



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower      The Governor Nelson A. Rockefeller Empire State Plaza      Albany, New York 12237

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*Commissioner*

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*Executive Deputy Commissioner*

<b>LOCAL COMMISSIONERS MEMORANDUM</b>
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**Transmittal No:** 06 OMM/LCM-1

**Date:** June 30, 2006

**Division:** Office of Medicaid  
Management

**TO:** Local District Commissioners

**SUBJECT:** Consumer Directed Personal Assistance Program (CDPAP)

**ATTACHMENT:** Questions and Answers Related to Administration of the CDPAP

The purpose of this Local Commissioner's Memorandum is to transmit to the local social services districts a compilation of answers to questions submitted by local social services districts, fiscal intermediaries and Consumer Directed Personal Assistance Program (CDPAP) consumers regarding the CDPAP. The Department continues to accept questions regarding administration of CDPAP and will be issuing additional questions and answers in the near future.

In 1996 the legislature passed Social Services Law 365-f establishing the CDPAP to support 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. CDPAP, is operated in New York State as a Medicaid State Plan service, under the Personal Care Services (PCS) Program benefit.

As such, until discrete regulations governing that program's operations are issued by the Department, the district must follow all applicable PCS assessment and authorization processes and policies. The scope of services that may be authorized under CDPAP include the scope of tasks that may be provided by a Personal Care Aide, Home Health Aide, Licensed Practical Nurse or Registered Professional Nurse.

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 CDPAP Association, all fiscal intermediaries and additionally with 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.

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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,

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Brian Wing  
Deputy Commissioner  
Office of Medicaid Management

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

1. **Q.** What is the scope of tasks allowed under the CDPAP?

**A.** Under the CDPAP, the personal assistant's scope of tasks includes only those tasks that may be performed by a personal care aide, home health aide, licensed practical nurse or registered professional nurse. See GIS 04 MA/010, issued April 27, 2004.
  
2. **Q.** How/When may 24/7 CDPAP services be authorized?

**A.** 24/7 CDPAP services may be authorized when the local district has determined that the consumer meets the criteria for continuous care at 18 NYCRR § 505.14(a)(3). Districts are reminded, however, that Department regulations provide that districts may not authorize or reauthorize personal care services based upon a task-based assessment when the district has determined that the consumer needs 24 hour personal care services, whether continuous (split-shift or multi-shift), 24 hour sleep-in care or the equivalent provided by formal or informal caregivers. See 18 NYCRR § 505.14(b)(5)(v)(d); GIS 01 MA/044 issued 12/24/01; and Q & A #3, herein, for further details.
  
3. **Q.** Can one person provide 24 hour continuous care?

**A.** No. One person may not provide 24 hour continuous care. In accordance with 18 NYCRR § 505.14(a)(3) "Continuous 24-hour personal care services shall mean the provision of uninterrupted care, by more than one person, for a patient who, because of his/her medical condition and disabilities, requires total assistance with toileting and/or walking and/or transferring and/or feeding at unscheduled times during the day and night." 24 hour personal care includes continuous (split-shift or multi-shift) care provided by more than one aide as indicated in 18 NYCRR § 505.14(a)(3). This is to assure the health and well-being of the consumer whose care needs are being met through this service type. It is unreasonable to assume that a single individual can provide safe and adequate assistance without sleep to a consumer 24 hours per day or that a single person can provide substantial amounts of 7 day/week care.
  
4. **Q.** May family members be CDPAP providers?

**A.** CDPAP is funded under the Personal Care Services Program (PCSP) benefit in the State's Medicaid Plan. As such, it must operate in accordance with all applicable Federal and State Medicaid statutes and regulations. Personal Care Services regulation 18 NYCRR § 505.14 (h)(2) states that payment for personal care services shall not be made to a consumer's spouse, parent, son, son-in-law, daughter, or daughter-in-law. However, payment may be made to another relative who is not

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residing in the consumer's home; or, is residing in the consumer's home because the amount of care required by the consumer makes his/her presence necessary.

- 5. Q.** Can Medicaid pay for an individual or agency to act as a self directing other for a consumer?
- A.** No. Medicaid reimbursement under the CDPAP is only available for medically necessary tasks and services.
- 6. Q.** Should nursing and social assessments be conducted during the period between Medicaid application and determination of Medicaid eligibility and at what point can CDPAP services start?
- A.** If a consumer has filed an application for Medicaid, a social services district may complete an assessment to determine appropriateness of the individual for any MA funded home care services. Services may not be authorized, nor notice provided, however, until such time as MA eligibility has been determined and established.
- 7. Q.** May the CDPAP personal assistant physical be waived?
- A.** No. The CDPAP personal assistant must meet the same requirements for health tests, immunizations and examinations that apply to home care services agency personnel who have direct patient contact. The fiscal intermediary must maintain required health documentation in the CDPAP personal assistant's file.
- 8. Q.** Can a CDPAP personal assistant perform medical procedures? Is nurse monitoring/supervision of the personal assistant/consumer required?
- A.** The CDPAP personal assistant may perform any personal care aide, home health aide, or nursing task that the consumer has been assessed as needing and has been prior authorized to receive; provided, however, that the personal assistant has been trained to perform the task and is supervised and directed while performing the task. Nurse supervision/monitoring is not required as the determination that the consumer (or his/her self-directing other) has the ability to direct his or her own care and train his/her assistants in needed tasks is made during the assessment process and before the prior authorization of service. Social Services Law § 365-f requires the vendor agency (fiscal intermediary) to monitor the consumer's continuing ability to fulfill his/her responsibilities in CDPAP. The LDSS must ask the fiscal intermediary how it will fulfill that responsibility.

