

NEW YORK
state department of
HEALTH

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TO: Commissioners of
Social Services

TRANSMITTAL: 11 OHIP/ADM-6

DIVISION: Office of Health
Insurance Programs

DATE: September 12, 2011

SUBJECT: Consumer Directed Personal Assistance Program (CDPAP)
Scope and Procedures

SUGGESTED DISTRIBUTION:	Director of Social Services Medicaid Staff Home Care Staff
CONTACT PERSON:	Bureau of Quality Assurance & Licensure Division of Home & Community Based Services Home Care District Liaison (518)474-5888
ATTACHMENTS:	See Appendix I for a listing of attachments Consumer Directed Personal Assistance Program (CDPAP) - Scope and Procedures

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
GIS 10 OLTC/009		18 NYCRR	SSL 365-f		
GIS 10 OLTC/005		§505.28			
GIS 09 OLTC/005		18 NYCRR			
GIS 08 OLTC/007		§504.3			
GIS 08 OLTC/005		10 NYCRR			
GIS 06 MA/030		§766.11			
GIS 04 MA/010					
GIS 02 MA/024					
06 OMM/LCM-2					
06 OMM/LCM-1					
92 ADM-15					
96 LCM-31					
95 LCM-102					

TABLE OF CONTENTS

I. PURPOSE	3
II. BACKGROUND	3
III. PROGRAM IMPLICATIONS	3
IV. DEFINITIONS	3
V. REQUIRED ACTIONS	4
A. Scope of CDPAP Services	4
B. Eligibility Requirements	4
C. Assessment & Authorization	5
1. Physician's Orders	5
2. Social Assessment	6
3. Nursing Assessment	6
4. Authorization & Notice of Decision	7
5. Reassessment & Reauthorization	8
D. Roles & Responsibilities	9
1. Consumer	9
2. Local Social Services District	10
3. Fiscal Intermediary	11
E. Forms and Notices	12
F. Maximization of Medicare and Other Third Party Insurance	13
G. Payment	13
VI. EFFECTIVE DATE	13

APPENDIX I Listing of Attachments

I. PURPOSE

The purpose of this administrative directive is to inform social services districts of the policies and procedures to be followed when authorizing or reauthorizing Consumer Directed Personal Assistance Program (CDPAP) services as outlined in 18 NYCRR § 505.28.

II. BACKGROUND

The CDPAP began as a demonstration called the Patient Managed Home Care Program (PMHCP). In 1995 it was elevated to program status and renamed CDPAP.

In 1995 the legislature passed Social Services Law 365-f establishing the CDPAP to permit chronically ill and/or physically disabled individuals receiving home care under the medical assistance program greater flexibility and freedom of choice in obtaining such services. The CDPAP is operated in New York State as a Medicaid State Plan service and the district must follow all applicable CDPAP assessment and authorization processes and policies. The scope of services that may be authorized under CDPAP include the tasks that may be provided by a Personal Care Aide, Home Health Aide, Licensed Practical Nurse or Registered Professional Nurse.

SSL Section 365-f authorizes the provision of the CDPAP and the regulatory authority is located at 18 NYCRR § 505.28. These regulations include a description of the program; eligibility requirements; the assessment/reassessment process; guidelines for the local social services districts to determine an applicant's eligibility and appropriateness for participation in the program. The regulation also delineates roles and responsibilities of program participants, local districts and the fiscal intermediary that acts as the employer of record on behalf of the consumer.

III. PROGRAM IMPLICATIONS

Districts will now be required to administer the CDPAP through adherence to 18 NYCRR § 505.28 which will ensure statewide consistency when authorizing or reauthorizing CDPAP services.

IV. DEFINITIONS

- A. Self-Directing Consumer:** means a consumer who is capable of making choices regarding the consumer's activities of daily living and the type, quality and management of his or her consumer directed personal assistance; understands the impact of these choices; and assumes responsibility for the results of these choices.
- B. Consumer:** means a medical assistance recipient who a social services district has determined eligible to participate in the consumer directed personal assistance program.
- C. Consumer Directed Personal Assistant:** means an adult who provides consumer directed personal assistance to a consumer under the consumer's instruction, supervision and direction or under the instruction, supervision and direction of the consumer's designated representative. A consumer's spouse, parent or designated representative may not be the consumer directed personal assistant

for that consumer; however, a consumer directed personal assistant may include any other adult relative of the consumer who does not reside with the consumer or any other adult relative who resides with the consumer because the amount of care the consumer requires makes such relative's presence necessary.

