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| LOCAL COMMISSIONERS MEMORANDUM |  
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DSS-4037EL (Rev. 9/89)

Transmittal No: 95 LCM-102

Date: September 18, 1995

Division: Health and Long  
Term Care

TO: Local District Commissioners

SUBJECT: Consumer Directed Personal Assistance Program (CDPAP)

ATTACHMENTS: Sample Memorandum of Understanding (MOU)  
(on-line)

As enacted in Section 77 of Chapter 81 of the Laws of 1995, Section 365-f of the Social Service Law was repealed and a new Section 365-f has been added to change the program name from Patient Managed Home Care to Consumer Directed Personal Assistance Program (CDPAP). The statute incorporates many of the components found in previous statutes, including Chapter 795 of the Laws of 1992 which was transmitted to the districts in 93 LCM-113.

In addition, Section 91 of Chapter 81 of the Laws of 1995 added a new Section 367-p to the Social Services Law. This Section states that "...each local district shall ensure access to a consumer directed personal assistance program operated pursuant to section three hundred sixty-five-f of this title is available in the district to allow persons receiving home care pursuant to this title to directly arrange and pay for such care."

The purpose of CDPAP is to allow chronically ill and/or physically disabled individuals receiving home care services under the Medical Assistance program greater flexibility and freedom of choice in obtaining such services while reducing administrative costs.

All agencies or individuals who meet the qualifications to provide home health, personal care or nursing services and who elect to provide such services to persons receiving Medical Assistance, may participate in the

program. Agencies or individuals providing services under a Patient Managed Home Care program, the former Section 3622 of the Public Health Law or the former Section 365-f of the Social Services Law, may continue to provide services under the CDPAP.

Eligible individuals currently in receipt of home care services will be advised of program guidelines by their local department of social services, and may apply for participation. According to Section 77 of Chapter 81 of the Laws of 1995, "an eligible individual, for purposes of this section is a person who:

- (a) is eligible for long term care and services provided by a certified home health agency, long term home health care program or AIDS home care program authorized pursuant to article thirty-six of the public health law, or is eligible for personal care services pursuant to this article;
- (b) is eligible for medical assistance;
- (c) has been determined by the social services district, pursuant to an assessment of the person's appropriateness for the program, conducted with an appropriate long term home health care program, a certified home health agency, or an AIDS home care program or pursuant to the personal care program, as being in need of home care services or private duty nursing and is able and willing or has a legal guardian able and willing to make informed choices, or has designated a relative or other adult who is able and willing to assist in making informed choices, as to the type and quality of services, including but not limited to such services as nursing care, personal care, transportation and respite services; and
- (d) meets such other criteria, as may be established by the commissioner, which are necessary to effectively implement the objectives of this section."

Eligible individuals who elect to participate in CDPAP assume the responsibility for services under the program as mutually agreed to by the eligible individual and the provider as documented in the individual's record. Such responsibilities may include:

1. Recruit workers
2. Hire workers
3. Train workers
4. Supervise workers
5. Fire workers
6. Arrange for back-up coverage when necessary
7. Arrange/coordinate provision of other services

8. Maintain records for processing of payroll and benefits.

Providers shall not be liable for fulfillment of responsibilities agreed to be undertaken by individuals participating in CDPAP. This does not, however, diminish the provider's liability for failure to exercise reasonable care in properly carrying out its responsibilities under this program. Such responsibilities include monitoring the individual's continuing ability to fulfill those responsibilities documented in his or her record. An individual's failure to carry out the agreed responsibilities may be considered in determining that person's continued appropriateness for the program.

Social services districts which have implemented, or initiated action to implement, a CDPAP should continue those efforts. Other districts should begin developing programs based upon the information contained in this transmittal.

Two possible methods of implementing CDPAP are:

1. Memorandum of Understanding (MOU)

Districts that have identified an immediate demand for the CDPAP delivery arrangement can use this administrative mechanism to quickly establish a program by using an established CDPAP. Six districts are pursuing this approach with Concepts for Independence, a New York City based CDPA provider. A sample of an MOU used by these districts is attached to this transmittal.

