

**Office of Health Insurance Programs
Division of Long Term Care**

Managed Long Term Care Policy 20.01: Transition Policies for Fiscal Intermediaries (FIs) and Consumers under the Consumer Directed Personal Assistance Program (CDPAP)

Date of Issuance: March 6, 2020

Background

In 2019, Social Services Law (SSL) Section 365-f, which governs the Consumer Directed Personal Assistance Program (CDPAP), was amended to require a procurement process through which the Commissioner of the Department of Health (the Department or DOH) would enter into contracts with eligible entities that submit offers under a Requests for Offers (RFO) and are selected to contract with the State to provide Fiscal Intermediary (FI) services required by the program. In response to this legislative requirement, the Department published RFO #20039 New York State Fiscal Intermediaries for the Consumer Directed Personal Assistance Program on December 18, 2019, with a proposal due date, as amended, of March 3, 2020. RFO #20039 is posted at <https://www.health.ny.gov/funding/rfo/20039/>.

Introduction

The Department is issuing this transition policy to facilitate the transition of services from entities currently providing FI services (“Current FIs”) that decide or are required to cease operations as a result of the RFO. This policy is effective immediately and provides guidance primarily to Current FIs and Managed Care Plans for transitions both before and after when the Department will announce the entities selected to provide FI services pursuant to the RFO on the “Contract Notification Date.”¹

For ease of use, this policy is broken down into five scenarios. In each scenario, the process, timeframes and responsibilities for Current FIs and other entities regarding how to cease operations may be different. Certain decisions made by Current FIs regarding closure can affect which scenario applies. The five scenarios are as follows:

- 1) Current FIs that do not submit an offer as Lead FI under the RFO, are not a Collaborating Partner in any offer made in response to the RFO, and elect to cease operating before the Contract Notification Date (p. 3);
- 2) Current FIs that do not submit an offer as Lead FI under the RFO, are not a Collaborating Partner in any offer made in response to the RFO, and elect to continue operating until the Contract Notification Date (p. 6);
- 3) Current FIs that submit an offer as Lead FI under the RFO in any offer made in response to the RFO, but are not selected in either capacity (p. 7);
- 4) Collaborating Partners (p. 8); and

¹ At this time, the Department has prioritized providing guidance for transactions most relevant to the initial procurement of FI services required by law. The Department may issue a transition policy or policies at a later date to specifically address transitions from contracted FIs, after awards are made, that decide or are required to cease operations or for other transition circumstances.

5) Current FIs that elect to cease operations immediately (p. 9).

Please consult the appropriate pages of this policy document for the specific transition requirements that addresses your situation.

Questions regarding these FI Transition Provisions should be directed to the Department of Health at ConsumerDirected@health.ny.gov

Definitions

The following terms are defined to enhance the clarity and consistency to the transition processes described herein and the materials specifically related to these transitions.²

Collaborating Partner means an entity identified in a Lead FI's offer to the Department under the RFO that intends to assist the Lead FI in providing FI services.

Consumer or CDPAP consumer means an individual authorized to receive or receiving services under the CDPAP program.

Consumer Directed Personal Assistance Program (CDPAP or CDPAP Program) means the program established pursuant to Section 365-f of the Social Services Law to provide individuals greater flexibility to self-direct home care services provided under the New York State medical assistance program.

Contract Notification Date means the date on which the Department first publishes on its website a list of Lead FIs selected to enter into a contract with the Department under the terms of the RFO.

Current FI means an entity providing FI services prior to the Contract Notification Date.

Lead FI means an entity that submits an offer to the Department under the RFO. Lead FIs may be selected by and contract with the Department to provide FI services pursuant to the RFO process.

Receiving FI or new FI means any FI a Consumer selects or could select to provide FI services on behalf of the Consumer when their Current FI decides or is required to cease operations.

² These definitions do not necessarily align with the way these terms are used in procurement of FIs or CDPAP generally and should not be solely relied upon for interpreting the RFO, or other materials, documents, or statements made by the Department related to the RFO or CDPAP. The Department may use or develop different definitions for the terms in this section or other terms used throughout this policy, including definitions provided in statute, regulation, or other policies and guidance of the Department, which may narrow, expand, overlap, contradict and/or supersede the definitions provided herein.

Scenario 1: Current FIs that Fail to Submit an Offer under the RFO, nor are Included as a Collaborating Partner in any Offer made in response to the RFO, and Elect to Cease Operations Prior to the Contract Notification Date

Election Form to Continue Operations through the Selection and Notification of FIs

To ensure continuity of care and an orderly and efficient transition for CDPAP consumers that may need to select and transition to a Receiving FI, the Department will permit all Current FIs that did not submit an offer and were not included as a Collaborating Partner in any offer under the RFO to continue to operate until the Contract Notification Date.