- D. **Designated Representative**: means an adult to whom a self-directing consumer has delegated authority to instruct, supervise and direct the consumer directed personal assistant and to perform the consumer's responsibilities specified in subdivision (g) of this section and who is willing and able to perform these responsibilities. 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.
- E. **Stable Medical Condition**: means a condition that is not expected to exhibit sudden deterioration or improvement and does not require frequent medical or nursing evaluation or judgment to determine changes in the consumer's plan of care.
- F. **Fiscal Intermediary**: means an entity that has a contract with a social services district to provide wage and benefit processing for consumer directed personal assistants and other fiscal intermediary responsibilities

V. **REQUIRED ACTIONS**

A. **Scope of CDPAP**

CDPAP is defined as the provision of some or total assistance with personal care tasks, home health aide tasks and/or skilled nursing tasks by a consumer directed personal assistant under the instruction, supervision and direction of a consumer or the consumer's designated representative.

When the consumer requires assistance with nutritional and environmental support functions only, the hours of assistance cannot exceed eight hours a week.

B. **Eligibility Requirements**

To participate in the CDPAP, a consumer must meet all of the following eligibility requirements:

1. Be eligible for medical assistance;
2. Be eligible for long term care and services provided by a certified home health agency, long term home health care program or an AIDS home care program authorized pursuant to Article 36 of the Public Health Law; or for personal care services or private duty nursing services;
3. Have a stable medical condition;

4. Be self-directing or, if non self-directing, have a designated representative;
5. Need some or total assistance with one or more personal care tasks, home health aide tasks or skilled nursing tasks;
6. Be willing and able to fulfill the consumer's responsibilities or have a designated representative who is willing and able to fulfill such responsibilities; and
7. Participate as needed, or have a designated representative who participates, in the required assessment and reassessment processes.

C. Assessment & Authorization

The social services district must conduct the social assessment and conduct or obtain a nursing assessment with reasonable promptness, generally not to exceed 30 calendar days after receiving a completed and signed physician's order. This statement applies except in unusual circumstances including, but not limited to, when the consumer or, if applicable, the consumer's designated representative has failed to participate as needed in the assessment process. The assessment should be strength based and must consider the consumer's ability to complete ADL's/IADL's. The assessors must base the determination of need on observation, discussion and documentation. The attached Assessment Information and Training Module (Attachment 1) can be shared with both social and nurse assessors for additional guidance.

1. Physician's Orders

A physician licensed in accordance with Article 131 of the NYS Education Law, a physician assistant or a specialist assistant registered in accordance with Article 131-B of the NYS Education Law or a nurse practitioner certified in accordance with article 139 of the Education Law must conduct a medical examination of the consumer and complete the physician's order within 30 calendar days after conducting the medical examination. The physician's order must be completed on a form that the Department requires or approves. The physician or other medical professional who conducted the examination must complete the order form by accurately describing the consumer's medical condition and regimens, including any medication regimens; the consumer's need for assistance with personal care tasks, home health aide tasks and skilled nursing tasks; and provide only such other information as the physician's order form requires. The medical professional who completes the order form must not recommend the number of hours of services that the consumer should be authorized to receive. In all cases, the physician's signature is required.

The physician's order form must be submitted to the social services district within 30 calendar days after the medical examination. The form may be submitted by the physician, other medical professional or by the consumer or the consumer's representative.

2. Social Assessment

Upon receipt of a completed and signed physician's order, social services district professional staff must conduct a social assessment. The social assessment form must be the LDSS-3139 or other form approved by DOH for use. The social assessment must include documentation of the following:

- a. A discussion with the consumer or, if applicable, the consumer's designated representative to determine the consumer's perception of his or her circumstances and preferences;
- b. An evaluation of the consumer's ability and willingness to fulfill the consumer's responsibilities or, if applicable, the ability and willingness of the consumer's designated representative to assume these responsibilities;
- c. An evaluation of the potential contribution of informal supports, such as family members or friends, to the consumer's care, which must consider the number and kind of informal supports available to the consumer;
- d. The ability and motivation of informal supports to assist in care;
- e. The extent of informal supports' potential involvement;
- f. The availability of informal supports for future assistance; and
- g. The acceptability to the consumer of the informal supports' involvement in his or her care.

