NY Governor Proposes a RFO on MCOs and MLTCs, and Other Changes Relevant to Home Care

The New York State budget season officially kicked off with Governor Hochul's "State of the State" address on January 5, when the Governor broadly outlined her goals and aspirations for the State's spending in the upcoming fiscal year, which begins on April 1, 2022. Yesterday, the Governor released detailed proposals of her vision for the State, detailing how New York's various programs (like healthcare) would be funded in the upcoming fiscal year. As is customary, the Governor's spending proposals also contain proposals to amend current laws and restructure the areas of funding (such as healthcare).

The Governor's spending plan at this point is a series of proposals which, as home care providers know, will be subject to extensive negotiations, lobbying, and advocacy in the weeks leading up to the final budget package. That final budget (and any changes to the law) is expected no later than April 1, 2022, the day that any changes would also take effect. Thus, with the caveat that these are just the starting proposals, here, we outline the Governor's "Health and Mental Hygiene" Legislation (the "Health Proposals"), as relevant to home care services.

Initially, the Governor has made no proposal to repeal the LHCSA or CDPAP RFOs. These RFOs could be the subject of subsequent proposals by the Legislature or independently acting Legislators who might introduce a bill to repeal either of the RFOs as part of the overall State budget. At the moment, however, there is no proposal to amend the State's law to repeal either the CDPAP or LHCSA RFO.

Somewhat unexpectedly, the Governor's 298-page Health Proposals would require MCOs and MLTCs to go through a competitive biding process with the DOH (similar to the recent fiscal intermediary RFO) in order to be allowed to continue to operate as a MCO or a MLTC in New York State. The Request for Proposals ("RFP") would be posted on the Department of Health website, along with the criteria the Department would consider and the manner in which the selections would be made.

Per the Governor's Health Proposals, plans' RFPs would have to address the following requirements as part of the competitive bidding process:

1. accessibility and geographic distribution of network providers, taking into account the needs of persons with disabilities and the differences between rural, suburban, and urban settings;
2. the extent to which major public hospitals are included in the submitted provider network;
3. demonstrated cultural and language competencies specific to the population of participants;
4. the corporate organization and status of the bidder as a charitable corporation under the not-for-profit corporation law;
5. the ability of the bidder to offer plans in multiple regions;
6. the type of number of products the bidder proposes to operate;
7. whether the bidder participates in products for integrated care for participants

who are duly eligible for Medicaid and Medicare;
8. whether the bidder participates in value-based payment arrangements;
9. the bidder's commitment to participation in managed care in the State;
10. the bidder's commitment to quality improvement;
11. the bidder's commitment to community reinvestment spending, as will be defined by the Commissioner;
12. for current or previously authorized plans, past performance in meeting managed care contract or federal or State requirements, and if the Commissioner issued any statements of findings, statements of deficiency, intermediate sanctions or enforcement actions to a bidder for non-compliance with such requirements, whether the bidder addressed such issues in a timely manner; and
13. "other" criteria as the Commissioner of Health might develop in the RFP.

The Commissioner will award plan applicants for "each product, for which proposals were requested." "At least two managed care providers in each geographic region defined by the Commissioner" in the RFP will be selected, however, "the Commissioner shall not offer any more than [5] contracts in any one region." Similarly, at least 2 MLTC plans will be selected per geographic region, with no more than 5 MLTCs per region being awarded the RFP.

Additional plans might be approved in a separate RFP issued by the Commissioner, "if necessary to ensure access to sufficient number of managed long term care plans on a geographic or other basis, including a lack of adequate and appropriate care, language and cultural competence, or special needs services." Any such RFP would be limited to the geographic or other basis of need that the RFP seeks to address. The awards made per this paragraph, however, would be subject to the limit of "at least 2 and no more than 5" plans per region.

Only those plans selected will be entitled to have a contract with the Department of Health "for the purpose of participating in the managed care program." The contracts would run for as long as determined by the Commissioner, and may be renewed from time to time without a new RFP.

Currently operating MLTCs and MCOs would need to notify the Department of their intent to apply under this RFP within 60 days of the DOH issuing the RFP. A plan that fails to submit the notice of intent, that fails to apply, or that is not awarded authorization to participate in the MCO or MLTC program would – upon direction from the Commissioner – terminate its services.

Moratorium on New MLTCs and MCOs

The Health Proposal also includes provisions to impose a moratorium on the processing and approval of applications to establish a managed care organization. The moratorium would not apply to applications submitted to the Department prior to January 1, 2022, applications seeking a change of control or transfer of ownership, applications seeking authorization to expand an existing MLTC's or MCO's approved service area, and certain other applications.

In conjunction with the MLTC/MCO RFP, the moratorium seems to suggest that the Department believes the MLTC/MCO program has grown too large for New York State, and the RFP, in conjunction with the moratorium, is the State's way of consolidating that market. This is similar to what the DOH is attempting to do with the CDPAP which, in its own words, has grown too large and too quickly for New York State's desired budget. Given the relatively small number of MLTCs and MCOs overall across the State, however, the question becomes whether the RFP is actually the State's way of terminating the operations of plans it has deemed "unworthy."

LHCSA Transfer Changes

The Health Proposal also modifies the process by which LHCSA operators can transfer interests in the LHCSA. New DOH notice requirements are proposed in the Health Proposal, seemingly designed to increase transparency about the operators and owners of the Article 36 entities. The Health Proposal also contains provisions expressly stating that failure to provide notice and receive approval of any transfer may result in the revocation of the LHCSA's license.

Establishment of a State PACE Program

The Health Proposal proposes establishing a New York PACE Program, that would work in conjunction and parallel to the currently-operated PACE program. While the Health Proposal is quite detailed in this regard, the logistics of this NY PACE proposal – if adopted in the final budget – are quite unclear. We will provide more information about this as it becomes known.

As expected, this promises to be an interesting budget season in New York, especially since the Governor and all of the State's Legislators are up for re-election. Please reach out to us if you have any questions about the budget process or the current Health Proposals.

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