

Pursuant to the authority vested in the Commissioner of Health by Social Services Law Sections 363-a(2) and 365-f and Public Health Law Section 201(1)(v), Section 505.28 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (b) is amended by renumbering paragraphs (7)-(12) as (8)-(13) and adding new paragraph (7), to read as follows:

(7) *fiscal intermediary administrative costs* means the allowable costs incurred by a fiscal intermediary for performance of fiscal intermediary services under section 365-f(4-a) of the Social Services Law and fiscal intermediary responsibilities under subdivision (i) of this section.

Subdivision (j) is amended to read as follows:

(j) Payment.

(1) The department will pay fiscal intermediaries that are enrolled as Medicaid providers and have contracts with social services districts for the provision of consumer directed personal assistance services at rates that the department establishes and that the Director of the Division of the Budget approves[, except as provided in paragraph (2) of this subdivision].

[(2) A social services district may submit a written request to the department to use an alternative payment methodology. The request must describe the alternative payment methodology that the district will use to determine payments to fiscal intermediaries for consumer directed personal assistance services and include such other information as the department may require. The department may grant a district's exemption request when it

determines that the alternative payment methodology is based on the fiscal intermediary's allowable costs of providing consumer directed personal assistance services and includes an adjustment for inflationary increases in the fiscal intermediary's costs of doing business.]

([3]2) No payment to the fiscal intermediary will be made for authorized services unless the fiscal intermediary's claim is supported by documentation of the time spent in provision of services for each consumer.

(3) As authorized by paragraph (1) of this subdivision, the rates of reimbursement for fiscal intermediary administrative costs shall be made on a per consumer per month basis, with three tiers of payments. Each tier shall represent a range of utilization levels based on the number of direct care hours of consumer directed personal assistance services authorized for that consumer in a particular month and the differences in fiscal intermediary administrative costs associated with each tier of utilization. Effective on September 1, 2019, or the next earliest date permitted by law, the tiers shall be as follows:

Tier	Direct Care Hours Authorized Per Month	Monthly Rate by Consumer
Tier 1	1-79	\$64
	80-159	
Tier 2	160-239	\$164
	240-319	
	320-479	
Tier 3	480-699	\$522
	700+	

(4) Nothing in paragraph (3) of this subdivision shall impact wages or wage related requirements for personal care assistants nor impact the ability of Medicaid managed care

organizations to reimburse fiscal intermediaries for fiscal intermediary administrative costs pursuant to their provider contracts.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Social Services Law (“SSL”) section 363-a and Public Health Law (“PHL”) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State’s medical assistance (“Medicaid”) program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State’s Medicaid program.

The State’s Medicaid program includes the Consumer Directed Personal Assistance Program (“CDPAP”) authorized by SSL section 365-f. All social services districts must assure access to CDPAP. SSL § 367-p(c).

The Department may promulgate regulations necessary to carry out the program’s objectives, which includes the provision of and payment for home care services. SSL § 365-f(1) & (5)(b). The proposed amendment to the CDPAP regulation is within the Department’s statutory rulemaking authority as it sets forth a required framework for the method of reimbursing Fiscal Intermediary (“FIs”) for administrative costs associated with personal assistant services.

Legislative Objectives:

The Legislature’s objective in enacting SSL § 365-f was to establish the CDPAP program to permit chronically ill and/or physically disabled individuals receiving home care services under the medical assistance program greater flexibility and freedom of choice in obtaining such services, while ensuring that Medicaid funds are appropriately spent. This regulation keeps in place all CDPAP eligibility rules and benefits, while adjusting the methodology for paying FIs.

Needs and Benefits:

Historically, the State has reimbursed FIs for administrative services based on the number of hours of CDPAP services the local social services district authorizes for each consumer receiving services. However, this methodology has led to inefficient allocation of resources, because the payment for administrative services is, in many instances, disproportionate to administrative costs.

Administrative costs include those associated with maintaining time records, health status records and processing wages and benefits. Although these costs increase to some degree for higher needs cases, the increase is not linear, and paying administrative costs in direct proportion to hours of care provided leads to FIs receiving administrative cost payments that in some cases far exceed actual administrative costs.

The Department's proposed rate methodology uses a per consumer per month payment structure with three tiers of monthly administrative rates that are associated with different levels of authorized service utilization (each, a "Tier" and collectively, the "Tiers"). For any particular case, the FI will be reimbursed for the Tier that is associated with the number of authorized direct care hours per consumer per month. To determine and evaluate the rates corresponding to each Tier, the Department relied, in part, on data submitted by managed long-term care plans as required under the Medicaid Managed Long Term Care Partial Capitation Contract. Based on these data submissions and other information furnished to the Department by FIs, the following cost parameters were used to help determine and evaluate the proposed rates and Tiers to reimburse FIs for their administrative costs:

- Statewide distribution of consumers by Tier (70% Tier 1, 20% Tier 2, and 10% Tier 3);

- Average number of personal care assistants required for CDPAP consumers receiving the number of authorized hours by each Tier;
 - Tier 1 – one personal care assistant per consumer;
 - Tier 2 – two and a half personal care assistants per consumer; and
 - Tier 3 – five personal care assistants per consumer.
- The cost of processing payroll and performing payroll related administrative tasks (i.e., \$8.78 per month per personal assistant);
- Payment for approximately one-quarter of personal assistants who do not have health insurance to cover the cost of health status assessment and immunizations;
- One full-time equivalent FI staff worker per 40 CDPAP consumers to perform the FI's administrative duties, with the assumption that the FI staff worker is assumed to have salary costs at the current New York City prevailing wage amount, including a minimum base wage of \$15 plus fringe, payroll taxes, overtime, in-service training, etc.;
- Overhead costs for each FI (i.e., \$0.75 per month per personal assistant).

Based on this analysis and the stated need for this change in methodology, the Department intends to use the per consumer per month payment structure uniformly across CDPAP providers and FIs. Accordingly, the Department no longer requires the discretion to grant social services districts the ability to use alternative payment methodologies when determining payments to FIs under paragraph (2) of subdivision (j). As a result, the former paragraph (2) has been deleted from subdivision (j) and the remaining paragraphs have been renumbered.

Notice of the new payment methodology will be issued to local departments of social services soon through a GIS. This methodology will better align administrative costs and reimbursement.

Costs to Regulated Parties:

There will be no additional costs to private regulated parties as a result of the proposed regulation.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of the proposed regulation. Costs should decrease as reimbursement is brought into better alignment with actual costs.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of the proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of the proposed regulation.

Local Government Mandates:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulations do not impose any reporting requirements on fiscal intermediaries or other entities.

Duplication:

The proposed regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

As discussed in the needs and benefits section, above, the Department has determined, based on the information it received from managed long-term care plans and FIs, that the current reimbursement methodology for reimbursing FIs for administrative costs does not align with the actual costs incurred by FIs. For this reason, the Department has determined that it is neither necessary nor prudent to commit to a methodology framework that maintains the current rate setting method for payments to FIs.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

There is no compliance schedule imposed by this amendment, which shall be effective upon publication of a notice of adoption.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments. The reimbursement methodology framework ensures that the reimbursement for administrative costs is made in the form of a capitation payment. But, as is the case under the current rule, the framework does not specify exactly how the Department must calculate the rate. The Department is simply limited to creating more than one rate tier and those tiers must account for differing administrative costs associated with different levels of service utilization. The Department therefore remains free to adjust the rates based on any number of other factors, unless otherwise not permitted.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas. The CDPAP places no additional reporting requirements on any agency or locality.

JOB IMPACT STATEMENT

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation has no implications for job opportunities.