

Client Alert

February 26, 2024

Governor Hochul's 30 Day Amendment Proposes to Make Major Changes to CDPAP and FI Services

Last week, Governor Hochul released 30-day amendments to the 2024–2025 State Fiscal Year Executive Budget Proposal. If the proposals are enacted, major changes could affect home care and more particularly the Consumer Directed Personal Assistance Program.

Notable changes to the program include:

- The elimination from the program of consumers who have a designated representative or legal guardian that make choices on their behalf.
- Prohibition of a consumer's designated representative from serving as a Personal Assistant.
- Replacement of the FI Request for Offer process with an authorization process based on standards and processes to be established by the Commissioner.
- An attempt to eliminate potential conflicts of interest between FIs and Licensed Home Care Services Agencies (LHCSA) by disallowing relationships between FIs, LHCSAs, and Medicaid Managed Long Term Care plans (MLTCs) or Health Maintenance Organizations (HMO) where there is a controlling interest or majority ownership.
- Authorization to the Commissioner to limit the maximum number of FIs that a local department of social services, MLTC, ACO or IDS may have under contract.
- The Commissioner would be given broad authorization to promulgate regulations covering criteria and training for personal assistants and establishment of limitations on the number of hours a personal assistant may work on a daily or weekly basis.

Glaser & Weiner, P.C. will be in Albany on February 26th and 27th sharing our voices at Advocacy Day with the members of the New York State Association of Health Care Providers. We will continue to keep you advised of all pertinent developments.

OMIG Is Reviewing Compliance Programs

As a reminder, effective Dec. 28, 2022, the Office of the Medicaid Inspector General (OMIG) revised 18 NYCRR 521 resulting in compliance-related regulatory changes. All Licensed Home Care Services Agencies and other providers (including Fiscal Intermediaries) that receive Medicaid payments (and/or can be reasonably expected to receive payments) either directly or indirectly, of at least \$1,000,000 in any consecutive 12-month period must adopt, implement, and maintain an effective compliance program that is tailored to its specific organizational needs. The new regulations significantly revised the compliance-related obligations of New York State Medicaid program providers. These changes required providers to review and revise their compliance program and related documents by March 28, 2023. OMIG has initiated compliance program reviews with a review period beginning as of April 1, 2023. Noncompliance may result in exclusion and removal from the Medicaid program along with other monetary penalties and sanctions.

Please contact our office for assistance with the review and update of your compliance program and all aspects of compliance.

Reminder: Covid-19 Isolation Period Remains at 5 days

Despite reports last week that federal officials were considering changing COVID-19 isolation guidelines, the New York State Department of Health (the "Department") has not changed isolation requirements. The Department continues to follow CDC guidance which requires isolation for at least five days (day 0 through day 5) after a positive test for COVID-19.

Increased Penalties for EVV Noncompliance

Governor Hochul's Fiscal Year 2025 Executive Budget included proposals that if passed will bring multiple changes that will impact home care industry. Overall, the Budget aims to increase auditing and oversight of long-term care providers. This includes enhancing enforcement efforts of the Electronic Visit Verification (EVV) requirements. EVV is a federally mandated program that requires real-time verification of in-home visits by providers of Medicaid personal care services and home

health services, including CDPAP personal assistance services. The Budget proposals would increase penalties for Medicaid plans that fail to enforce EVV compliance. Under the proposed amendments, the New York State Department of Health would be authorized to collect liquidated damages or actual losses incurred from failure to meet contractual obligations and performance standards under their model contracts with managed care organizations. This will result in a higher level of EVV auditing and enforcement of home care providers.

New York City Creates a Private Right of Action for Alleged Violations of the Earned Sick and Safe Time Act

On January 20, 2024, New York City enacted a law that will allow individuals to file civil actions alleging violations of the city's Earned Safe and Sick Time Act (ESSTA) within two years of when they knew (or should have known) of the alleged violations. The law takes effect on March 20, 2024 and will allow any person alleging violations of the ESSTA to file lawsuits in court with or without first filing a complaint with or notifying the Department of Consumer and Worker Protection (DCWP).

Before the modifications to the ESSTA, employees were limited to filing administrative complaints with DCWP. Beginning March 20, 2024, a court may award an employee who proves a violation of the ESSTA:

- \$500 for each occurrence of safe/sick time that is wrongfully denied or conditioned by the employer.
- Either (i) three times the wages that should have been paid or (ii) \$250 (whichever is greater) for each occurrence when an employee is not properly compensated for safe/sick time.
- Full compensation for wages and benefits lost, plus \$500 and equitable relief for each instance of employer retaliation and interference.
- Full compensation including wages and benefits lost, \$2,500, and equitable relief, including reinstatement for each instance of unlawful discharge from employment.
- \$500 for each employee covered by an employer's policy or practice that does not provide or allow for the use of safe/sick time in accordance with the law.

In addition, prevailing employees may recover other injunctive and declaratory relief, attorneys' fees and costs, and any other relief as the court deems appropriate.

Now is the time for New York City employers to review their safe and sick leave policies. Contact our office for assistance

with review and preparation of policies.

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