

Medicaid Consumer Directed Personal Assistance Program (CDPAP) in New York State

WHO MAY BE HIRED AS THE PERSONAL ASSISTANT? Changes effective APRIL 1, 2016

An adult who is not "legally responsible" for a Medicaid consumer's care and support may be a CDPAP assistant for that consumer. In particular, this means that **a parent of an adult child (21 years of age or older) may serve as that adult child's CDPAP assistant.**

- -- but only if they are not also the recipient's "**designated representative**" and --
- **if the parent lives with the consumer/child, they must** "... [reside] with the consumer because the amount of care the consumer requires makes such relative's presence necessary...." [18 NYCRR 505.28\(b\)\(3\)](#)
- **Click here** for more information and see this article in [Democrat & Chronicle](#), Nov. 25, 2015.

What is CDPAP?

The **Consumer Directed Personal Assistance Program (CDPAP)** is a statewide Medicaid program that provides an alternative way of receiving home care services, where the consumer has more control over who provides their care and how it is provided. Rather than assigning a home care vendor or agency that controls selection, training, and scheduling of aides, the "consumer" or the family member, friend or guardian directing his/her care performs all these functions usually done by a vendor. All counties - and now all mainstream Managed Care and Managed Long Term Care plans - are required to have a CDPAP program and notify "eligible individuals" of the option to join. Eligible individuals include those eligible for services provided by a certified home health agency, a long term home health care (waiver) program, AIDS home care program, or personal care (home attendant).

NEWS EFFECTIVE April 1, 2016! -- WHO CAN BE HIRED AS THE CDPAP AIDE?

The consumer can hire almost anyone, including any family members except his or spouse. **Starting April 2016, parents of disabled adult children will be to serve as CDPAP aide if they are not also the recipient's designated representative, and with restrictions on whether they may live with the consumer.**

Before, spouses and parents could not be hired as the CDPAP aide, but a son or daughter or any other family member could be the aides, provided the family member does "...not reside with the consumer or ... who resides with the consumer because the amount of care the consumer requires makes such relative's presence necessary...." 18 NYCRR 505.28(b)(3). Now, only spouses are prohibited from being hired as the aides.

- **STATE DIRECTIVES:** NYS DOH Issued a Medicaid Update (Vol. 32 No. 3, March 2016) and GIS 16 MA/006 - Changes to the Statute for the Consumer Directed Personal Assistance Program (CDPAP) PDF explaining the new law.
- A "legally responsible" adult may not be the aide. Spouses are always legally responsible for their spouse. Parents are always legally responsible for their children under age 21.
- A "designated representative" of a CDPAP consumer may not be the aide. State regulations state, "...With respect to a non self-directing consumer, a "designated representative" means the consumer's parent, legal guardian or, subject to the social services district's approval, a responsible adult surrogate who is willing and able to perform such responsibilities on the consumer's behalf. The designated representative may not be the consumer directed personal assistant or a fiscal intermediary employee, representative or affiliated person" 18 NYCRR 505.28(b)(5)
- **May parent live with his or her adult child and be the child's aide?** Per existing regulations, an adult relative may only be the personal assistant if s/he does "...not reside with the consumer or ... who resides with the consumer because the amount of care the consumer requires makes such relative's presence necessary...." 18 NYCRR 505.28(b)(3)
- This change was signed into law on November 20, 2015, amending Social Services Law Â§365-f, subd. 3, L. 2015 Ch. 511, enacting Senate bill S05712-A proposed by Sen. Simcha Felder. Earlier, regulations adopted in April 2011 expanded the definition to allow an adult child or son-in-law or daughter-in-law to be hired as the aide.
- **Immigrants must have a valid work authorization.** The aide need not be "certified" - training is done by the consumer and family.

CDPAP Aides may Perform "SKILLED" TASKS - unlike regular personal care aides

Another special benefit of CDPAP is that CDPAP aides may perform "skilled" care that otherwise may only be performed by a nurse - suctioning tracheostomies, insulin injections, administration of oxygen or medications where the consumer cannot self-administer. See N.Y. Educ. Law Â§ 6908(1)(a) . Tasks that could not otherwise be performed by home health aides or personal care aides are indicated in the scope of tasks for personal care and home health aides.

