



Department of Health

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Administrative Directive

TRANSMITTAL: 25 OHIP/ADM-05

TO: Commissioners of Social Services

DIVISION: Office of Health Insurance Programs

DATE: August 1, 2025

SUBJECT: Consumer Directed Personal Assistance Program (CDPAP) Local Department of Social Services (LDSS) Policy for Evaluation of a Consumer's Continued Appropriateness for CDPAP

SUGGESTED DISTRIBUTION:

Director of Social Services
Medicaid Staff
Home Care Staff
Fair Hearing Staff

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ATTACHMENTS:

[Consumer Directed Personal Assistance Program Agreement Between the Consumer/Designated Representative and the Local Department of Social Services](#)

FILING REFERENCES

Previous Ref. ADMs/INFs	Releases Cancelled	Dept. Regs. Law	Soc. Serv. & Other	Manual Ref	Misc.
		SSL § 365-f 18 NYCRR § 505.28			

I. Purpose

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

II. 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 LDSS 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 (consumers), designated representatives, local districts, and the fiscal intermediary that acts as the joint employer of record on behalf of the consumer. These regulations also include guidelines for the local social services districts to determine an applicant's initial and continued eligibility and appropriateness for participation in the program.

III. Program Implications

When a consumer 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 Local Department of Social Services (LDSS) must take steps to determine a consumer's continued appropriateness for CDPAP and whether a different Long Term Care service or program would better fit the consumer's current needs.

IV. Circumstances Requiring the LDSS to Evaluate a Consumer's Continued Appropriateness for CDPAP

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

Consumers in CDPAP must be capable of self-directing or have a designated representative that is capable and agrees to assume the consumers' responsibilities. The LDSS has obligations and responsibilities to ensure that consumers 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 consumer and approved by the LDSS.

The fiscal intermediary has an obligation and responsibility to report to the LDSS when they have knowledge that a consumer 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

Consumer Duties and Responsibilities

When a consumer is authorized for CDPAP, they are required to sign the [Consumer Directed Personal Assistance Program Agreement Between The Consumer/Designated Representative And The Local Department Of Social Services](#) (CDPAP MOU) acknowledging they understand their duties and responsibilities in the program. If a consumer 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 consumer, abide by the duties and responsibilities in the CDPAP MOU, and ensure the consumer remains eligible for the program. Additional designated representative duties and responsibilities are as follows:

1. Be available to ensure the consumer 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 LDSS when the member is not self-directing.

Consumer Appropriateness

Consumers who are not willing and able to fulfill the consumer 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 LDSS must remove ineligible consumers from CDPAP and evaluate them to determine what other services meet their needs (see 18 NYCRR 505.28(i)).

V. Process for Consumer Removal from CDPAP

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

If the consumer is not self-directing and does not have a designated representative, the LDSS should work with the consumer 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 consumer's designated representative. If a designated representative is removed from the program for non-compliance, the consumer should be given the chance to select a new designated representative. If an appropriate designated representative cannot be identified by the consumer and approved by the LDSS, and the consumer is not self-directing, then the consumer is not eligible to participate in CDPAP. The LDSS must discontinue

authorization for CDPAP and work with the consumer 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 LDSS must issue a Notice of Intent (NOI) advising the consumer of the discontinuation of CDPAP service authorization with fair hearing rights (including the backside of the form). Consistent with existing policy, if a consumer can be more appropriately and cost-effectively served through other Medicaid programs/services, the notice must identify which one(s).

LDSS should be mindful that although a consumer can request aid to continue when the Notice of Intent DOH-CDPAP-02 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 consumer.

Where appropriate, a consumer may be authorized for another long term service and support, such as Personal Care Services (PCS). LDSS should provide appropriate instructions to a homecare agency depending on the circumstances based on information gained from CDPAP experience.

VI. Effective Date

This ADM is effective immediately.