3. Nursing Assessment

Upon receipt of a completed and signed physician's order, the social services district must conduct or obtain a nursing assessment. The nursing assessment must be completed by a registered professional nurse who is employed by the social services district or by a licensed or certified home care services agency under contract with the district. The nurse must have a license and current registration to practice as a registered professional nurse in New York State and at least two years of satisfactory recent experience in home health care. The nursing assessment form must be the LDSS-3139 and the DMS-1 or other form(s) approved by DOH for use.

If a consumer requires skilled tasks to be completed, at the time of the assessment, the nurse can request (depending on the task) that the individual demonstrate the procedure and/or provide a written policy/procedure that is followed detailing the task and the steps required to complete the task. In that way, the assessors have sufficient information to make an informed decision as to the ability of the responsible party to relay the information to any personal assistant.

The nursing assessment must include the following:

- a. A review and interpretation of the physician's order;
- b. The primary diagnosis code from the ICD-9-CM;
- c. An evaluation whether the consumer's medical condition, as described in the physician's order, would require frequent nursing diagnosis, evaluation or judgment;
- d. An evaluation of the personal care tasks, home health aide tasks and skilled nursing tasks that the consumer requires and whether the consumer requires some assistance or total assistance with such services or tasks;
- e. An evaluation, made in conjunction with the social assessment and physician's order, as to whether the consumer or, if applicable, the consumer's designated representative, is self-directing and willing and able to instruct, supervise and direct the consumer directed personal assistant in performing any needed personal care tasks, home health aide tasks and skilled nursing tasks;
- f. An evaluation of whether the consumer's need for assistance can be totally or partially met through the use of specialized medical equipment or supplies including, but not limited to, commodes, urinals, adult diapers, walkers or wheelchairs and whether the consumer would be appropriate for personal emergency response services (or other device);
- g. Development of the CDPAP Plan of Care (Attachment 2) in collaboration with the consumer or, if applicable, the consumer's designated representative, that identifies the personal care tasks, home health aide tasks and skilled nursing tasks with which the consumer needs assistance in the home, the degree of assistance required and a recommendation for the number of hours or frequency of such assistance; and
- h. Recommendations for authorization of services.

4. Authorization & Notice of Decision

When the social services district determines pursuant to the assessment process, that the individual is eligible to participate in the CDPAP, the district must authorize consumer directed personal assistance according to the consumer's plan of care. The district must not authorize consumer directed personal assistance unless it reasonably expects that such assistance can support the individual's health and safety in the home.

The district may authorize only the hours or frequency of services that the consumer actually requires to maintain his or her health and safety in the home. The authorization must be completed prior to the initiation of services.

No authorization may exceed six months unless the social services district has requested, and the Department has approved, authorization periods of up to twelve months. The Department may approve district requests for authorization

periods of up to twelve months provided that professional staff of the social services district conducts a home visit with the consumer and, if applicable, the consumer's designated representative every six months and evaluate whether:

- The plan of care continues to meet the consumer's needs;
- The consumer or, if applicable, the consumer's designated representative continues to be willing and able to perform the consumer's responsibilities;
- The fiscal intermediary is fulfilling its responsibilities.

The social services district must provide the consumer with a copy of the plan of care that specifies the CDPAP services that the district has authorized the consumer to receive and the number of hours per day or week of such assistance.

Nothing precludes the provision of CDPAP services in combination with other services when a combination of services can appropriately and adequately meet the consumer's needs; provided, however, that no duplication of Medicaid funded services would result.

When there is a disagreement among the physician's order, nursing and social assessments, or there is a question regarding the level, amount or duration of services to be authorized, or if the case involves continuous 24-hour consumer directed personal assistance, an independent medical review of the case must be completed by the local professional director, a physician designated by the local professional director or a physician under contract with the social services district. The local professional director or designee must review the physician's order and the nursing and social assessments and is responsible for the final determination regarding the level and amount of services to be authorized. The final determination must be made with reasonable promptness, generally not to exceed five business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.

Following completion of the assessment process, the local social services district must provide written notification of initial authorization, reauthorization or denial of the requested services (Attachment 3). The notification must be completed in its entirety and provide the required information regarding fair hearings. Notice should be provided to the consumer and, if applicable, the consumer's designated representative. A copy of the notice should be maintained in the consumer's case record.

The district is also responsible for entering the prior authorization for the services into the eMedNY system.

5. Reassessment & Reauthorization

Prior to the end of the authorization period, the social services district must reassess the consumer's continued eligibility for the CDPAP. The reassessment must evaluate whether the consumer or, if applicable, the consumer's designated representative satisfactorily fulfilled the consumer's responsibilities under the CDPAP. When the social

services district determines, pursuant to the reassessment process, that the consumer is eligible to continue to participate in the CDPAP, the district must reauthorize CDPAP in accordance with the authorization process and provide written notice of the authorization (Attachment 3).

