
◆ ELDER LAW REVIEW ◆TM

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IMPORTANT MEDICAID HOME CARE UPDATES

CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAM (CDPAP)

The Consumer Directed Personal Assistance Program (“CDPAP”) is a Medicaid program that allows consumers to control decisions regarding who provides their care and how the care is provided. The consumer is responsible for directing the care and for training the aide. CDPAP aides may perform “skilled” tasks such as the administration of insulin, oxygen administration, and medication administration. Managed Long Term Care (“MLTC”) plans are required to have a CDPAP program and to notify eligible individuals of the option to join. The MLTC plan assesses whether the consumer is able to direct and manage his or her own care to determine eligibility for CDPAP.

Until recently, spouses and parents could not provide care. On November 20, 2015, New York State changed the Social Services Law so that, effective April 1, 2016, anyone may be hired except a spouse or a parent of a minor child under 21 (“legally responsible relatives”). This means that a parent of an adult child, 21 or older, may serve as that adult child’s CDPAP caregiver. See GIS 16 MA/006 for changes to the CDPAP law.

REVISED REGULATIONS REGARDING 24 HOUR PERSONAL CARE

1. The NYS Department of Health notified MLTC plans that they must comply with revised regulations used to assess need for 24 hour personal care services. One major change is that the need for “total assistance” is no longer a requirement for continuous care. The practical ramification of this is that the nursing assessment is no longer required to include an evaluation of the *degree* of assistance required for each task, since the definition of “some assistance” and “total assistance” is repealed. In addition, the nursing assessment must document factors such as whether the doctor’s order has reported a medical condition that causes the patient to need frequent assistance during a calendar day with toileting, walking, transferring, turning or positioning. However, services shall not be authorized to the extent that needs may be met by voluntary assistance from other people.

2. There is a new definition of “continuous consumer directed personal assistance (split-shift)” and a new definition of “live-in 24 hour consumer directed personal assistance.”

3. The Medicaid agency must first determine whether the consumer

would be otherwise eligible for consumer directed personal assistance. For those who would be otherwise eligible, the district must determine whether and to what extent the consumer’s need for assistance can be met by voluntary assistance from informal caregivers, formal services or by adaptive or specialized equipment or supplies.

The social assessment for consumer directed and personal care services must include an evaluation of whether the home has sleeping accommodations for the caregiver. If the consumer does not have sleeping accommodations, continuous (split-shift) consumer directed personal assistance or continuous personal care services must be authorized.

OVERTIME

In light of new overtime requirements, the state Department of Health announced that it will be advancing \$22.8 million in funds to MLTC plans to pass the funds on to home care agencies with whom they contract in order to pay overtime wages to aides. However, the Consumer Directed Personal Assistance Association estimated that overtime costs alone would be \$35 million in 2016-17, so it is anticipated that the funds will fall short of what is needed.
