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Consumer Directed Personal Assistance Association of New York State

SUCCESSFUL INTEGRATION OF THE CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAM (CDPAP) INTO MANAGED LONG TERM CARE (MLTC)

CDPAANYS continues to believe that CDPAP does not work within the confines of the MLTC system and we remain concerned that a representative of a fiscal intermediary (FI) is not serving on this workgroup. However, because CDPAANYS is committed to ensuring the long-term viability of the Medicaid program, and this is the direction that Governor Cuomo and the Legislature have chosen, we offer these basic tenets that must be incorporated if the merger of these two programs is to prove successful.

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Program Integrity

CDPAP was founded on the premise that individuals with the capacity to self-direct their care should be allowed to independently manage their care. Therefore, it is imperative that the program maintain, and even strengthen, this principle in the move to MLTC.

To this end, CDPAANYS recommends:

- **MLTCs, or subsidiaries and affiliates, will be fulfilling the role of Local Social Service Districts and should therefore not be allowed to be an FI.** This is a critical check and balance ensuring consumers have choice and that each party in the process is fulfilling its responsibilities, as spelled out in the CDPAP regulations.
- **Consumers must be allowed to independently recruit, hire, train, and supervise their own personal assistants.** This role is specifically assigned to the consumer in regulation. It would be a violation of the core program principles for any interference from a third party, be it an MLTC or an FI. In this way, it also conflicts with the consumer's distinct role if a third party forces additional requirements upon who can work as a personal assistant if the requirements are not relevant to the CDPAP model or not currently required by state or federal law.
- **MLTCs must be allowed to contract only with FIs that are operating in compliance with the CDPAP regulations.** There are currently too many FIs that do not operate within the confines of the program and either cost the system more, do harm to the consumers in their program by not affording them their basic rights under the program, or both. DOH must establish criteria based on the CDPAP regulations to determine which FIs meet these criteria. MLTCs must not be allowed to contract with organizations not operating within the regulatory framework.

Rates and Reimbursement

- **Reimbursement rates must be crafted to consider the amount of compensation and benefits for the “direct care” personal assistant and then build in appropriate administrative components.** This rate must be sufficient enough to allow consumers, through FIs, to offer at least the same current salary and benefit packages that are offered through the current Medicaid reimbursement. FIs operate at very low levels of administrative cost. Any overall reduction in reimbursement will negatively impact the pay of personal assistants.
- **Reimbursement in counties with living wage ordinances must take into account the increased reimbursement required under local law.** Providers in counties with a living wage ordinance currently face a situation where their direct care costs are outpacing their reimbursement. MLTCs offering contracts in these counties should be required to impose a “Supplemental Living Wage Payment” on top of reimbursement. This would add to their average reimbursement in non-living wage counties the difference in average personal assistant wage and the county’s living wage.
- **Premiums paid by the state to MLTCs must take into account the increased risk faced by plans with high levels of high needs individuals.** A uniform premium across all MLTCs in a region, regardless of the makeup of their consumer base, will result in “cherry-picking” and a push by MLTCs to limit hours of care provided based not on clinical judgment but by a fiscal need to survive. The state should reward providers who specifically focus on high-needs populations by providing an increased premium for MLTCs that exceed a specific threshold in terms of high-needs individuals.

Consumer Rights

- **Consumers have a right to the same number of hours they are currently receiving for 90 days or the period of the current authorization, whichever is longer.** The transition period will be stress filled for consumers, with new responsibilities and new entities with whom to communicate. To make the process as seamless as possible, the MLTC should be required to maintain the current level of hours.
- **Consumers must retain their right to appeal any decisions made by the MLTC.** If a consumer disagrees with an assessment of hours by the MLTC, he or she must be able to bring an appeal before an Administrative Law Judge (ALJ).
- **Consumers must retain the right to an objective nursing assessment.** The nursing assessment is critical to the number of hours and type of services that will be provided. MLTCs must perform assessments according to current applicable standards and regulations. Consumers who disagree with the assessment must be able to appeal an ALJ. Therefore, it is imperative that this assessment be objectively based on current regulations.
- **Consumers must be given notice of their rights and responsibilities.** Consumers sign Memorandums of Understanding (MOU) with both the FI and the LDSS that outline all parties responsibilities. It is imperative that in a transition, consumers receive the same assurances.
- **Consumers must have a right to be notified in writing of significant matters at least 60 days in advance.** Such matters shall include, but not be limited to, a) changes to nursing assessment frequency, b) reconfiguration of income surplus payment, c) handling of Medicaid Buy-In matters, d) recertification of home care, and e) recertification of Medicaid eligibility.

CDPAANYS is a membership association founded upon passage of the CDPAP program law and we carry the vision and intent of original legislation. CDPAANYS represents fiscal intermediaries in 37 counties of the state. These fiscal intermediaries represent over half of the consumers in CDPAP.