TO: Local District Commissioners, Medicaid Directors

FROM: Deborah McClure, Director
Bureau of Medicaid Long Term Care Policy
Division of Program Development and Management

SUBJECT: Ensuring Safety for CDPAP Consumers by Managing Excessive Hours Worked by Personal Assistants

EFFECTIVE DATE: Immediately

CONTACT: services@health.ny.gov

The Purpose of this General Information Systems (GIS) message is to inform Local Departments of Social Services (LDSS) of their obligations in determining the ability and willingness of a consumer (individual) in receipt of Consumer Directed Personal Assistance Services (CDPAS) or their designated representative, to fulfill their responsibilities as specified per Consumer Directed Personal Assistance Program (CDPAP) regulations at 18 NYCRR 505.28(h).

The individual or their designated representative is responsible for hiring a sufficient number of qualified caregivers to serve as consumer directed personal assistants. As a best practice, it is recommended that there is at least one (1) consumer directed personal assistant regularly available for every 40 authorized hours of service.

At the request of the New York State Department of Health (the Department), the Statewide Fiscal Intermediary (SFI), Public Partnerships LLC (PPL), will provide a biweekly report identifying individuals with consumer directed personal assistants working excessive hours, identified herein as instances in which a consumer directed personal assistant works eighty-four 84 or more hours in a single week.

The SFI will be required to report all instances of consumer directed personal assistants working over 112 hours per week to the New York State Office of the Inspector General (OMIG) for further investigation.

The LDSS will be expected to actively engage with individuals identified in this report to address situations where there are insufficient caregivers to properly meet the individual's needs.

For consumer directed personal assistants identified as working 168 hours per week, the LDSS must provide a resolution within three (3) business days, by:

- Contacting the individual or their designated representative and reviewing their obligation, in accordance with the Memorandum of Understanding, to hire sufficient caregivers, provide a safe environment, and take any action necessary to facilitate the return of any overpayment or inappropriate payments from the Medicaid program made to consumer directed personal assistant(s);

- Approving a designated representative for consumers unable to self-direct who will ensure that the consumer responsibilities are carried out without delay.

- Confirming that a statement of medical necessity for continuous care is on file for the current authorization period from:
    - The Local Professional Director, if the most recent valid assessment was conducted by the LDSS; or
    - The Independent Review Panel, if the most recent valid assessment was conducted by the New York State Independent Assessor Program (NYIAP) for the current authorization period.

- If the medical necessity statement is not on file, the District must complete a new person centered service plan, plan of care, and determine whether other services or informal support may be utilized within a reasonable timeframe. When continuous care is not determined to be medically necessary or medically appropriate or is no longer medically necessary or appropriate per the Local Professional Director or Independent Review Panel, the consumer's authorization must be modified accordingly. The individual must be provided with notification on a form required or approved by the Department.

For consumer directed personal assistants working over 112 hours per week, the LDSS must communicate with the individual or their designated representative to provide a resolution within seven (7) calendar days, by:

- Contacting the individual or their designated representative and reviewing their obligation, in accordance with the Memorandum of Understanding, to hire sufficient caregivers, provide a safe environment, and take any action necessary to facilitate the return of any overpayment or inappropriate payments from the Medicaid program made to consumer directed personal assistant(s);

- Confirming the individual or their designated representative, if applicable, remain willing and able to fulfill their program responsibilities per 18 NYCRR 505.28(h);

- Verifying that sufficient consumer directed personal assistants and voluntary informal support(s) are regularly available to provide care; and

- Ensuring the individual or their designated representative, if applicable, is self-directing and cooperative with the LDSS.

Where there are insufficient consumer directed personal assistants to support the medically necessary hours for a consumer, the LDSS must discontinue the current authorization and state the reason(s) for discontinuing on a notice required by the Department. The LDSS caseworker is expected to support the consumer in identifying an appropriate mechanism of support to meet the individual's medically necessary needs.

Upon implementing a solution or determining a course of action, the LDSS must report the action or plan to their SFI liaison.

Questions related to this message may be sent to services@health.ny.gov.