



## **New York State Department of Health Memo**

### **Consumer Directed Personal Assistance Program (CDPAP) Medicaid Managed Care Plan (MMCP) Policy for Evaluation of a Member's Continued Appropriateness for CDPAP**

**Date of Issuance: August 1, 2025**

The purpose of this policy is to outline the criteria and circumstances in which it would be appropriate for the Medicaid Managed Care Plan (MMCP) to assess a member's appropriateness for continued enrollment in the Consumer Directed Personal Assistance Program (CDPAP) and the procedure to follow if the member is no longer self-directing and does not have a designated representative.

#### ***Background***

Social Services Law 365-f established CDPAP to permit chronically ill and/or physically disabled individuals receiving home care under the medical assistance program greater flexibility and freedom of choice in obtaining such services. CDPAP is operated in New York State as a Medicaid State Plan service and the MMCP must follow all applicable CDPAP assessment and authorization processes and policies.

Regulatory authority is located at 18 NYCRR § 505.28. These regulations delineate the roles and responsibilities of program participants (members), designated representatives, MMCPs, and the fiscal intermediary that acts as the joint employer of record on behalf of the member. These regulations also include guidelines for MMCPs to determine an applicant's initial and continued eligibility and appropriateness for participation in the program.

#### ***Program Implications***

When a member or their designated representative is no longer medically eligible, refuses to cooperate in assessments, is unwilling or unable to manage their plan of care, risks their own safety and/or the safety of their employees, or otherwise does not or cannot fulfill their responsibilities, the MMCP must take steps to determine a member's continued appropriateness for CDPAP and whether a different Long Term Care service or program would better fit the member's current needs.

#### ***Circumstances Requiring the MCO to Evaluate a Member's Continued Appropriateness for CDPAP***

The MMCP has obligations and responsibilities for determining what Community Based Long Term Services and Supports (CBLTSS) are appropriate for members enrolled in their plan. CDPAP is one of the CBLTSS available to members.

Members in CDPAP must be capable of self-directing or have a designated representative that is capable and agrees to assume the consumers responsibilities. The MMCP has obligations and responsibilities to ensure that members are capable of self-directing or, if they are not self-directing, that they have a designated representative who can assume these responsibilities. The designated representative should be identified by the member and approved by the MMCP.

The fiscal intermediary has an obligation and responsibility to report to the MMCP when they have knowledge that a member and/or their designated representative is not fulfilling their duties and responsibilities. Reporting from the fiscal intermediary may include, but is not limited to:

- The consumer is consistently not approving timesheets by the weekly deadline
- The consumer is consistently not meeting the Electronic Visit Verification (EVV) compliance requirement
- The consumer is consistently scheduling their personal assistants in a way that risks the safety of the consumer and/or the personal assistant
- Any reports of an unsafe environment

### *Member Duties and Responsibilities*

When a member is authorized for CDPAP, they are required to sign the Consumer Directed Personal Assistance Program Agreement Between the Consumer/Designated Representative and the Health Plan (CDPAP MOU) acknowledging they understand their duties and responsibilities in the program. If a member has a designated representative, the designated representative is also required to sign the CDPAP MOU and acknowledge their duties and responsibilities. These duties and responsibilities align with the CDPAP requirements in 18 NYCRR 505.28.

### *Designated Representative Duties and Responsibilities*

Designated Representatives are required to act on behalf of the member, abide by the duties and responsibilities in the CDPAP MOU, and ensure the member remains eligible for the program. Additional designated representative duties and responsibilities are as follows:

1. Be available to ensure the member responsibilities are carried out without delay.
2. Be available and present for any scheduled assessment or visit by the independent assessor, examining medical professional, or MMCP when the member is not self-directing.

### *Member Appropriateness*

Members who are not willing and able to fulfill the member responsibilities specified in the CDPAP MOU and do not have a designated representative are not eligible to participate in CDPAP (see 18 NYCRR 505.28 (c)(6)). The MMCP must remove ineligible members from CDPAP and evaluate them to determine what other services meet their needs (see 18 NYCRR 505.28(i)).

### ***Process for Member Removal from CDPAP***

When an MMCP is made aware that a member/designated representative under their jurisdiction is not following the CDPAP requirements, it is the MMCP's obligation to investigate and validate these claims. If the member and/or designated representative is in fact found to be failing to perform their duties and responsibilities, the MMCP should meet with the member and designated representative (where applicable) to review the findings, discuss the obligations in the CDPAP MOU, and explain program requirements.

If the member is not self-directing and does not have a designated representative, the MMCP should work with the member to determine if identifying a designated representative is a viable resolution.

If a designated representative fails to comply with program requirements, they are subject to removal as the member's designated representative. If a designated representative is removed from the program for non-compliance, the member should be given the chance to select a new designated representative. If an appropriate designated representative cannot be identified by the member and approved by the MMCP, and the member is not self-directing, then the member is not eligible to participate in CDPAP. The MMCP must discontinue authorization for CDPAP in an appropriate timeframe that enables transition of care and work with the member to identify other services that can meet their needs.

If the violation of duties and responsibilities continues (and, if applicable, the non-self-directing consumer is unable or unwilling to identify a designated representative), the MMCP must issue a notice of the reduction/suspension of a service using the Initial Adverse Determination Notice template advising the member of the discontinuation of CDPAP service authorization with internal appeal rights and fair hearing rights. Consistent with existing policy, if a member can be more appropriately and cost-effectively served through other Medicaid programs/services, the notice must identify which one(s).

MMCPs should be mindful that although a member can request aid to continue when an Initial Adverse Determination Notice is sent, conditions may lead a personal assistant to terminate their employment. This may result in a gap in care and potential safety issue for the member. Where appropriate, a member may be authorized for another long term service or support such as Personal Care Services (PCS). MMCPs should provide appropriate instructions to a homecare agency depending on the circumstances based on information gained from CDPAP experience.

### ***Effective Date***

This policy is effective immediately.