To be eligible to operate during this time period, Current FIs that did not submit an offer under the RFO, nor were included as a Collaborating Partner in any offer, must notify the Department of their intent to continue operations through this period on or before **March 20, 2020** by submitting an election form, which can be found on the Department's website on the [CDPAS](#) and [MLTC Policy](#) pages, to ConsumerDirected@health.ny.gov.

Current FIs that submit this election form but nonetheless want to cease operations prior to the Contract Notification Date are required to follow the transition policies and procedures guidance below.

Transition Policies and Procedures

Current FIs that do not want to continue operations through the Contract Notification date must deliver written notice within forty-five (45) calendar days in advance of such change in operations to the affected CDPAP consumers (or the consumers' designated representatives), their personal assistants (PAs), the LDSS and Managed Care Plans with which the Current FI contacts, and DOH.

FIs must use the following templates, located on the Department's website on the [CDPAS](#) and [MLTC Policy](#) pages, to provide such written notices:

- FI Cease Operations Template FI to Consumer
- FI Cease Operations Template FI to LDSS or Managed Care Plan
- FI Cease Operations Template FI to PAs

The templates include information regarding the date the Current FI plans to cease operations or change its service area, and the following information.

- 1) Notice to the CDPAP consumer (or the consumer's representative) indicating the consumer has a right to select a new FI of their choosing, and that their Managed Care Plan or LDSS (as appropriate) will be contacting them to provide options for choosing a new FI and will supervise and assist them with transitioning to a new FI. In addition, the notice indicates the Current FI has also notified their Managed Care Plan or LDSS, their PA(s), and DOH.
- 2) Notice to the CDPAP consumer's PA(s) indicating the Current FI has notified their CDPAP consumer of the change in their FI operations and the need for them to select a new FI. The notice also indicates the Current FI has also notified DOH, and the CDPAP consumer's Managed Care Plan or LDSS, and that the Managed Care Plan or LDSS will supervise and assist with the transition process.
- 3) Notice to any LDSS or Managed Care Plan with which the Current FI contracts indicating

the Current FI has notified their CDPAP consumer, the CDPAP consumer's PA(s), and the DOH of their change in FI operations. The notice must identify each CDPAP consumer that has received the notification.

- 4) Copies of all notifications must be sent to DOH via email to ConsumerDirected@health.ny.gov with the subject line: "FI Withdrawal Notices"

FIs that voluntarily cease operations, leave a service area, or have a CDPAP consumer that independently chooses to change FIs, **may not** take any action to:

- Prevent a PA from transitioning to a new FI of the CDPAP consumer's choice; or
- Require the CDPAP consumer or their PA (s) to switch to a personal care or home health care program that is not within the CDPAP program.

Within five (5) business days of receiving a records request, with written consent from the CDPAP consumer, FIs must transfer all records relating to the CDPAP consumer's care authorizations to the consumer's Receiving FI. Within five (5) business days of receiving a records request, with written consent from the CDPAP PA, a Current FI must transfer records related to the PA's health status, including immunization records to the consumer's Receiving FI. Upon transmittal to the Receiving FI, the current FI must acknowledge it assumes all liability for omissions or errors in such records.

The Model Consent Forms, also posted to the Department's website on the [CDPAS](#) and [MLTC Policy](#) pages, may be used by the consumer to provide written consent to transfer their records.

- CDPAP Consumer Serv Auth Transfer – Model Consent Form
- CDPAP Med Record Transfer – Model Consent Form

Written Notice and Other Transition Requirements for Managed Care Plans and LDSS

Within five (5) business days of receipt of a notice from a contracted Current FI to cease operations or leave its service area, the Managed Care Plan or LDSS, as appropriate, must send each affected member receiving CDPAP a written acknowledgement of receipt of the notice from the Current FI and using the following templates to send the required notice to each affected CDPAP consumer, located on the Department's website on the [CDPAS](#) and [MLTC Policy](#) pages.

- FI Cease Operations Template Managed Care Plan or LDSS to Consumer
- FI Cease Operations Template Managed Care Plan or LDSS to Consumer 2nd Notice

The templates include the following information.

- A statement that the Managed Care Plan or LDSS has received notice of the change in their FI's operations and is charged with overseeing and assisting the CDPAP consumer with selecting a new FI;
- The CDPAP consumer has the right to select a new FI of their choice and the change in the Current FI's business operations does not impact their care plan or their choice of PA (s);
- A list of all other FIs, including contact information, the Managed Care Plan or the LDSS contracts with and operates in the member's service area;

- To ensure continuity of FI services, a request that the CDPAP consumer select another FI within ten (10) calendar days from the date the CDPAP consumer receives the CDPAP consumer notice;
- A contact at the Managed Care Plan or LDSS, including a telephone number, to address CDPAP consumers' questions or concerns; and
- A reminder that CDPAP consumers are entitled to a copy of their care plan, and instructions on how the consumer may obtain a copy of their care plan.

