

Clarification on Consumer Directed Personal Assistant Program (CDPAP) in Relation to Federal Fair Labor Standards Act (FLSA)

The purpose of this clarification is to ensure compliance with federal FLSA and New York Labor Law requirements, determine responsibilities of a Consumer Directed Personal Assistance Program (CDPAP) personal assistant versus the expectations of a household resident or family member, and define safe and ethical caregiving practices within CDPAP.

To align with federal FLSA and New York Labor Law requirements, to prevent conflicts of interest and to ensure objectivity in care, eligible family members or other eligible household residents who are paid as caregivers cannot work more than the number of hours per week identified in the authorization and established in the person-centered plan of care when providing services to the consumer.

Generally, hours spent with family members outside of the CDPAP authorization and person-centered service plan do not fall within the employment relationship of CDPAP and thus are subject to the clarifications offered in [Fact Sheet #79F: Paid Family or Household Members in Certain Medicaid-Funded and Certain Other Publicly Funded Programs Offering Home Care Services Under the Fair Labor Standards Act \(FLSA\) | U.S. Department of Labor.](#)

The Local Departments of Social Services (LDSS) and Medicaid Managed Care Organizations (MMCO) are responsible for managing the person-centered plan of care.

The LDSS and MMCOs must specify the hours and scope of services in the plan of care, and it must be developed in collaboration with the consumer or designated representative. The LDSS and MMCO must consider the individual's health and safety in the home when establishing a plan of care.

All paid services and tasks must be documented in the consumer's plan of care. Activities outside the authorized plan of care are prohibited for Medicaid payment under CDPAP. The LDSS and MMCOs must certify the PCSP/plan of care authorizing a reasonable amount of time to complete required tasks. The reasonable amount of time that is authorized should be consistent whether the personal assistant is a family member, other household resident, or a non-family member.

Authorized hours should not be reduced or increased solely due to family status of the caregiver and services should reflect the consumer's needs, not familial ties. For example, the LDSS and MMCO must be able to attest to not authorizing hours for care of common spaces or common chores or meals.

For further guidance or assistance in understanding the roles and responsibilities in CDPAP, please contact the New York State Department of Health.