Different Employment Model - Fiscal Intermediary vs. Home Care Agency

- **Fiscal Intermediaries** -- The aide is not an employee of a home care agency, but is instead an independent contractor, who is paid wages and benefits by a "fiscal intermediary," an entity that contracts with either the county or a managed care plan to provide services authorized by that county or managed care plan. It is the fiscal intermediary that pays the aide wages and benefits.
 - ◆ Most but not all CDPAP fiscal intermediaries are members of CDPAANYS - see their [online list statewide](#).
 - ◆ In addition, individuals in NYC can choose from agencies on [HRA's list](#) - these are CDPAP vendor agencies contracted with HRA to provide fee-for-service CDPAP care. These agencies may also contract with managed care plans; individuals in managed care should confirm which CDPAP vendors their plans contract with.

How to get CDPAP - Obtain from their Managed Care/MLTC Plan or thru "Immediate Need"

Effective Nov. 1, 2012, Consumer-Directed Personal Assistance Program (CDPAP) is included in the "benefit package" for both [Mainstream Medicaid Managed Care](#) and [Managed Long Term Care](#). Here is how people with Medicaid only and those with Medicare and Medicaid access CDPAP.

See [NYC HRA MICSA Medicaid Alert dated Oct. 26, 2012 on CDPAP and Managed Care](#).

1. **People with Medicaid Only (but do not have Medicare)** - Most are already required to enroll in a [Mainstream Medicaid Managed Care](#) (MMC) plan. Since November 2012, these mainstream Medicaid managed care plans took over the authorization and management of CDPAP services statewide, as well as personal care services.
 1. **Transition Rights** - When a consumer is required to transition to an MMC or MLTC plan, after receiving CDPAP services through their local DSS, the MMC plan is required to continue the services previously authorized by the local district (HRA or DSS) for 90 days, at which time the MMC plan re-assesses need.
 2. **New applicants for CDPAP who have Medicaid but do not have Medicare** --
 1. If they are already enrolled in a mainstream MMC plan, then they apply to their MMC plan for CDPAP (They submit a Physician's Order ([Form M11g](#) in NYC) and any plan application for CDPAP). The plan must assess their needs and if the plan finds them eligible for home care services, must give them the option of choosing CDPAP.
 2. If they are not yet enrolled in a mainstream MMC plan, then they apply for CDPAP at their local CASA/DSS.

2. Managed Long Term Care (MLTC)-- Most adults who have both Medicaid AND Medicare are required to enroll in MLTC in order to obtain CDPAP,

1. There are some exceptions - excluded populations who may apply at local DSS (in OPWDD, hospice, etc.. see list at above link).
2. The new "Immediate Need" procedure can be used for people not yet enrolled in an MLTC, who have an Immediate Need for personal care or CDPAP. The procedure may include both applying for Medicaid and requesting home care approval from DSS. See more about Immediate Need here. Once approved, the local DSS authorizes CDPAP. After 120 days of receipt, the individual will be transitioned to MLTC.
3. The State posted these documents that govern how MLTC plans must provide CDPAP services to find online, go to Medicaid Redesign Team page, scroll down to MRT 90 - MLTC and then to CDPAS Final MLTC Documents (posted around 10/1/12)

Responsibilities of the Health Plan and Consumer (acknowledgement that MLTC member must sign)

Policy for the Transition of Consumer Directed Personal Assistance Services into Managed Care

Administrative Agreement for the Provision of Fiscal Intermediary Services for the Consumer Directed Personal Assistance Program

4. **Transition Rights** - The MLTC plans must continue the same hours authorized by CASA/DSS for at least 90 days. This includes enrollment after receiving Immediate Need services. After that they may change the hours -- but plans must give advance notice of a change with the right to request a hearing and AID CONTINUING, and may reduce services only for permitted reasons - pursuant to MLTC Policy 16.06 (a change in medical condition or other circumstances).

ELIGIBILITY FOR CDPAP

• Eligibility Criteria - 18 NYCRR Sec. 505.28(c)

1. Eligible for Medicaid
2. Eligible for personal care, certified home health care, private duty nursing, or AIDS or other waiver program
3. "have a stable medical condition" [NOTE: this is same definition as in personal care See Section 2 - Eligibility. But note that CDPAP aides may perform skilled tasks, unlike in personal care. In this way the definition of "stable medical condition" is different for CDPAP.