As part of the Managed Care Plans and LDSS role in supervising the transition to a new FI, Managed Care Plans and LDSS will oversee the transfer of records by the Current FI to the Receiving FI and maintain regular contact with CDPAP consumer to ensure services from the Receiving FI are in place prior to the change in operations noticed by the Current FI.

Within five (5) business days of the requested 10-day period provided to CDPAP consumers to select a new FI, Managed Care Plans and LDSS, shall issue a second notice and contact the member directly to notify and assist them with selecting a new FI. Managed Care plans and LDSS should continue to follow up with CDPAP consumers until the transition to a new FI is complete.

Scenario 2: Current FIs that Fail to Submit an Offer under the RFO, nor are Included as a Collaborating Partner in any Offer made in response to the FO, but Elect to Continue Operating until the Contract Notification Date

Election Form to Continue Operations through the Selection and Notification of FIs

To ensure continuity of care and an orderly and efficient transition for CDPAP consumers that may need to select and transition to a new FI, the Department will permit all Current FIs that did submit an offer as a Lead FI, nor were included as a Collaborating Partner in any offer, under the RFO to continue to operate until the Contract Notification Date.

To be eligible to operate during this time period, Current FIs that did not submit an offer under the RFO must notify the Department of their intent to continue operations through the Contract Notification date on or before **March 20, 2020** by submitting the election form, located on the Department's website on the [CDPAS](#) and [MLTC Policy](#) pages, to ConsumerDirected@health.ny.gov.

Under the provisions of SSL § 365-f, the Department, rather than the Current FI, will issue the following notifications (also identified above), to consumers or their designated representatives, PAs, LDSS and Managed Care Plans that the Current FIs must cease operations and transition:

- FI Cease Operations Template FI to Consumer;
- FI Cease Operations Template FI to LDSS or Managed Care Plan; and
- FI Cease Operations Template FI to PAs.

The Department will work with Current FIs, and the Managed Care Plans and LDSS who are responsible for supervising the transition of consumers to a new FI, to obtain the information required for the Department to effectuate initiating notices to the required parties. The Department may issue additional transition policies and procedures and notices to draw on the ability of the Managed Care Plans and LDSS to assist before or during the 90-day period following the posting of contracted FIs to the website to ensure seamless continuity of services for CDPAP consumers.

Scenario 3: Current FIs that Submit an Offer as a Lead FI under the RFO, but Are Not Selected

As of the Contract Notification Date, Current FIs that are not on the award list will have no longer than 90 days to cease operations. Under the provisions of SSL § 365-f, the Department, rather than the Current FI, will issue the following notifications (also identified above), to consumers or their designated representatives, PAs, LDSS and Managed Care Plans that the Current FIs must cease operations and transition:

- FI Cease Operations Template FI to Consumer;
- FI Cease Operations Template FI to LDSS or Managed Care Plan; and
- FI Cease Operations Template FI to PAs.

The Department will work with Current FIs, and the Managed Care Plans and LDSS who are responsible for supervising the transition of consumers to a new FI, to obtain the information required for the Department to effectuate initiating notices to the required parties. The Department may issue additional transition policies and procedures and notices to draw on the ability of the Managed Care Plans and LDSS to assist before or during the 90-day period following the posting of contracted FIs to the website to ensure seamless continuity of services for CDPAP consumers.

Scenario 4: Collaborating Partners

Any Current FI that did not submit an offer as a Lead FI but was included in at least one offer as a Collaborating Partner will eventually be required to cease operating as an FI. However, all Collaborating Partners can elect to continue to operate as an FI until 90 days after the Contract Notification date.

Collaborating Partners Ceasing Operation Prior to the Contract Notification Date

If a Collaborating Partner decides to cease operations prior to the Contract Notification Date, then please follow the instructions under Scenario #1.

Collaborating Partners Electing to Continue Operations Until the Contract Notification Date

If a Collaborating Partner elects to continue to operate until the Contract Notification Date, then please follow the instructions under Scenario #2.

Scenario 5: Current FIs that Cease Operations Immediately

Regardless of the scenarios above, Current FIs that seek to cease operations immediately, including those Current FIs that **do not** submit the election form by **March 20, 2020**, are required to follow the transition policies and procedures guidance below.

