

Revisions to 505.28 effective December 23, 2015

I. Scope of the CDPAP Benefit

A. Slightly revised definition of Consumer Directed Personal Assistance

Consumer directed personal assistance means the provision of assistance with personal care services, home health aide services and skilled nursing tasks by a consumer directed personal assistant under the instruction, supervision and direction of a consumer or the consumer's designated representative.

[18 NYCRR § 505.28(b)(2)]

B. Repeal of "some assistance" and "total assistance" definitions

C. Addition of "turning and positioning" as a CDPAP function

D. New definition of "Continuous Consumer Directed Personal Assistance ("Split-Shift Care")

Continuous consumer directed personal assistance means the provision of uninterrupted care, by more than one consumer directed personal assistant, for more than 16 hours in a calendar day for a consumer who, because of the consumer's medical condition, needs assistance during such calendar day with toileting, walking, transferring, turning and positioning, feeding, home health aide services, or skilled nursing tasks, and needs assistance with such frequency that a live-in 24-hour consumer directed personal assistant would be unlikely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.

[18 NYCRR § 505.28(b)(4)]

E. New definition of "Live-in 24-Hour Consumer Directed Personal Assistance"

Live-in 24-hour consumer directed personal assistance means the provision of care by one consumer directed personal assistant for a consumer who, because of the consumer's medical condition, needs assistance during a calendar day with toileting, walking, transferring, turning and positioning, feeding, home health aide services, or skilled nursing tasks and whose need for assistance is sufficiently infrequent that a live-in 24-hour consumer directed personal assistant would be likely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.

[18 NYCRR § 505.28(b)(12)]

F. Consumer directed personal assistance, including continuous consumer directed personal assistance and live-in 24-hour consumer directed personal assistance, shall not be authorized to the extent that the consumer's need for assistance can be met by the following:

(a) voluntary assistance available from informal caregivers including, but not limited to, the consumer's family, friends or other responsible adult;

(b) formal services provided or funded by an entity, agency or program other than the medical assistance program; or

(c) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers, and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.
[18 NYCRR § 505.28(e)(1)(ii)]

G. The social services district must first determine whether the consumer, because of the consumer's medical condition, would be otherwise eligible for consumer directed personal assistance, including continuous consumer directed personal assistance or live-in 24-hour consumer directed personal assistance. For consumers who would be otherwise eligible for consumer directed personal assistance, the district must then determine whether, and the extent to which, the consumer's need for assistance can be met by voluntary assistance from informal caregivers, by formal services, or by adaptive or specialized equipment or supplies.
[18 NYCRR § 505.28(e)(1)(iii)]

H. Live-in 24-Hour Cases that Lack Sleeping Accommodations for a Live-in Aide

When the consumer's home has no sleeping accommodations for a consumer directed personal assistant, continuous consumer directed personal assistance must be authorized for the consumer; however, should the consumer's circumstances change and sleeping accommodations for a consumer directed personal assistant become available in the consumer's home, the district must promptly review the case. If a reduction of the consumer's continuous consumer directed personal assistance to live-in 24-hour consumer directed personal assistance is appropriate, the district must send the consumer a timely and adequate notice of the proposed reduction.

[18 NYCRR § 505.28(d)(2)(v)]

II. New Nursing Assessment Requirements in Continuous Consumer Directed Personal Assistance and Live-in 24 Hour Consumer Directed Personal Assistance Cases

The nursing assessment in continuous (split-shift) and live-in cases must include documentation of the following:

(1) whether the physician's order has documented a medical condition that causes the consumer to need frequent assistance during a calendar day with toileting, walking, transferring, turning and positioning, feeding, home health aide services, or skilled nursing tasks;

- (2) the specific functions or tasks with which the consumer requires frequent assistance during a calendar day;
- (3) the frequency at which the consumer requires assistance with these functions or tasks during a calendar day;
- (4) whether the consumer requires similar assistance with these functions or tasks during the consumer's waking and sleeping hours and, if not, why not; and
- (5) whether, were live-in 24-hour consumer directed personal assistance to be authorized, the consumer directed personal assistant would be likely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.
[18 NYCRR §505.28(g)]

III. New Social Assessment Requirement in Live-in 24-Hour Consumer Directed Cases

For cases involving live-in 24-hour consumer directed personal assistance, the social assessment must include an evaluation whether the consumer's home has sleeping accommodations for a consumer directed personal assistant. When the consumer's home has no sleeping accommodations for a consumer directed personal assistant, continuous consumer directed personal assistance must be authorized for the consumer; however, should the consumer's circumstances change and sleeping accommodations for a consumer directed personal assistant become available in the consumer's home, the district must promptly review the case. If a reduction of the consumer's continuous consumer directed personal assistance to live-in 24-hour consumer directed personal assistance is appropriate, the district must send the consumer a timely and adequate notice of the proposed reduction.

[18 NYCRR § 505.28(d)(2)(v)]

IV. New Notice Requirements for Denials of Consumer Directed Personal Assistance

The determination to deny consumer directed personal assistance must be stated in the notice.

Appropriate reasons and notice language to be used when denying consumer directed personal assistance include but are not limited to the following:

- (a) the consumer's health and safety cannot be assured with the provision of consumer directed personal assistance. The notice must identify the reason or reasons that the consumer's health and safety cannot be assured with the provision of such assistance;
- (b) the consumer's medical condition is not stable. The notice must identify the consumer's medical condition that is not stable;

- (c) the consumer is not self-directing and has no designated representative to assume those responsibilities;
 - (d) the consumer refused to cooperate in the required assessment;
 - (e) a technological development, which the notice must identify, renders certain services unnecessary or less time-consuming;
 - (f) the consumer resides in a facility or participates in another program or receives other services, which the notice must identify, which are responsible for the provision of needed assistance; and
 - (g) the consumer or, if applicable, the consumer's designated representative, is unable or unwilling to fulfill the consumer's responsibilities under the program.
- [18 NYCRR § 505.28(h)(5)(i)]

V. New Notice Requirements For Reductions/Discontinuations of Consumer Directed Personal Assistance

The determination to reduce or discontinue consumer directed personal assistance must be stated in the notice.

Appropriate reasons and notice language to be used when reducing or discontinuing consumer directed personal assistance include but are not limited to the following:

- (a) the consumer's medical or mental condition or economic or social circumstances have changed and the district determines that the consumer directed personal assistance provided under the last authorization or reauthorization are no longer appropriate or can be provided in fewer hours. For proposed discontinuances, this includes but is not limited to cases in which: the consumer's health and safety can no longer be assured with the provision of consumer directed personal assistance; the consumer's medical condition is no longer stable; or the consumer is no longer self-directing and has no designated representative to assume those responsibilities. The notice must identify the specific change in the consumer's medical or mental condition or economic or social circumstances from the last authorization or reauthorization and state why the assistance should be reduced or discontinued as a result of the change;
- (b) a mistake occurred in the previous authorization or reauthorization for consumer directed personal assistance. The notice must identify the specific mistake that occurred in the previous authorization or

reauthorization and state why the prior assistance is not needed as a result of the mistake;

(c) the consumer refused to cooperate in the required reassessment;

(d) a technological development, which the notice must identify, renders certain assistance unnecessary or less time-consuming;

(e) the consumer resides in a facility or participates in another program or receives other services, which the notice must identify, which are responsible for the provision of needed assistance; and

(f) the consumer or, if applicable, the consumer's designated representative is no longer able or willing to fulfill the consumer's responsibilities under the program or the consumer no longer desires to continue in the program.

[18 NYCRR § 505.28(h)(5)(ii)]