The MOU is a legal document which details the roles and responsibilities of the entities that would administer the CDPAP. These entities would include the following:

- a. the district which would conduct an assessment of the consumer to determine appropriateness for the program and authorize services;
- b. an existing CDPAP provider to act as a fiscal agent to bill the Medical Assistance program and perform administrative functions such as payroll processing at the direction of the consumer; and
- c. a third party such as an independent living center located in the district, to act as a liaison between the CDPAP provider and the consumer.

2) Locally Established Program

The district enters directly into a contract with a vendor to provide the CDPAP. The contract between the district and the vendor should include a delineation of the roles and responsibilities of the district, vendor and consumer.

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The Department will convene an advisory group to assist in developing regulations for CDPAP. Regulations and an administrative directive will be issued as a part of this effort.

Districts are requested to contact Ms. Deirdre Barnes at (212) 383-1431 (user ID AV0060) or Mr. Fred Waite at (518) 473-5490 (user ID 0LT150) for further information concerning CDPAP or to pursue either of the options described above.

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Richard T. Cody  
Deputy Commissioner  
Division of Health and Long Term Care

SAMPLE

MEMORANDUM OF UNDERSTANDING

for provision of the

Consumer Directed Personal Assistance Program (CDPAP)

by and between

\_\_\_\_\_  
Local Department of Social Services

and

\_\_\_\_\_  
CDPAP Provider Agency

and

\_\_\_\_\_  
Local Consumer Organization

Introduction

In accordance with Sections 365-f and 367-p(c) of the Social Services Law, the parties seek to enable Medicaid recipients (the "Consumer") to utilize the Consumer Directed Personal Assistance Program (CDPAP). The CDPAP Provider Agency will provide services in conjunction with the Local Consumer Organization for the Local Department of Social Services.

The CDPAP Provider Agency will assume the role of fiscal intermediary and act as the paymaster of record for the Consumer's Personal Assistant (the "CDPA"). The Local Consumer Organization will provide local assistance, quality assurance and facilitate peer support, including the establishment of an advisory committee for the purpose of program review and support. The CDPAP Provider Agency and the Local Consumer Organization will work closely with the Local Department of Social Services in all phases of the delivery of CDPAP to be provided under this agreement.

Although the Consumer is not a party to this agreement, the Consumer will be required to execute a separate agreement confirming his/her responsibilities as enumerated below.

The parties hereby agree as follows:

Responsibilities of the Consumer

The Consumer and/or the Consumer's guardian shall undertake the following:

1. Recruit, interview, hire, train, supervise, schedule and terminate the CDPA.
2. Provide equal employment opportunities as specified in the Consumer's agreement with the CDPAP Provider Agency and the Employment/Wage Agreement which is signed by both the Consumer and the CDPA.
3. Inform the Local Consumer Organization of any changes in status including, but not limited to, address, telephone number, CDPA's names, addresses, hours worked and hospitalization. Inform the social services district of any change in status, including address and telephone number changes and hospitalizations.
4. Process the required paperwork for the CDPAP Provider Agency including time sheets, annual worker health assessments, and required employment documents.
5. Arrange and schedule back up CDPA coverage for vacations, holidays, and in case of illness.
6. Distribute paychecks to each CDPA.
7. Insure that each CDPA works the hours indicated on the time sheet.
8. Meet with a registered nurse once every six months for the required nursing review.

9. Enter into a written agreement with the CDPAP Provider Agency which acknowledges these responsibilities.

Responsibilities of the CDPAP Provider Agency

Upon the completion of the rate approval process by the New York State Department of Social Services, the CDPAP Provider Agency shall undertake the following:

1. Process the payroll for each CDPA, including withholdings for Federal, State and local income tax and Social Security (FICA). Act as the employer of record for Social Security (FICA).
2. Monitor the completion of the required annual worker health assessment and all required employment documents.
3. Act as the employer of record for insurance, unemployment and worker compensation benefits.
4. Coordinate annual leave, health insurance, and other benefit programs for each CDPA.
5. Monitor the completion of the required nursing assessment forms and the Consumer agreement outlining responsibilities assumed thereby.
6. Maintain a personnel record for each CDPA which shall include, at a minimum, copies of the enrollment forms, the annual worker health assessments, and the information needed for payroll processing and benefit administration.
7. Maintain consumer record, which includes copies of the Local Department of Social Service's approval/referral, the Local Department's service authorizations, the agreement signed by the Consumer outlining the responsibilities assumed thereby, the periodic nursing assessments, and other documentation of the Local Consumer Organization's efforts to monitor the Consumer's ability to meet its obligations.

