

Transitional Issues Regarding a Single
Statewide Fiscal Intermediary



Welcome

HERMES FERNANDEZ

ROGER BEARDEN

Esq., Bond Schoeneck, and King



Timeline

- Single Statewide FI Statute passed: April 22, 2024
- Request for Proposals issued: June 17, 2024
- Bids due: August 21, 2024
- Award made: September 12, 2024
- Projected Contract start date: October 1, 2024
- Contract signed: Hasn't happened
- FI replacement date: April 1, 2025

Statutory Replacement Date

- April 1, 2025
- One Single State Statewide Fiscal Intermediary
- All current Fiscal Intermediaries Must Halt

Wait! What! How?

- NYS Department of Health says:
 - 280,000 Consumers
 - 300,000+ Personal Assistants
 - 600 (approximate) Fiscal Intermediaries
- To Meet the April 1 deadline:
 - From now to April 1, move 70,000 Consumers Per Month to Single FI
 - From now to April 1, move 75,000+ PAs Per Month to Single FI

Delay

- 1199 says more time may be needed
- Health Commissioner McDonald says more time may be needed
- PPL may be suggesting more time may be needed
- Contract not yet signed
 - Attorney General's office has stated a contract will not be signed before January first

Hoped for Delay

- Three cases filed in Albany County Supreme Court.
 - One on interlocutory appeal
- Two cases filed in federal court
 - Eastern District of New York
 - Southern District of New York
 - One case expected in Western District of New York
- Challenges to contract award expected (state court)

Fantasy April 1, 2025

- Cannot take any action that would prevent a PA from moving to the Single FI
- Cannot require the Consumer or PA to move to a personal care or home care program

Fantasy April 1, 2025

- “Upon request and consent, promptly transfer all records relating to the person’s health care and health care authorizations and personnel records to the FI, or personal or home care provider, and assume all liability for omissions or errors in the records”
- Statute does not say “without charge”
- Consent of the Consumer or PA as applicable is required
- Not up to the FI to seek consent

Fantasy April 1, 2025

- Where an FI ceases operations because it has been denied a contract:
 - Notice will be sent by the Department to all interested parties
 - Or maybe not

Fantasy April 1, 2025

- FIs must deliver notice of cessation of operations 45 days in advance to:
 - DOH
 - Consumers
 - Designated Representative
 - Personal Assistants
 - Contracting Local Depts. of Social Services
 - Contracting Managed Care Plans

Between Now and Fantasy April 1, 2025

- Opportunity!
- Increasingly likely that DOH will need a statutory change
- Back to the Legislature
- Develop an alternative acceptable to all parties

Between Now and Fantasy April 1, 2025

- FIs can encourage Consumers to enroll with a related LHCSA
- Be cognizant on the limits on care
 - Certain care requires professional license
 - PA experience does not satisfy training requirements
- Be cognizant on the limits on relatives and house mates

Become a Subcontractor

- PPL is seeking subcontractors
 - PPL has announced four regional subcontractors
 - PPL claims to want more
 - PPL appears willing to subcontract with LHCSAs
 - Seems unconcerned with January 1, 2012
 - Subcontractors must be approved by DOH
 - What the duties will be are unknown
 - Pay rates are unknown
 - Subcontractors can do quite a lot

Become a Subcontractor

- Subcontractors cannot:
 - set wages and benefits
 - maintain workers compensation, disability, or unemployment insurance policies for PAs
 - appear at workers compensation, disability or unemployment hearings
 - maintain PA personnel records
 - maintain Consumers' service authorizations or plans of care (may maintain duplicates)
 - enter into Department approved MOUs with Consumers
 - contract with managed care organizations.

Become a Subcontractor

- Subcontractors can:
 - Distribute wages and benefits
 - Enroll PAs into workers compensation, disability, or unemployment insurance policies established by FI
 - Give testimony at workers compensation, disability or unemployment hearings
 - maintain duplicate record
 - recruit consumers
 - orient consumers and PAs
 - provide support to consumers and PAs

Statutory Subcontracting Considerations

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.

Statutory Payment to Subcontractors

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.



Thank You

The information in this presentation is intended as general background information.

It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

All rights reserved.

This presentation may not be reprinted or duplicated in any form without the express written authorization of Bond, Schoeneck & King PLLC.