4. "be self-directing or, if non self-directing, have a designated representative";
See above for who may be designated representative.

• **WHO DETERMINES ELIGIBILITY for CDPAP:**

- ◆ Before, when all CDPAP was authorized by the NYC CASA's and LDSS offices, NYC and most counties required the consumer or the person directing their care to complete a CDPAP application, to show they are capable of arranging for and managing the care. Download NYC HRA forms and instructions:
 - ◇ The NYC application --Form M-13d (2010)
 - Download this fill-in-able version of this form, created by Evelyn Frank Legal Resources Program.
 - ◇ Helpful Hints on Completing the CDPAP Application. (HCSP-712d)(4-26-2010) and
 - ◇ CDPAP Fact Sheet (2017-01-20) HCSP-3000-z)
- ◆ Under Managed Long Term Care and managed care, it is the MLTC or managed care plan that determines eligibility for CDPAP - assessing the consumer's or their representative's ability to direct and managed their own care. See Responsibilities of the Health Plan. It is not clear that MLTC plans (or mainstream MMC plans) are required to use the NYC Form M-13d or have been given other guidelines or directives on how to assess eligibility. Consumers and advocates will need to be vigilant to ensure that people who should be eligible for CDPAP are not wrongly denied. Knowledge of the laws, regulations and directives governing CDPAP developed over many years is critical. For example, GIS 08-LTC-005 clarifies that the family member or other person directing care does *not* have to be present at all times in which skilled nursing tasks are administered by a CDPAP aide to a non-self-directing recipient of CDPAP. We can anticipate that MLTC plans may wrongly deny CDPAP services based on lack of knowledge of these past directives.

Help with Understanding and Using CDPAP -

The Consumer-Directed Personal Assistance Association of NYS (CDPAANYS) has lots of resources on its website.

- Peer Mentoring Program --CDPAANYS offers Peer Mentoring services to prospective and current CDPA consumers and designees who may have questions about the program or are seeking assistance with successfully running their own CDPA program. Peer Mentoring is always free for those who use the service. You can reach their team of Peer Mentors by calling the toll-free number, **1-855-423-7733 (1-855-4CDP-PEER)**, or sending an email to peers@cdpaanys.org. See more here.

Concepts of Independence - the largest and oldest fiscal intermediary, has tutorials and other info. on its website

- **FAQ's and tutorials on how CDPAP works** (including how to hire, train and manage aides)

CaringKind NYC -- TogetherWeCare Program - Consumers or their families can find aides who have completed the CaringKind Dementia Care Training for Professional Caregivers (CaringKind was formerly the NYC Chapter of the Alzheimer's Association)

BACKGROUND ON CDPAP, Laws & Regulations

This article explains the CDPAP program in NYS, with cites to state statutes (some have been amended since). Note that this article pre-dates mandatory MLTC.

Laws.

The statutes establishing the CDPAP program include Section 365-f of the Social Services Law and N.Y. Educ. Law Â§ 6908(1)(a) (also known as the Nurse Practice Act, which creates an exception that allows CDPAP aides, along with family and other unpaid informal caregivers, to perform tasks that otherwise may only be performed by licensed nurses.

Regulations.

The State published final regulations, effective April 20, 2011, creating a new section 28 to 18 NYCRR Part 505. See New York State Register April 20, 2011/Volume XXXIII, Issue 16 (pp. 7-8)

- In 2015, the State amended the regulations with new definitions of **24-hour live-in** and **split-shift care**, and more specific requirements for the content of **written notices** when services are reduced.

See December 2015 NYS Dept. of Health GIS 15 MA/024 - Changes to the Regulations for the Personal Care Services Program (PCS) and the Consumer Directed Personal Assistance Program (CDPAP) (PDF) NOTICE OF ADOPTION

- Scope of the CDPAP Benefit
- The 2011 final regulations with the Notice of Adoption, with review of public comments received and regulatory impact statement, are posted here. Compare with the proposed regulations -- notice of proposed rulemaking on September 29, 2010. These Comments were submitted by Selfhelp Community Services and other organizations representing the interests of consumers.
- **Interim AMENDMENTS** -- The state regulation for Medicaid personal care services was partially amended effective on 10/4/11 (published in NYS Register Oct.

