



STATE OF NEW YORK DEPARTMENT OF HEALTH

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Commissioner

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Executive Deputy Commissioner

LOCAL COMMISSIONERS MEMORANDUM

Transmittal No: 06 OMM/LCM-02

Date: November 2, 2006

Division: Office of Medicaid
Management

TO: Local District Commissioners

SUBJECT: Consumer Directed Personal Assistance Program (CDPAP)

ATTACHMENT: Second Round of Questions and Answers Related to the Administration of the CDPAP

The purpose of this Local Commissioner's Memorandum is to transmit to the local social services districts, a second round of answers to questions submitted by local social services districts, fiscal intermediaries and Consumer Directed Personal Assistance Program (CDPAP) consumers regarding the CDPAP. The attached Questions and Answers document will serve as an additional guide for local districts to use in the administration of the CDPAP.

This document will be shared with the Consumer Directed Personal Assistance Association of New York State, the New York State Association of Home Care Providers (HCP) and the New York State Home Care Association (HCA). It is strongly recommended that the district discuss the attached document with the district's fiscal intermediary(ies) to assist them in performing the activities identified in the MOU/contract executed between them and the district.

If you have any questions regarding the content of this memorandum or its attachment, you may contact Leslie Galusha or Priscilla Ferry in the Division of Consumer and Local District Relations, Bureau of Long Term Care at 518-474-5271.

Sincerely,

Brian Wing
Deputy Commissioner
Office of Medicaid Management

**CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAM (CDPAP)
QUESTIONS AND ANSWERS
2006**

1. **Q.** Can a legal guardian or "self-directing other" function as a CDPAP personal assistant?
- A.** No. A consumer's legal guardian or "self-directing other" may not serve as a CDPAP personal assistant.
2. **Q.** Describe under what circumstances CDPAP services can be terminated?
- A.** A social services district may propose to discontinue a consumer's participation in the CDPAP provided that the district has an appropriate and legitimate reason for its proposed action and sends the consumer a timely and adequate notice of the district's intent to discontinue the consumer's participation in the CDPAP. If the consumer is non self-directing, the district must also send the notice to the consumer's "self-directing other." In the notice, the district must describe the specific reason or reasons why it proposes to terminate the consumer's participation in CDPAP. The consumer is entitled to request a fair hearing and to have CDPAP services continue unchanged (aid-continuing) pending the issuance of the fair hearing decision.

Examples of appropriate reasons (and notice language) for proposing to discontinue services are set forth in the personal care services regulations at 18 NYCRR 505.14(b)(v)(c) and were also attached to GIS 01 MA/044, entitled "Personal Care Services Regulations and Mayer v. Wing," issued December 24, 2001. Other appropriate reasons for proposing to discontinue a consumer's participation in the CDPAP include, but are not limited to, when conditions are known to exist in or around the consumer's home that would imminently threaten the safety of personnel including, but not limited to, actual or likely physical assault which the individual threatening the assault has the ability to carry out; the presence of weapons, criminal activity or contraband material which creates in personnel a reasonable concern for personal safety; continuing severe verbal threats which the individual making the threats has the ability to carry out and which create in personnel a reasonable concern for personal safety; or, the consumer has engaged in fraudulent activities with respect to the Medicaid program. Again, the district must specify in the notice the specific reason or reasons why the district is proposing to discontinue the consumer's participation in the CDPAP, and the consumer has the right to request a fair hearing with aid-continuing.

Prior to sending the timely and adequate notice of proposed discontinuance, the district should counsel the consumer, with the fiscal intermediary (if appropriate), to try to remedy the circumstance that is causing the district to propose discontinuing the consumer's CDPAP participation. Referrals should also be made to Adult Protective Services or to other appropriate available long term care options that may meet the consumer's needs.

Appropriate referrals to the district's fraud unit and the New York State Office of the Medicaid Inspector General should also be made when the district has documented evidence that the consumer, a "self directing other" or a CDPAP personal assistant has engaged in fraudulent activity with respect to the Medicaid program. If the district has documented evidence that the "self-

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directing other" for a non-self directing consumer has participated in illegal activity, fraud, abuse of the CDPAP personal assistant or consumer or has failed to fulfill his or her responsibilities as the "self-directing" other, the district must intervene on behalf of the non self-directing consumer to assist in rectifying the situation. Consumers who are self-directing should be given the opportunity to select another individual to serve as their "self directing other."