Transition Policies and Procedures

Current FIs that seek to cease operations immediately must deliver written notice within forty-five (45) calendar days in advance of such change in operations to the affected CDPAP consumers (or the consumers' designated representatives), their personal assistants (PAs), the LDSS and Managed Care Plans with which the Current FI contacts, and DOH.

FIs must use the following templates to provide such written notices, which are located on the Department's website on the [CDPAS](#) and [MLTC Policy](#) pages:

- FI Cease Operations Template FI to Consumer
- FI Cease Operations Template FI to LDSS or Managed Care Plan
- FI Cease Operations Template FI to PAs

The templates include information regarding the date the Current FI plans to cease operations or change its service area, and the following information.

- 1) Notice to the CDPAP consumer (or the consumer's representative) indicating the consumer has a right to select a new FI of their choosing, and that their Managed Care Plan or LDSS (as appropriate) will be contacting them to provide options for choosing a new FI and will supervise and assist them with transitioning to a new FI. In addition, the notice indicates the Current FI has also notified their Managed Care Plan or LDSS, their PA(s), and DOH.
- 2) Notice to the CDPAP consumer's PA(s) indicating the Current FI has notified their CDPAP consumer of the change in their FI operations and the need for them to select a new FI. The notice also indicates the Current FI has also notified DOH, and the CDPAP consumer's Managed Care Plan or LDSS, and that the Managed Care Plan or LDSS will supervise and assist with the transition process.
- 3) Notice to any LDSS or Managed Care Plan with which the Current FI contracts indicating the Current FI has notified their CDPAP consumer, the CDPAP consumer's PA(s), and the DOH of their change in FI operations. The notice must identify each CDPAP consumer that has received the notification.
- 4) Copies of all notifications must be sent to DOH via email to ConsumerDirected@health.ny.gov with the subject line: "FI Withdrawal Notices."

FIs that voluntarily cease operations, leave a service area, or have a CDPAP consumer that independently chooses to change FIs, **may not** take any action to:

- Prevent a PA from transitioning to a new FI of the CDPAP consumer's choice; or
- Require the CDPAP consumer or their PA (s) to switch to a personal care or home health care program that is not within the CDPAP program.

Within five (5) business days of receiving a records request, with written consent from the CDPAP consumer, FIs must transfer all records relating to the CDPAP consumer's care

authorizations to the consumer's Receiving FI. Within five (5) business days of receiving a records request, with written consent from the CDPAP PA, a Current FI must transfer records related to the PA's health status, including immunization records to the consumer's Receiving FI. Upon transmittal to the Receiving FI, the current FI must acknowledge it assumes all liability for omissions or errors in such records.

The following Model Consent Forms, posted to the Department's website on the [CDPAS](#) and [MLTC Policy](#) pages, may be used by the consumer to provide written consent to transfer their records.

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Within five (5) business days of receipt of a notice from a contracted Current FI to cease operations or leave its service area, the Managed Care Plan or LDSS, as appropriate, must send each affected member receiving CDPAP a written acknowledgement of receipt of the notice from the Current FI and using the following templates, located on the Department's website on the [CDPAS](#) and [MLTC Policy](#) pages, to send the required notice to each affected CDPAP consumer.

- FI Cease Operations Template Managed Care Plan or LDSS to Consumer
- FI Cease Operations Template Managed Care Plan or LDSS to Consumer 2nd Notice

The templates include the following information.

- A statement that the Managed Care Plan or LDSS has received notice of the change in their FI's operations and is charged with overseeing and assisting the CDPAP consumer with selecting a new FI;
- The CDPAP consumer has the right to select a new FI of their choice and the change in the Current FI's business operations does not impact their care plan or their choice of PA (s);
- A list of all other FIs, including contact information, the Managed Care Plan or the LDSS contracts with and operates in the member's service area;
- To ensure continuity of FI services, a request that the CDPAP consumer select another FI within ten (10) calendar days from the date the CDPAP consumer receives the CDPAP consumer notice;
- A contact at the Managed Care Plan or LDSS, including a telephone number, to address CDPAP consumers' questions or concerns; and
- A reminder that CDPAP consumers are entitled to a copy of their care plan, and instructions on how the consumer may obtain a copy of their care plan.

As part of the Managed Care Plans and LDSS role in supervising the transition to a new FI, Managed Care Plans and LDSS will oversee the transfer of records by the Current FI to the Receiving FI and maintain regular contact with CDPAP consumer to ensure services from the Receiving FI are in place prior to the change in operations noticed by the Current FI.

Within five (5) business days of the requested 10-day period provided to CDPAP consumers to select a new FI, Managed Care Plans and LDSS, shall issue a second notice and contact the member directly to notify and assist them with selecting a new FI. Managed Care plans and LDSS should continue to follow up with CDPAP consumers until the transition to a new FI is complete.