When the district determines that the consumer is no longer eligible to continue to participate in the CDPAP, the district must send the consumer, and if applicable, the consumer's designated representative, a timely and adequate notice of the district's intent to discontinue the CDPAP on forms required by the Department (Attachment 4). The reason for discontinuance must be reflected on the notice and supported in case record documentation.

The social services district must conduct a reassessment of the consumer when an unexpected change in the consumer's social circumstances, mental status or medical condition occurs during the authorization or reauthorization period that would affect the type, amount or frequency of consumer directed personal assistance provided during such period. The district is responsible for making necessary changes in the authorization or reauthorization, when they become aware of a change, on a timely basis in accordance with the following procedures:

- a. When the change in the consumer's service needs results solely from an unexpected change in the consumer's social circumstances including, but not limited to, loss or withdrawal of informal supports or a designated representative, the social services district must review the social assessment, document the consumer's changed social circumstances and make changes in the authorization or reauthorization as needed. A new physician's order and nursing assessment are not required; or
- b. When the change in the consumer's service needs results from a change in the consumer's medical condition, including loss of the consumer's ability to instruct, supervise or direct the consumer directed personal assistant, the social services district must obtain a new physician's order, social assessment and nursing assessment.

D. Roles & Responsibilities

1. Consumer

A consumer or, if applicable, the consumer's designated representative has the following responsibilities under the CDPAP:

- a. Managing the plan of care including recruiting and hiring a sufficient number of individuals to provide authorized services that are included on the consumer's plan of care; training, supervising and scheduling each personal assistant; and assuring that each consumer directed personal assistant competently and safely performs the personal care tasks, home health aide tasks and skilled nursing tasks that are included on the consumer's plan of care; terminating the personal assistant's employment;

- b. Timely notifying the social services district of any changes in the consumer's medical condition or social circumstances including, but not limited to, any hospitalization of the consumer or change in the consumer's address, telephone number or employment;
- c. Timely notifying the fiscal intermediary of any changes in the employment status of each consumer directed personal assistant;
- d. Attesting to the accuracy of each consumer directed personal assistant's time sheets;
- e. Transmitting the consumer directed personal assistant's time sheets to the fiscal intermediary according to its procedures;
- f. Timely distributing each consumer directed personal assistant's paycheck, if needed;
- g. Arranging and scheduling substitute coverage when a consumer directed personal assistant is temporarily unavailable for any reason; and
- h. Entering into the Department approved CDPAP Agreement between the LDSS and the Consumer/Designated Representative with the social services district (Attachment 5) that describes the parties' responsibilities under the CDPAP.

2. Local Social Services District

Social services districts have the following responsibilities with respect to the CDPAP:

- a. Notifying on an annual basis, recipients of personal care services, long term home health care program services, AIDS home care program services or private duty nursing services of the availability of the consumer directed personal assistance program and affording them the opportunity to apply for the program;
- b. Complying with the assessment, authorization, reassessment and reauthorization procedures specified in this administrative directive;
- c. Receiving and promptly reviewing, the fiscal intermediary's notification to the district of any circumstances that may affect the consumer's or, if applicable, the consumer's designated representative's ability to fulfill the consumer's responsibilities under the program and making changes in the consumer's authorization or reauthorization as needed;
- d. Discontinuing, after timely and adequate notice, the consumer's participation in the CDPAP and making referrals to other services that the consumer may require when the district determines that the consumer or, if applicable, the consumer's designated representative is no longer able to fulfill the consumer's responsibilities under the program or no longer desires to continue in the program;

- e. Notifying consumers, on forms required by the Department, of the district's decision to authorize, reauthorize, increase, reduce, discontinue or deny services under the CDPAP, and of the consumer's right to request a fair hearing (Attachments 5 & 3);
- f. Maintaining current case records on each consumer and making such records available, upon request, to the Department or the Department's designee;
- g. Entering into contracts with each fiscal intermediary for the provision of fiscal intermediary responsibilities and monitoring the fiscal intermediary's performance under the contract, including reviewing the fiscal intermediary's administrative and personnel policies and recordkeeping relating to the provision of the CDPAP services and evaluating the quality of services that the fiscal intermediary provides; and
- h. Entering into the Department approved CDPAP Agreement between the LDSS and the Consumer/Designated Representative with the consumer or, if applicable the designated representative (Attachment 5) that describes the parties' responsibilities under the CDPAP.