3. Q. What is the responsibility of the Certified Home Health Agency (CHHA) nurse for the CDPAP personal assistant when the consumer also receives home health care services through the CHHA?

A. It is not the responsibility of the CHHA nurse to supervise the CDPAP personal assistant. It is the responsibility of the consumer or "self-directing other" to supervise the personal assistant. It is possible to receive services from both a CHHA and through CDPAP. There should not be a duplication of medically necessary services provided by the CHHA and the personal assistant.

4. Q. What information must the district use in determining CDPAP hours to prior authorize? Do consumers have flexibility on when they can use their weekly authorized hours?

A. Prior authorizations are based on a physician's order and a nursing and social assessment of the consumer's consistent weekly care needs in the home. While the consumer has some discretion in scheduling the provision of care within that weekly authorization, any unused hours of care may not be saved for use at a later time. Continued inability to use authorized hours indicates a need to reevaluate the needs of the consumer.

Some consumers may be concerned that their care needs cannot be met without the ability to "bank" hours. The Department's regulations provide that if a consumer has an unexpected change in his or her social circumstances, mental status or medical condition that would affect the type, amount or frequency of services provided during the authorization period, the social services district is responsible for making necessary changes in the authorization on a timely basis. Local districts currently make changes to existing authorizations based on such unexpected changes.

5. Q. What tasks may a CDPAP personal assistant perform and what are the imitations?

A. The CDPAP personal assistant's tasks include those which may be provided by a personal care aide, home health aide or a nurse:

- ◆ Personal care services tasks include the Level I tasks of assistance with certain nutritional and environmental support functions and the additional Level II tasks of assistance with certain personal care functions. See 18 NYCRR 505.14(a)(6) for a comprehensive listing of tasks.
- ◆ Home health aide tasks include personal care services tasks, as well as, some health related tasks, e.g. preparation of meals for modified or complex modified diets; special skin care; use of medical equipment,

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supplies and devices; dressing change to stable surface wounds; performance of simple measurements and tests to routinely monitor the medical condition; performance of a maintenance exercise program; and care of an ostomy when the ostomy has reached its normal function.

- ◆ Nursing tasks including, but not limited to, wound care, taking vital signs, administration of medication (including administration of eye drops and injections), intermittent catheterization and bowel regime.

(Also see response to Q. #7)

- 6. Q.** May a consumer with an uncontrollable seizure disorder, but no other medical needs, receive CDPAP in case the consumer has a seizure, so the personal assistant could take care of the consumer's baby?
- A.** No. The CDPAP may not be authorized so that a CDPAP personal assistant may care for the consumer's child or other family member. The CDPAP authorization and plan of care are solely for the benefit of the CDPAP participant, not for the benefit of other family members, including children. Services to such family members may be provided through another family member, other informal support or through Title XX.
- 7. Q.** Is safety monitoring available in CDPAP?
- A.** Safety monitoring as a discrete task in and of itself, is not an available CDPAP service. Prior authorization of hours for the sole purpose of safety monitoring is not appropriate. Safety monitoring can and should only be provided in CDPAP as part of the personal assistant's performance of medically necessary tasks authorized or listed on the plan of care.

Social services districts should authorize assistance with recognized, medically necessary tasks. As previously advised, (See GIS 03 MA/003 Rodriguez v. Novello, issued January 24, 2003) social services districts are not required to allot time for safety monitoring as a separate task as part of the total hours authorized.

Districts are reminded that a clear and legitimate distinction exists between "safety monitoring" as a non-required independent stand alone function while no task is being performed, and the authorization of adequate time to allow for the appropriate monitoring of the consumer while providing assistance with the performance of a task, such as transferring, toileting or walking, to assure the task is safely completed.

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8. Q. What is the definition of non-self-directing?

A. As defined in 92 ADM-49, a non-self directing consumer lacks the capability to make choices about the activities of daily living, **does not** understand the implications of these choices, and **does not** assume responsibility for the results of these choices. A non-self-directing individual may exhibit one or more of the following characteristics:

- ◆ May be delusional, disoriented at times, have periods of agitation, or demonstrate other behaviors, which are inconsistent and unpredictable;
- ◆ May have a tendency to wander during the day or night and to endanger his or her physical safety through exposure to hot water, extreme cold, or misuse of equipment or appliances in the home;
- ◆ May not understand what to do in an emergency situation or how to summon emergency assistance; or
- ◆ May not understand the consequences of other harmful behaviors such as, but not limited to, not following medication regimes, refusing to seek assistance in a medical emergency, or leaving gas stoves unattended.