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- 9 Q.** Is there a required number of personal care personal assistants for backup?
- A.** No. The need for and number of additional personal assistants is dependent on a variety of factors and should be determined on a case by case basis. A consumer who only has hours authorized for housekeeping tasks is not likely to be at risk if his/her personal assistant is unavailable for a limited period of time. However, a consumer who is ventilator dependent must have an adequate plan for assuring his/her health and safety in the event that the scheduled personal assistant is unavailable. Additionally, if the district determines at any point in time that the consumer's care needs are not being adequately met, the district must review the consumer's arrangements for meeting authorized service and take any appropriate action deemed necessary.
- 10.Q.** Are participants receiving Residential Habilitation or Day Habilitation (waiver services) also eligible to receive CDPAP?
- A.** It depends. Consumers who receive Residential Habilitation or Day Habilitation services through the OMRDD Home and Community Based Services (HCBS) waiver program may participate in the CDPAP only during those hours of the day in which they are **not** receiving either of these waiver services. The OMRDD is responsible for personal care services and home health aide services provided to recipients of Residential Habilitation or Day Habilitation services. (See 04 OMM/LCM-3.) Consequently, a consumer may not participate in the CDPAP during those hours of the day in which he or she receives either waiver service through the OMRDD HCBS waiver program; however, the consumer may participate in the CDPAP during those hours of the day in which he or she does not receive either waiver service.
- 11.Q.** Can a consumer who participates in CDPAP also receive Meals On Wheels (home delivered meals) and Personal Emergency Response Services (PERS)?
- A.** A consumer who participates in CDPAP may also receive Meals On Wheels and/or PERS if the consumer meets the respective eligibility criteria for each service.
- 12.Q.** Can a person be hired privately to baby-sit a child and simultaneously take care of a CDPAP consumer during the same hours?
- A.** No. MA will only pay for medically necessary services delivered to a consumer and which are specified on a plan of care. It would be impossible to simultaneously provide care to both the consumer and, at the same time, the child.

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- 13. Q.** How does an individual or an agency become a CDPAP fiscal intermediary?
- A.** The initial step in the process is to contact the local department of social services (LDSS) in order to determine whether or not the LDSS wants to pursue a contract/memorandum of understanding (MOU) with the individual or the agency. If the LDSS determines that they wish to pursue a contract/MOU with the entity, they must follow the guidelines delineated in 98 OCC LCM-003. The agency/individual must contact the Bureau of Long Term Care Reimbursement at (518) 473-8910. A Health Provider Network (HPN) account will be established. The agency/individual will access their HPN and complete the required cost report(s) in order to establish rates. If the agency/individual is not already a Medicaid provider, they must also contact the Division of Medical Review and Provider Enrollment at (518) 474-8161 in order for the Department to establish a provider ID number.
- 14. Q.** Is the CDPAP personal assistant free to choose the vendor agency (fiscal intermediary)? Is the consumer able to choose the vendor agency (fiscal intermediary)?
- A.** Each social services district must contract with a sufficient number of fiscal intermediaries to serve the district's CDPAP consumers. Although neither a CDPAP consumer nor the personal assistant may require that the district contract with a particular fiscal intermediary, districts should be reasonable in the response to requests for a particular fiscal intermediary to be under contract rather than summarily reject such requests across-the-board. There may be circumstances in which the district could reasonably accommodate a request for a particular fiscal intermediary with no detrimental effect on the district's administrative procedures. For example, a CDPAP consumer may request a particular fiscal intermediary because he or she has a long-standing relationship with a personal assistant who is affiliated with that entity. The district should consider whether it can accommodate this or other reasonable requests. Districts should thus evaluate requests for a particular fiscal intermediary to be under contract to the LDSS on a case-by-case basis.
- 15. Q.** CDPAP providers have experienced problems with ePACES. Who should be contacted for assistance?
- A.** Medicaid billing issues and login/systems problems should be directed to Computer Science Corporation (CSC), at 1-800-522-5518 or (518) 447-9860.

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**16. Q.** Can annual authorizations be used in CDPAP?

**A.** If a district is in receipt of Department approval for annual authorization in the PCSP, it may choose to extend that policy to self-directing CDPAP cases. However, because of the nature of CDPAP, the Department recommends that the district carefully evaluate the history of each case on an individual basis to determine if an annual authorization is appropriate. The Department recommends that home visits be made by district staff, or its designee, on CDPAP cases at a minimum every six months to assure that the assistance needs of the individual are being adequately met by the authorized tasks. In cases where the CDPAP participant is not self-directing, annual authorizations should **NOT** be used. It is the Department's policy that, at a minimum, every six month visits by the district staff provide an opportunity to determine the continued involvement of the self-directing other in the assumption of duties related to the oversight of the CDPAP personal assistant.