

Alert | Health Care & FDA Practice



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New York Proposes Changes to Personal Care and Consumer Directed Personal Assistance Services Regulations

In an effort to control New York's Medicaid spending, Governor Andrew Cuomo reconstituted the Medicaid Redesign Team (MRT II) in early 2020. The MRT II brought together various health care stakeholders to develop recommendations to contain spending growth while advancing Medicaid program objectives. In March, the MRT II released its proposals, which included specific recommendations to the personal care services (PCS) and consumer directed personal assistance services (CDPAS) programs. Based upon the MRT II recommendations that were adopted by the Legislature, the New York State budget amended the Social Services Law and Public Health Law provisions governing PCS and CDPAS. To align the PCS and CDPAS regulations with the MRT II recommendations and statutory amendments, the Department of Health (DOH) has proposed amendments to the PCS and CDPAS regulations. The proposed amendments were published in the State Register on July 15, 2020.

Consistent with the MRT II recommendations, the proposed regulations change the assessment and authorization processes for the PCS and CDPAS programs. In addition, the proposed regulations extend to Medicaid managed care organizations (MMCOS) through which the vast majority of New York's Medicaid recipients receive services.

Proposed regulatory changes for the PCS and CDPAS programs include the following:

Significantly, the proposed regulations impose several new requirements to the process for determining whether an individual may receive PCS or CDPAS. First, the proposed regulations require such services be medically necessary and ordered by a qualified and independent physician, rather than the individual's attending physician. Second, the regulations require an independent assessment conducted by a registered nurse and administered by the entity now managing the Conflict-Free Evaluation and Enrollment Center program. The independent assessor must not have a prior provider-patient relationship with the individual. Finally, the regulations require that high-need cases – where 12 hours or more of services are recommended – be referred to a clinical review panel made up of independent physicians who must determine whether the proposed plan of care is appropriate.

Under the proposed regulations, the Local Districts of Social Services (LDSS) and MMCOs remain responsible for significant aspects of the assessment process and will be required to review the results of the independent assessment and medical exam. Prior to authorizing high-needs cases of more than 12 hours of services per day, the LDSS or MMCO, as applicable, must refer the case to an independent clinical review panel for a medical review of the individual and plan of care. The independent review panel must recommend whether the plan of care is reasonable and appropriate to maintain the individual's health and safety in the home, identify other appropriate Medicaid services, and the clinical rationale for such recommendation. The independent review panel's recommendation shall not, however, include specific hours or an alternative plan of care. The LDSS or MMCO, as applicable, must consider the recommendation of the review panel in its decision to authorize services.

The proposed regulations require that an individual's eligibility for services must be established prior to the provision of services and that the authorization and reauthorization of services must be consistent with the assessment process. Under the proposed regulations the frequency of reassessments would be reduced from semi-annual to annual, absent a change to the individual's social circumstances, mental status, or medical condition.

The proposed regulations require PCS and CDPAS recipients to demonstrate a minimum need for assistance with activities of daily living (ADL). Specifically, individuals with dementia or Alzheimer's must need supervision with more than one ADL, and all others must need limited assistance with physical maneuvering with more than two ADLs. The proposed regulations also clarify that although supervision and cueing may be provided to assist an individual with nutritional support, environmental support, and personal care functions, they do not constitute standalone personal care services and will not be authorized or reimbursed independent from certain enumerated functions.

Specific to the CDPAS program, the proposed regulations clarify that a person legally responsible for a consumer's care and support cannot serve as a consumer directed personal assistant. The proposed regulations also prohibit consumers from working with more than one fiscal intermediary. Finally, the proposed regulations include a new definition for live-in-24-hour consumer directed personal assistance, which contemplates an aide getting five hours of uninterrupted sleep during an eight-hour period.

Consistent with the recommendations of the MRT II, the regulations proposed by DOH are intended to promote consistency and standardization of the provision of PCS and CDPAS throughout the state. The proposed regulations transfer a number of responsibilities under the PCS and CDPAS programs from the LDSSs and MMCOs to independent third-parties. Although these changes may provide some administrative relief to LDSSs and MMCOs, they may also impact Certified Home Health Agencies

(CHHAs) and Licensed Home Care Services Agencies (LHCSAs) currently under contract with LDSSs and MMCOs to perform assessments.

Next Steps:

Pursuant to the State Administrative Procedure Act (SAPA), the proposed regulations were published in New York State Register July 15, 2020, and are subject to a 60-day comment period. Comments may be submitted to REGSQNA@health.ny.gov through Sept. 14, 2020.

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