensure access in rural and underserved areas, and provide cultural and language competencies specific to the consumers it will serve and those of the available workforce.
 - Each offer may only include one Lead FI which will be required to fulfill all program and contractual requirements. Lead FIs may only submit one offer. Collaborating partners must meet the eligible offeror qualifications but will be considered subcontractors for the purposes of that offer. There is no limit to the number of offers that an eligible entity may join as a collaborating partner.
 - Current FIs that submit an offer as a Lead FI OR that are included as a subcontractor in at least one offer (within 60 days of the posting of this RFO) shall remain authorized to provide FI services pursuant to SSL § 365-f(4a)(b)(iv) until further notice from the Department.
 - Collaborating partners, as subcontractors, may not bill Medicaid, Managed Care Plans, Consumers, or PAs for services provided in relation to an award under this RFO.
- Contractors will be required to perform the FI services described in SSL § 365-f (4-a)(a)(ii), 18 NYCRR § 505.28(i) and 10 NYCRR § 766.11(c)-(d) and found under RFO section 4.1.
- Fiscal Intermediaries are not responsible for, and fiscal intermediary services shall not include fulfillment of the responsibilities of the consumer which include:
 - a) Managing their own plan of care including recruiting and hiring PAs;
 - b) Training, scheduling and supervising PAs including arranging and scheduling substitute coverage when a PA is temporarily unavailable for any reason;
 - c) Assuring PAs competently and safely perform the required services;
 - d) Timely approving and attesting to the accuracy of PA time records and transmitting such information to the FI according to the FIs procedures;
 - e) Timely notifying the FI of changes in employment status of any PA;
 - f) Timely distributing PAs' employment checks, if necessary; and
 - g) Terminating PAs.

Best Practices: In carrying out the specific duties, FIs may use creative approaches in delivering high quality FI services that best meet the needs of consumers. Offerors should identify these approaches in their application. Such practices may include but are not limited to: **a)** Providing peer supports, including peer mentoring and counseling for consumers and their families to assist in navigating their employer responsibilities; **b)** Conducting onsite visit(s) with the consumers; **c)** With the consent of consumers, conducting face-to-face orientation for PAs; **d)** Providing training for consumers to assist them in their role as an employer in areas including, but not limited to, recruiting, interviewing, dealing with difficult employees, effective supervision and termination of employment; **e)** Establishing a consumer advisory committee that includes PAs, FI staff, MCOs, LDSS and consumer representatives in the FI's service area; **f)** Establishing, maintaining and monitoring an electronic email or user-friendly website that provides information to consumers/caregivers and provide a means to report and/or resolve complaints and answer inquiries; and **g)** Other practices as may be determined by the Offeror.

Compliance Requirements: Of the many compliance requirements in RFO section 4.4, contractors will be required to enroll as a CDPAP-FI enrolled Medicaid provider. An Offeror that is not a CDPAP-FI enrolled Medicaid provider must successfully enroll before any contract awarded under this procurement will become effective. Any award under the terms of this RFO will be conditioned on such enrollment.

Fiscal Intermediary Organizational Requirements: Of the many organizational requirements in RFO Section 4.5, the contractor will maintain an organizational chart with professional and managerial lines of authority and submit such chart to the Department upon request. **Where the FI is also a Licensed Home Care Services Agency (LHCSA), maintain adequate firewalls between the LHCSA and FI lines of business to ensure the avoidance of actual or perceived conflicts of interest between the two lines of business.**

HCP Urges Extension of January 3 Deadline to Submit Questions to DOH.

With the release of this RFO late in the day on December 18, shortly before the major year-end holiday season, HCP has contacted DOH to urge the extension of the January 3 deadline to submit question to DOH to answer.

DOH Draft Regulation on PMPM Rates for FIs in CDPAP

Also this week, DOH published on its website a [draft regulation](#) related to fiscal intermediary administrative costs. The draft regulation defines FI administrative costs as allowable costs incurred by a FI for performance of FI services under section 365-f(4-a) of the Social Services law and under the draft regulation.

The rates in the draft regulation include the three-tiered approach announced by DOH in the fall, with Tier 1 a monthly rate of \$64 for 1-159 monthly direct care hours; Tier 2 \$164 for 160 – 479 monthly direct care hours and Tier 3 \$522 for 480 – 700+ monthly direct care hours.

This draft rule appears to be in response to the recent lawsuit wherein the court instructed DOH to follow the appropriate rule making procedure in setting this rate. It is expected that the drafted rule will be published in the State Register in the coming weeks. HCP is preparing comments on this proposal to be submitted at the appropriate time.

HCP Public Policy Staff continues to review these materials. Please contact [Kevin Kerwin](#) with questions.