19. 2011 p. 33), which expired 90 days after filing and then was republished as an emergency regulation effective 12/30/2011. See December 30, 2011 - Personal Care Services Program and Consumer Directed Personal Assistance Program. That regulation again expired, but was re-filed effective March 29, 2012, when an amended emergency regulation was filed. See <http://www.dos.ny.gov/info/register/2012.html> .

State Directives

The following directives have been issued since the above article was written in 2003:

- 06 OMM/LCM-1: Questions and Answers Related to the Administration of the CDPAP
- 06 OMM/LCM-02: Consumer Directed Personal Assistance Program (CDPAP)
- Consumer Directed Personal Assistance Program: Clarification of 06 OMM/LCM-1, "Questions and Answers Related to Administration of the CDPAP" GIS 08-LTC-005 --Clarifies that the family member or other person directing care does *not* have to be present at all times in which skilled nursing tasks are administered by a CDPAP aide to a non-self-directing recipient of CDPAP. This GIS was issued as a result of litigation in Leon v. Danes, et.al.(CV 07-1674 E.D.N.Y, June 12, 2008)(available on WNYLC Online Resource Center Benefits database (with free log-in))
- Non Medical Transportation in the Consumer Directed Personal Assistance Program GIS 08-LTC-007 (issued as a result of litigation or threatened litigation, described in this article)
- GIS 10 LTC 005 - Consumer Directed Personal Assistance Program (CDPAP) Documents - lists all State directives that currently apply to CDPAP in NYS as of 8/25/10
- 11LTC004 - Consumer Directed Personal Assistance Program (CDPAP) Services Provided Out of State
- 11ADM-06 - Consumer Directed Personal Assistance Program (CDPAP) Scope and Procedures (PDF, 86KB, 14pg.)
 - ◆ Attachment 1 (PDF, 25KB, 7pg.)
 - ◆ Attachment 2 (PDF, 14KB, 3pg.)
 - ◆ Attachment 3 (PDF, 26KB, 2pg.)
 - ◆ Attachment 4 (PDF, 19KB, 2pg.)
 - ◆ Attachment 5 (PDF, 10KB, 2pg.)
- 11LTC 007 - New State Law Requiring Automatic Change To No More than 8 Hours Per Week of Nutritional and Environmental Support Functions (Level I) For Personal Care and CDPAP Consumers Who Are Authorized to Receive Only Nutritional and Environmental Support Functions

- ◆ [Attachment 1](#)
- ◆ [Attachment 2](#)
- [12-ADM-01 - Changes to Personal Care Services Program and Consumer Directed Personal Assistance Regulations Resulting From MRT #4652](#)

State Managed Long Term Care Contracts, Guidelines re CDPAP ([Posted Oct. 1, 2012, eff. 11/1/2012](#))

- [Responsibilities of the Health Plan and Consumer](#) (acknowledgement that MLTC member must sign)
- [Policy for the Transition of Consumer Directed Personal Assistance Services into Managed Care](#)
- [Administrative Agreement for the Provision of Fiscal Intermediary Services for the Consumer Directed Personal Assistance Program](#)

NYC Directives

- NYC HRA MICSA ALERT Oct. 26, 2012 -- [CDPAP and Managed Care](#)

HISTORY

For a history of the development of the consumer-directed program in New York City, which was a national leader in launching this form of service 33 years ago, see [this article](#), along with:

- [Original Certificate of Incorporation of Concepts of Independence](#) - Dec 12, 1977
- [Special Report - Evaluation of the Client Maintained Plan - June 1981](#)
- [Original CONCEPTS OF INDEPENDENCE By-Laws](#) - Amended to Reflect 1983 Name Change

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Article ID: 40

Last updated: 30 Jan, 2018

Revision: 43

Medicaid -> Home Care -> Medicaid Consumer Directed Personal Assistance Program (CDPAP) in New York State

<http://www.wnylc.com/health/entry/40/>