NYS DOH's Answers to SFI RFP Questions: The 4 Most Important Takeaways for Home-Based Care Agencies

The New York Department of Health issued answers to questions submitted by stakeholders about its Request for Proposal #20524 (RFP) published on June 17.

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On August 8, 2024, the New York Department of Health issued answers to questions submitted by stakeholders about its Request for Proposal #20524 (RFP) published on June 17 for a single Statewide Fiscal Intermediary (SFI) to replace the hundreds of FIs currently participating in the program.

104 pages, 1,362 questions, and an RFP amendment later, are we any smarter?

The answer is um... yes, kind of.

At first glance, it seems that most of the Answers fall into one of five categories:

- "This question is not relevant to the development of a proposal under this RFP."

- "This information will not be shared with the bidding community."
- "The Department does not have this information."
- "Department projections will not be provided. Bidders should review historic and publicly available information to inform their own assumptions."
- "See RFP Section..."

In addition, many of the Answers simply refer the reader back to earlier Answers higher up in the list.

But this is all actually kind of understandable, as the DOH seems to have published every question that was asked – even repetitive or unclear ones – so that every questioner knows their question was read and considered.

The obfuscation could also be the DOH's way of pushing back against a thinly veiled (and successful) attempt by agencies to delay the process by inundating the Department with questions, any and all questions.

Then there are the actual Answers, those with real information – which can be divided into two types:

- Confirmation of the more surprising provisions found in the RFP to somewhat incredulous questioners.
- New information.

So, with that as an introduction, what do you – as a home-based care agency – need to know? Here are Viventium's* three top picks, four top unanswered questions, and an important fourth takeaway:

1. **Confirmation of the Surprising Stuff: LHCSAs Can't Be FIs Anymore**

RFP Section 6.2.C stated the SFI can't be an entity owned or controlled by a LHCSA and can't own or hold a controlling interest in a LHCSA in NYS.

A number of questions asked if that's really true (#135, 137, 143, and more). After all, that language did not appear in the FY2025 NYS budget that started this whole process rolling.

The DOH answered a resounding, "Yes, it's true!" The SFI can't be LHCSA.

Maybe you're thinking, "That's only a restriction on the single SFI. What about being a subcontractor – could a LHCSA do that?"

New information to digest: No. You can't even be a subcontractor to the SFI if you're a LHCSA (#146 and on).

1. **New Information: Presenting the Newly Formed Transition Period**

In the Answers (#711 and on) and also in the new "Amendment 3" to the RFP, we learn about a new phase of the SFI contract: the first year will be an "initial transition period," requiring the SFI to contact each and every consumer and PA to assist them in transitioning to the new system.

A separate PMPM bid must be submitted for these transition costs. Subcontractors can assist the SFI with the transition tasks, which must be performed in a "culturally competent" manner and provide specialized assistance for vulnerable populations, such as people with disabilities, children, and those with limited English proficiency.

Well, at least now we know something a subcontractor CAN do (there's a whole list of things it can't do in the RFP). Oh yes, we're also told (Answer #548) that subcontractors can be the ones to fulfill the SFI's requirement to maintain a "local presence" in each MLTC rating region. More about subcontractors' roles in our "Open Questions" below.

1. **New Information: Costs to PAs**

The cost of PA background checks (to be newly required under the SFI contract) are not to be included in the PMPM bid (Answer #37 and on). The "implementation and specifics" of these checks are "still being determined."

At the same time, PAs will be responsible for obtaining and paying for their own health assessments (#475 and on). And unlike the current requirement, these health assessments must be based on physical check-ups, not just completion of a questionnaire or a statement of medical clearance (#482).

That will likely be a big surprise for many PAs.

Open Questions:

None of the Questions (and certainly none of the Answers) reference the certified payroll requirement found in RFP Section 6.2.E, which obligates the SFI and all of its subcontractors to fulfill section 220(3-a)(a)(iii) of the Labor Law that sets forth the certified payrolls and obligations related to such payrolls.

This lack of questioning is actually quite surprising. The DOH's just made a statement requiring weekly certified payroll reports and – dare we say it? – payment of prevailing wage in an industry that has nothing to do with public service contracts?!?! Not a bombshell?

Another open issue – Questions #626 and on place the responsibility for paying PAs' wage parity and overtime squarely on the SFI's shoulders as the joint employer. They also stick to the existing law that FIs can't restrict PAs' working hours (that's up to the Consumer).

But there's more: "Hours worked are evaluated at the individual worker level, regardless of the volume of consumers served."

That means that if a PA's activities are administrated by more than one subcontractor, the SFI needs to aggregate all of those hours for the workweek and the same for recalculated overtime when retro hours are submitted (as they so often are in this industry). How that will be coordinated remains a good question.

Third on the open list – what's all this talk about unions and unionizing PAs? You may have heard some rumblings in this direction, and around 15 Questions, starting from #1203, try to drill down to the bottom of the issue. The DOH "pleads the Fifth," saying only that "unionization of personal assistants is not a requirement of the RFP and the Department will not opine on the topic."

And our last – perhaps most relevant to you – question. As mentioned above, the RFP gave us a laundry list of "cannot dos" for subcontractors. The Answers further restrict subcontractor functions. So what exactly will subcontractors do?

Since the DOH made it very clear that there will be no further published Q&A, we will just be left to wonder... for the time being.

The Fourth Takeaway:

Keep your ear to the ground.

On Monday, August 12, the Save Our Consumer Directed Home Care Program coalition filed a (54-page) suit against the DOH seeking injunctive relief against further implementation of the RFP. Among the allegations are "arbitrary and capricious" criteria, unconstitutional deprivation of members' abilities to provide FI services, and interfering with Consumers' abilities to receive adequate Medicaid services.

Based on this challenge and others that will come from individual FIs and other groups, will the court issue a temporary restraining order? Will it invalidate the entire RFP process? Or just delay its implementation? Will FIs be able to continue functioning as they do now?

Time will tell. And Viventium will keep you informed.

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