

## Elder Law/Trusts and Estates Law

# CDPAP: Medicaid Recipients Can Choose Their Caregivers

The New York State Consumer Directed Personal Assistance Program (CDPAP) is a statewide Medicaid program that allows recipients to direct their own care and select the individuals who provide the care. The program is intended for elderly or disabled persons who require personal care, home health or skilled nursing care and wish to maintain control regarding who provides these services. As consumers of care services, they are choosing to direct their own care, hence the phrase "consumer directed."



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It is no secret that our population is aging. In fact, it is projected that by the year 2030, older people will outnumber children for the first time in American history.<sup>1</sup> As this shift in demographics occurs, more and more people will require some type of long-term care, which will require new solutions to meeting this need. The stress of potentially having strangers in your home providing intimate care is reduced by the ability to hire trusted family members or friends.

## Eligibility for CDPAP

According to the CDPAP website, in order to participate in the program, an applicant (potential consumer) must be: Medicaid eligible; eligible for long-term care services provided via home care services, personal care services, or private duty nursing; require some or total assistance with one or more home care service, skilled nursing task, or personal care service; have a stable medical condition; and be self-directing or have a designated representative who is willing and competent to assume the responsibilities of the program.<sup>2</sup>

In order for consumers to be considered "self-directing," they must be capable of making choices regarding their activities of daily life as well as the nature and management of their personal assistance. Consumers must be able to understand the impact of their choices and be able to assume responsibility for the outcome.<sup>3</sup>

In addition to meeting the eligibility requirements, applicants must provide a designated back up to provide care in the event of an emergency or when the caregiver needs time off. This may prove difficult for applicants with few available family members or friends willing to serve in a formal role. The wages that a potential caregiver will receive present another obstacle, as family members who would otherwise quit a job to provide care may not be willing to do so at the Medicaid pay rate.

## CDPAP Application Process

For many consumers seeking services through CDPAP, they will be considered "dual eligible," meaning they are eligible for both Medicare and Medicaid. The first step is to submit a Medicaid application (DOH Form 4220), Supplement A (DOH Form 4495A or DOH Form 5178A depending on county), and supporting documentation, including potential pooled income trust, to the applicant's local Department of Social Services.<sup>4</sup>

Once the consumer has been approved for Medicaid, he or she must have a Conflict-Free Assessment with New York Medicaid Choice. This evaluation can be scheduled while the

Medicaid application is pending. The purpose of the evaluation is to determine if the consumer requires community-based services through Medicaid for at least 120 days.

The evaluation is performed by a registered nurse, and consists of various questions developed by the Department of Health.<sup>5</sup> The evaluation itself typically lasts approximately three hours. During this time, the nurse evaluator will ask various questions designed to determine the level of assistance required by the

applicant with his or her activities of daily living (ADL) such as bathing, grooming, ambulating, and prompting to eat or take medications.

It is advisable to have a family member present who may also provide information that the applicant may be unable or unwilling to share. For example, an applicant may not, understandably, want to tell the nurse that he or she requires reminders to bathe. At the completion of the evaluation, the nurse will verbally tell the applicant whether or not he or she is need of long-term care.

Once the nurse-evaluator determines that the consumer qualifies for long-term care, a referral is, generally, then made to a Managed Long-Term Care Plan (MLTC). When making the referral, the consumer or his or her advocate should confirm that the plan participates in CDPAP, and inform the plan that the consumer plans to participate in the program. Prior to enrolling with the MLTC, the consumer will be evaluated again by the plan. At this second evaluation, a recommendation will be made regarding the number of hours the consumer will receive.

The friend of family member who will serve as the caregiver must contract with a licensed home care agency before providing services to the consumer. The caregiver will be considered an independent contractor rather than an employee of the home care agency. The home care agency serves not as employer, but as an authorized "fiscal intermediary," for the purposes of paying the caregiver's wages and benefits.<sup>6</sup> The consumer assumes total responsibility for hiring, training, and supervising the aide.

## CDPAP Provides the Consumer with More Flexibility

While traditional Medicaid home attendants are limited in the types of services they can provide to the consumer, caregivers with CDPAP are able to perform "skilled" care that otherwise may only be performed by a nurse. These services very commonly include administering insulin injections or oral medications, but may be as specialized as suctioning tracheostomies.<sup>7</sup> These services can be provided in addition to assistance with the consumer's activities of daily living. This is especially helpful for individuals who require skilled care at home, but either lack the insurance coverage for private duty nursing or the funds to finance same.

Any adult who is not "legally responsible" for the consumer's care and support may be a CDPAP assistant for the Medicaid consumer. This means that the Medicaid recipient can



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hire almost anyone he or she wishes, including certain family members. The CDPAP aide cannot, however, be a spouse or parent for a consumer under twenty-one years old, as spouses are always legally responsible for one another and parents are always legally responsible for their children under age twenty-one.<sup>8</sup> For children over the age of

twenty-one, parents are allowed to serve as caretakers if certain conditions are met.<sup>9</sup> This flexibility is especially helpful in more rural counties, where the availability of home health aides is limited either due to population or lack of public transportation.

As the population who requires some type long-term care continues to increase, CDPAP is a viable long-term care program that allows individuals to maintain their dignity and autonomy while remaining safely in the community.

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1. United States Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History*, available at <https://tinyurl.com/yd4nmvdd>.
2. CDPANYS, *About CDPA*, available at <https://tinyurl.com/y5egztkr>.

3. 10 NYCRR § 505.28(b)(9).
4. NY Health Access, *Applying for Medicaid Personal Care Services and CDPAP Outside NYC - 2016 Changes*, available at <https://tinyurl.com/yxafqycy>.
5. *New York Medicaid Choice: About health plans: learn the basics, get your questions answered*, available at <https://tinyurl.com/y3qmq63b>.
6. NY Health Access, *Medicaid Consumer Directed Personal Assistance Program (CDPAP) in New York State*, available at <https://tinyurl.com/y3hfkftfu>.
7. N.Y. Educ. Law § 6908(1)(a).
8. GIS 16 MA/006 – *Changes to the Statute for the Consumer Directed Personal Assistance Program (CDPAP)*, available at <https://tinyurl.com/y5c27auv>.
9. *Id.*