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MLTC Policy 26.02: Ensuring Safety for CDPAP Consumers by Managing Excessive Hours Worked by Personal Assistants

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Purpose

The purpose of this guidance is to reiterate guidelines for Managed Long Term Care (MLTC) plans for the administration of the Consumer Directed Personal Assistance Program (CDPAP) through the statewide fiscal intermediary to ensure compliance with program regulations, proper documentation, and appropriate billing practices.

Definitions

Excessive Hours: Any instance in which a Consumer Directed Personal Assistant (PA) works more than 16 hours per day every day, or 112 or more hours in a single week.

Applicability

☒ Managed Long-Term Care (MLTC) Policy
☐ Technical Assistance
☐ General Guidance

Policy Content

This policy is to provide guidance to MLTC plans regarding plans' obligations for determining the ability and willingness of a member in receipt of Consumer Directed Personal Assistance Services (CDPAS) or their designated representative to fulfill their responsibilities as specified per CDPAP regulations at 18 NYCRR 505.28(h).

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

At the request of the New York State Department of Health (Department), the Statewide Fiscal Intermediary (SFI) - Public Partnerships LLC (PPL), will provide a biweekly report identifying members with PAs working excessive hours, defined herein as instances in which a PA works 112 or more hours in a single week. For informational purposes to help health plans proactively address consumers who may be in need of additional care management support, this report will also include instances in which a single PA works

eighty-four (84) or more hours in a single week.

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

MLTC plans must actively engage with each member identified in this report to address situations where there are insufficient caregivers to properly meet the member's needs.

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

- Contacting the member 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 members who are unable to self-direct who will ensure that the member responsibilities are carried out without delay; and

- Confirming that a statement of medical necessity for continuous care is on file for the current authorization period from:
    - The Medical Director if the most recent valid assessment was conducted by the plan; 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 plan must complete a new Person Centered Service Plan (PCSP) and determine, within a reasonable timeframe, whether other services or informal support(s) may be utilized. When continuous care is not determined to be medically necessary or medically appropriate or is no longer medically necessary or appropriate per the Medical Director or Independent Review Panel, authorization hours must be modified accordingly. The member must be provided with notification on a form required or approved by the Department.

For PAs working over 112 hours per week, the MLTC plan must communicate with the member or their designated representative, if applicable, to provide a resolution within seven (7) calendar days, by:

- Contacting the member 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 PA(s);

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

- Verifying that sufficient PAs and voluntary informal support(s) are regularly available to provide care; and

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

Where there are insufficient PAs to support medically necessary hours for the member such that the member is unable to comply with the requirements of the program, the MLTC plan must discontinue the current authorization and send the required notice to the member, stating the relevant reason(s) for discontinuing services. The MLTC plan is responsible for providing alternate support(s) to meet the member's medically necessary needs.

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

MLTC Plan Reporting:

The SFI - PPL, currently generates a monthly report for all plans and the Local Departments of Social Services (districts) that identifies CDPAs who have worked excessive hours.

In accordance with PPL's contract with the Department, the following updates to this report are effective immediately.:

1. The report will be issued on a biweekly basis rather than monthly.
2. Excessive hours will now be categorized into three bands:
   a. 84–111 hours per week, for informational purposes
   b. 112–167 hours per week, for action within 7 days
   c. 168 hours per week, for immediate action within 3 days

In accordance with 18 NYCRR 505.28 (h)(1)(i), the Department expects plans and districts to actively engage with their members identified in this report to address situations where there are insufficient caregivers to meet the member's needs.

For CDPAs working 112–167 hours per week, plans and districts are expected to provide a response to PPL outlining a clear path toward resolution within seven (7) calendar days. At the request of the Department, PPL will report CDPAs working greater than 112 hours to the OMIG as this is outside of existing policy.

For PAs working 168 hours per week, the Department expects plans and districts to provide a resolution to PPL within three (3) business days. At the request of the Department, PPL will also be reporting these instances to OMIG.

PPL will submit a biweekly member-level report of responses to the Department. Accordingly, the MLTC plan must update the “Plan/District Response” column in the MLTC plan’s spreadsheet with the MLTC plan’s resolution status. The Department may contact you directly to discuss specific cases or progress toward resolution and cases not addressed within required timeframe(s) will be subject to Statements of Deficiencies.

References

Memorandum of Understanding

Contact Information

For inquiries or assistance regarding this guidance, please contact:
Bureau of Managed Long Term Care - New York State Department of Health at mltcinfo@health.ny.gov