Operationalizing the CDPAP Statewide Fiscal Intermediary in New York State

A Policy Paper by the Center for Disability Rights

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Introduction

As part of the 2024-25 NYS Budget, the state has decided to consolidate all of the Fiscal Intermediaries (FIs) providing Consumer Directed Personal Assistance Services (CDPAS) under a single, Statewide Fiscal Intermediary (SFI). Independent Living Centers (ILCs) – disability-led, peer organizations – decried the budget proposal because these services were originally developed by the Disability Community and, when implemented correctly, have proven to be a valuable tool for community integration. There was significant concern that the proposal would entirely eliminate consumer choice among Fiscal Intermediaries, disenfranchise disability-led organizations which have used this program as a means to uplift the Disability Community locally, and result in unwanted institutionalizations.

The network pointed to the experience of consumers receiving services from the Center for Disability Rights. In 2010, Monroe County retaliated against CDR's efforts to enforce the Americans with Disabilities Act by eliminating CDR as a choice for Fiscal Intermediary services in the county even though CDR was instrumental in establishing the statewide program. Consumers were forced out of CDR's program and into five for-profit FIs. In the months that followed, many of the individuals who CDR had transitioned into the community using CDPAP services were re-institutionalized because the new FIs were unwilling to effectively support them.

In response to the concerns raised by the ILCs, state budget negotiators included budget language to preserve the role of the ILCs as CDPAP FIs. Recognizing that some disability-led and otherwise-important FIs were being eliminated, budget negotiators also added language allowing the SFI to subcontract with at least one other entity in each of the four rate-setting regions to provide "delegated Fiscal Intermediary services."

Although, with these additions, the state budget negotiators acknowledged the importance of disability-led, cultural, and language-competent agencies to ensure the Consumer Directed Personal Assistance Program is administered with integrity and reflects true consumer direction, the budget language does not delineate a structure for the new system. **This paper provides a framework for the implementation of SFI in a manner that complies with the statutory language and the legislative intent of the proposal.**

Key Provisions in the Budget Language Establishing the Statewide Fiscal Intermediary

- The statewide Fiscal intermediary shall subcontract to facilitate the delivery of Fiscal intermediary services to an entity that is a service center for independent living under section one thousand one hundred twenty-one of the education law that has been providing Fiscal intermediary services since January first, two thousand twenty-four or earlier.

  Although the budget language references a single service center for independent living, the Governor's office and state legislature agree that under the state law the 11 Independent Living Centers, which have been providing FI services prior to January 1, 2024, would continue as full Fiscal Intermediaries, distinguished from the other subcontracts which would only provide "delegated Fiscal intermediary services". Based on the discussions with the Executive and legislators who intended to maintain the integrity of these Disability-led FIs, the ILCs would remain independent FIs that simply receive their administrative funding through the SFI instead of as a PMPM from the managed care organizations.

- The statewide Fiscal intermediary shall further subcontract to facilitate the delivery of Fiscal intermediary services with at least one entity per rate setting region that has a proven record of delivering services to individuals with disabilities and the senior population, and has been providing Fiscal intermediary services since January first, two thousand twelve; provided that such subcontractor shall be required to provide any delegated Fiscal intermediary services with cultural and linguistic competency specific to the population of consumers and those of the available workforce, and shall comply with the requirements for registration as a Fiscal intermediary set forth in subdivision four-a-one of this section.

  The state law requires the SFI to contract with at least one additional entity in each of the four rate setting regions to provide "any delegated Fiscal Intermediary services." Eligible entities in this category of subcontractor must have been providing FI services since January 1, 2012.

- For purposes of this section, "delegated Fiscal intermediary services" are defined as Fiscal intermediary services as set forth in subparagraph (ii) of paragraph (a) of this subdivision that the statewide Fiscal intermediary includes in a subcontract and which shall include services designed to meet the needs of consumers of the program, which may include assisting consumers with navigation of the program by providing individual consumer assistance and support as needed, consumer peer support, and education and training to consumers on their duties under the program.

  Although the definition of Fiscal Intermediary services remains the same, with only a change in wording to address non-binary individuals with disabilities, the state budget defines "delegated Fiscal Intermediary services" as any of the services listed that have been negotiated between the SFI and non-ILC subcontractor.