3. Fiscal Intermediary

Fiscal intermediaries have the following responsibilities with respect to the CDPAP:

- a. Processing each consumer directed personal assistant's wages and benefits including establishing the amount of each assistant's wages; processing all income tax and other required wage withholdings; and complying with worker's compensation, disability and unemployment insurance requirements;
- b. Ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation;
- c. Maintaining personnel records for each consumer directed personal assistant, including time sheets and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation;
- d. Maintaining records for each consumer including copies of the social services district's authorization or reauthorization;
- e. Monitoring the consumer's or, if applicable, the consumer's designated representative's continuing ability to fulfill the consumer's responsibilities under the program and promptly notifying the social services district of any circumstance that may affect the consumer's or, if applicable, the consumer's designated representative's ability to fulfill such responsibilities;

- f. Complying with the Department 's regulations at 18 NYCRR §504.3, or any successor regulation, that specify the responsibilities of providers enrolled in the medical assistance program;
- g. Entering into a contract with the social services district for the provision of fiscal intermediary services; and
- h. Sharing information with the consumer or, if applicable, the consumer's designated representative, regarding their respective responsibilities and requirements under the CDPAP.

E. Forms and Notices

The forms and notices below have been developed to assist the local district in the administration of the CDPAP in accordance with 18 NYCRR § 505.28 and are effective immediately:

Attachment 1 - Assessment Information and Training Module

- The purpose of this document is to familiarize staff involved in the assessment and authorization of the CDPAP for training and assessment purposes.

Attachment 2 - CDPAP Plan of Care

- The purpose of this document is to clearly identify those tasks, both skilled and unskilled, that the consumer requires. A copy of this plan should be maintained by the LDSS in the case record and provided to the consumer for use in directing the personal assistant(s) in those authorized tasks. It will be the responsibility of the CDPAP personal assistant to perform only those tasks authorized and included on the plan of care. At a minimum, this plan of care must be completed as part of each assessment/reassessment and whenever there is a change in service responsibility.

Attachment 3 - CDPAP Notice of Decision of Initial Authorization, Reauthorization, or Denial of CDPAP Services

- A completed copy of this notice must be provided to the CDPAP consumer no later than the effective date of the initial authorization, reauthorization, or denial. The same notice must be mailed to the consumer when the application for CDPAP is denied. This must be sent as a two-sided notice.

Attachment 4 - CDPAP Notice of Intent to Increase, Reduce or Discontinue CDPAP Services

- A completed copy of this notice must be mailed to the CDPAP consumer at least 10 days before the date that CDPAP services are to be increased, reduced or discontinued. This should be sent as a two-sided notice.

Attachment 5 - CDPAP Memorandum of Understanding/Agreement Between the LDSS and the Consumer/Designated Representative

- The purpose of this document is to clearly outline the responsibilities of the consumer and the LDSS and assure that both parties understand the purpose and parameters of the program. This agreement should be implemented as part of the assessment process prior to the authorization of service. A copy should be maintained in the LDSS case record and a copy must be provided to, and maintained by, the CDPAP participant. If there is a change in the consumer's ability to self-direct or a change in the self-directing other, a new agreement must be executed.

F. Maximization of Medicare and Other Third Party Insurance

Before providing CDPAP services, local social service districts shall make maximum use of home health and/or nursing services provided under Medicare or other third party insurance, whenever program eligibility conditions under those programs can be met.

G. Payment

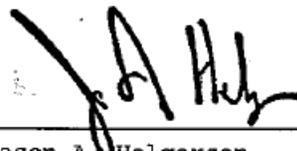
The Department will pay fiscal intermediaries that are enrolled as Medicaid providers and have contracts with social services districts for the provision of CDPAP services at rates that the Department establishes and that the Director of the Division of the Budget approves, except as provided in the following paragraph.

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.

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.

V. EFFECTIVE DATE

This ADM is effective April 20, 2011.



Jason A. Helgerson
Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs

LISTING OF ATTACHMENTS

- Attachment 1: Assessment Information and Training Module
- Attachment 2: CDPAP Plan of Care
- Attachment 3: CDPAP Notice of Decision of Initial Authorization, Reauthorization, or Denial of CDPAP Services
- Attachment 4: CDPAP Notice of Intent to Increase, Reduce or Discontinue CDPAP Services
- Attachment 5: CDPAP Agreement Between the LDSS and the Consumer/Designated Representative