Responsibilities of the Local Department of Social Services

The Local Department of Social Services shall undertake the following:

1. A. Determine that the Consumer is a resident of the authorizing county and is Medicaid eligible.
- B. Determine that the Consumer is eligible for long term care and services provided by a certified home health agency, the long term home health care program, the AIDS home care program or personal care services.
- C. Determine, pursuant to an assessment of the person's appropriateness for the program conducted with an appropriate long term home health care program, certified home health agency, or an AIDS home care program or pursuant to the personal care program, that the Consumer is in need of home care services or private duty nursing.

- D. Determine that the Consumer is able and willing or has a legal guardian able and willing to make informed choices, or has designated a relative or other adult who is able and willing to assist in making informed choices, as to the type and quality of services, including but not limited to nursing care, personal care, transportation and respite services.
2. Determine Consumer's eligibility for the program through its approved annual plan procedure including the initial assessment and periodic reassessments. The Local Social Services Department will authorize the level and amount of services required and will authorize the reimbursement for CDPAP services to the CDPAP Provider Agency as prescribed by the New York State Department of Social Services.
3. Transfer the Consumer to other programs with more traditional agency control should the Consumer be deemed inappropriate to continue participation in the CDPAP.
4. Provide all eligible individuals receiving home care with notice of the availability of the program and an opportunity to apply for participation in the program.
5. Provide Consumers with the appropriate fair hearing notice and the opportunity for a fair hearing with aid-continuing, if appropriate, at such times as the Department requires.

#### Responsibilities of the Local Consumer Organization

The Local Consumer Organization shall undertake the following:

1. Assist the Consumer with recruitment and service coverage referrals, and provide informational support for training, supervision, advocacy and personal management.
2. Monitor the Consumer's ability to meet contractual obligations.
3. Provide local support to the Consumer by coordinating payroll distribution, the distribution of forms, and the collection of information.
4. Maintain the original personnel record for each CDPA which shall include, at a minimum, the original enrollment forms, the annual CDPA health assessments, and the information needed for payroll processing and benefit administration.
5. Maintain the original Consumer record, which shall include the original Local Social Services Department approval/referral, the Local Social Services Department service authorizations, the agreement signed by the Consumer outlining the responsibilities the Consumer has assumed, the periodic nursing assessments, and other documentation of the Local Consumer Organization's effort to monitor the Consumer's ability to meet its obligations.



6. Coordinate access to health facilities capable of providing the required annual worker health assessment and other health related program requirements.
7. Establish an advisory committee which will consist of disabled consumers, advocates and/or other interested parties. The committee will oversee quality assurance of this agreement and provide the Local Social Services Department and the CDPAP Provider Agency with assistance and support, which may include peer counseling, referral and program monitoring.
8. Provide the CDPAP Provider Agency with monthly statistical reports in the manner and form determined by the CDPAP Provider Agency to be necessary and appropriate, to permit the proper documentation of the growth of the CDPAP and the level of savings achieved as a result of this agreement.

Right to Terminate Agreement

1. Upon thirty (30) days notice, any party may terminate this agreement without further liability.
2. This agreement will terminate upon notification from the New York State Department of Social Services that State and/or Federal funds are unavailable for these services or for any other reason specified by the Department.

Signatures

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CDPAP Provider Agency

\_\_\_\_\_

Date

\_\_\_\_\_

Local Department of Social Services

\_\_\_\_\_

Date

\_\_\_\_\_

Local Consumer Organization

\_\_\_\_\_

Date