- The statewide Fiscal intermediary shall be responsible for payment to subcontractors for delegated Fiscal intermediary services.

  ILC will receive payment directly from the SFI, not managed care organizations. Although the SFI will pass through rates directly to Centers, other subcontractors will negotiate pass-through rates depending on the specific delegated services.

- 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.

  The SFI will be responsible for making sure subcontractors follow any federal and state laws and regulations.

- Except for the statewide Fiscal intermediary and its subcontractors, as of April first, two thousand twenty-five, no entity shall provide, directly or through contract, Fiscal intermediary services.

  The state law prohibits any Fiscal Intermediary outside the SFI and its subcontractors after April 1, 2025.

- The commissioner is authorized to waive any provision of section three hundred sixty-seven-b of this title related to payment and may promulgate regulations necessary to carry out the objectives of the program including minimum safety, and health and immunization criteria and training requirements for personal assistants.

  The state budget added language authorizing minimum training requirements for personal assistants.

Issues that Need to be Addressed in Implementing the SFI Framework in New York

It is clear from the budget language that the 11 ILCs remain as autonomous FIs whose administrative payments, currently paid as a Per Member Per Month (PMPM) payment by Medicaid and some managed care organizations, will be paid as a pass-through funding from the SFI. This approach addresses the concern that a single, for-profit organization providing FI services for the entire state would establish a monopoly and eliminate all consumer choice. Additionally, this approach preserves a network of Disability-led FIs, where Disabled individuals are not only empowered to manage their own services, but also work for, and govern the non-profit organization itself. Although we disagreed with the direction of this proposal, we appreciate that the Governor and legislature understood and worked to address our concerns.

As we move forward, it is critical that the state involve the ILCs and other disability advocates in developing the plan to operationalize the state law. This model was developed by people with disabilities, including advocates with the Center for Disability Rights. Advocates worked closely with the Department of Health to develop the program, initially educating NYS DOH staff about the model and then serving as a sounding board for issues NYS DOH identified. Although we understand best how to run the program as it was intended, in recent years, NYS DOH has not fully leveraged us as a resource, in part, to avoid issues with procurement rules. Because the IL network has been identified in the state law as a key component of the new structure it makes sense that NYS DOH reinvigorate its relationship with the network.

The following are key issues that need to be considered and addressed:

- <u>Ensuring Consumer Choice</u>

  By incorporating the ILCs and other entities into the system, the Governor and legislature have embedded consumer choice into the SFI model. It is imperative, however, that consumers be made aware of their options under this model. Providing choice at the front end will avoid the potential for the SFI to hand off only the consumers they see as "difficult".

- <u>Ensuring Adequate Funding for the ILC FIs</u>

  The new framework must ensure that the ILCs – in receiving a pass-through payment for administrative services – receive adequate payments for the administrative pass-through from the SFI. Reductions in the individual administrative cost of CDPAP is intended to be offset by an increase in the economy of scale associated with serving a larger group of consumers, but that will only work if ILCs have the opportunity to serve more consumers.

- <u>Establish Standard Statewide Direct Service Billing Rates</u>

  The current system allows managed care companies to utilize the rate negotiation process to pay enhanced direct service rates (or blended rates) to FIs as a way to incentivize bringing on lower-hour individuals or to provide a marketing function. To avoid this, NYS DOH should establish a statewide payment for CDPAP direct services that is paid by all managed care organizations.

- <u>Establish a Streamlined Billing Process to Increase Efficiency</u>

  Billing the managed care companies is an onerous process and significant administrative burden. Standardizing the direct service rates – as described above – is the first step to increasing the efficiency of processing payments, but it is not enough for substantive reform. As the state seeks to reduce the administrative cost of CDPAP, it must explore mechanisms that further increase the administrative efficiency of billing and payment for services. This will be critical to the SFI, ILC FIs, and any entities that have been delegated the full range of FI services. Otherwise, the state is paying administrative fees to multiple organizations simply to move funds from one organization to another, while incentivizing the managed care organizations to restrict or limit payments.

- <u>Ensure Flexibility in the ILC FI Service Areas</u>

  The state needs to provide flexibility for the ILC FI service areas, as opposed to strictly limiting their service areas. ILCs may serve a range of areas. As an example, some ILCs that were awarded contracts as part of the CDPAP RFO developed an infrastructure that would allow them to serve a broader geographic area. Centers may provide other services over a wider geographic area as well. For example, CDR serves consumers in our Pooled Trust across the entire state. Affording the Centers flexibility in where they provide FI services will help ensure consumer choice and better leverage this network. Additionally, some policymakers may not realize that the four rate-setting regions are not geographic regions with contiguous counties. As an example, the Upstate/Metro region includes the following counties: Albany, Erie, Madison, Monroe, Montgomery, Niagara, Onondaga, Orleans, Rensselaer, Saratoga, Schenectady, Warren, Washington, and Wyoming.

- <u>Ensuring Timely Payment to the ILCs</u>

  The contract between the state and the SFI must ensure timely and complete payment to the ILCs.

Further Policy Issues that Need to be Addressed

- <u>Growth of CDPAS</u>

  We have clearly heard that policymakers are concerned about the growth of CDPAS in New York. While advocating on this budget issue, some policymakers have expressed a concern that the growth of CDPAS has been out of line with the other sectors of home care, and despite these increases the state has not seen a comparable reduction in nursing facility use. The growth has been fueled by several factors.

  - *Population growth increases need*: As the population in our state continues to age, there will be greater need for Long Term Services and Supports. In addition to the growth in numbers, older New Yorkers are aging with the expectation that they will remain in their home and maintain as much control over their lives as possible. CDPAP offers both of these.
  - *Limited access to other forms of community-based Long Term Services and Supports*: Even if individuals want traditional home care services, those services are struggling to find workers to cover people's needs. We are even seeing individuals who have used traditional home care for decades get pushed out of those services into CDPAP.
  - *State policy has incentivized enrollment in Medicaid*: Changes in Medicaid eligibility have made more individuals eligible for Medicaid and Medicaid LTSS. The policy changes – which were intended to expand eligibility – obviously increase utilization.
  - *Managed care and venture capital*: With the implementation of managed care, New York introduced a free market dynamic into a social safety network system. Managed care and providers fueled by venture capital have impacted enrollment because they

make more money by expanding enrollment. The growth of CDPAP must be evaluated in the context of the growth of managed care.

It is important to understand how these factors have contributed to the growth of CDPAP in New York. We need to take a broader view of the LTSS system to identify policy directions that advance the state, instead of vilifying Disabled individuals, their attendants, and a single sector of LTSS.

- Attendant Wages and Overtime

  Any policy document on these issues must address attendant wages. It is imperative that policymakers understand how the inadequate wages are impacting the lives of Disabled individuals and how the failure to continue funding overtime has impacted both attendants and Disabled individuals. With the consolidation of FIs, the overtime issue is likely to worsen as attendants work for multiple FIs, which allows them to work more than 40 hours a week. Consolidating the FIs as the state is doing will likely further restrict the attendant workforce and increase pressure to raise wages and fund overtime.

- Managed Care

  Instead of reducing Medicaid spending, New York's "Care Management for All" plan – developed under Governor Cuomo – has increased it while adding a layer of administrative bureaucracy and restricting access to LTSS to support community integration. It is imperative that the state reassess this system.

About the Center for Disability Rights

The Center for Disability Rights is a service and advocacy organization run by and for people with disabilities. In 1990, as a volunteer organization, CDR began developing a report on attendant services because local advocates were being forced into unwanted placement in nursing facilities. After three years of research, analysis, and writing, the group published Early to Bed/Late to Rise, a 200-page policy report that called for the establishment of CDPAP statewide. Initially, CDR did not intend to operate as a Fiscal Intermediary, but when traditional agencies failed to effectively implement the program in Monroe County, the organization stepped in. While for-profit organizations enriched themselves using this Medicaid-funded program, CDR utilized it to develop and implement a model for transitioning individuals with disabilities from institutional settings. CDR trained people across the country to implement this model, which serves as the basis for the Open Doors Program in New York. CDR maintains a policy office in Albany to advance state legislation and policies that promote the full integration, independence, and civil rights of people with disabilities.