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HEALTH

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ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 12 OHIP/ADM-1

TO: Commissioners of Social Services

DIVISION: Office of Health Insurance Programs

DATE: April 9, 2012

SUBJECT: Changes to Personal Care Services Program and Consumer Directed Personal Assistance Regulations Resulting From MRT #4652

SUGGESTED DISTRIBUTION:	Director of Social Services Medicaid Staff Home Care Staff
CONTACT PERSON:	Bureau of Quality Assurance & Licensure Division of Home & Community Based Services Home Care District Liaison (518)474-5888
ATTACHMENTS:	None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
80 ADM-9	None	18 NYCRR 505.14 18 NYCRR 505.28	365-(a)(2)(e)(iv)	None	GIS 11 OLTC/007

I. PURPOSE

The purpose of this Administrative Directive is to advise local departments of social service (LDSS) regarding changes in regulations to the Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP) found in Department regulations 18 NYCRR §505.14 and §505.28.

II. BACKGROUND

The statutory authority for these changes in regulation is contained in Chapter 59, Part H, Section 89 of the Laws of 2011 in which the Commissioner of Health was authorized to promulgate regulations, including emergency regulations, pursuant to the authority vested in the Commissioner of Health by §§ 363-a(2), 365-a(2)(e) and 365-f of the Social Services Law (SSL) and § 201(1)(v) of the Public Health Law. Changes to the Personal Care and Consumer Directed Personal Care regulations, as expanded upon in the directive, are consistent with key goals of these programs. Among those goals are the promotion of self-care and consumer independence. Successfully meeting these important consumer oriented goals will have a salutary impact on the cost-effectiveness of needed services. The key regulatory changes are discussed below.

- The amended regulations conform to State law by establishing a limit on PCSP and CDPAP nutritional and environmental support (housekeeping functions) of 8 hours per week for Medicaid recipients who receive only nutritional and environmental supports in either program. This change was addressed in GIS 11 OLTC 007, which was issued on June 3, 2011. This change conforms the Department's regulations to SSL § 365-a(2)(e)(iv), which was effective April 1, 2011, and which caps nutritional and environmental support functions to no more than 8 hours per week for consumers whose needs are limited to those housekeeping functions.

- New language has been incorporated defining continuous personal care services and continuous consumer directed personal assistance as constituting uninterrupted care provided by more than one person to a consumer who requires total assistance with toileting and/or walking and/or transferring and/or feeding and which involves more than 16 hours of care per day during times that cannot be predicted or scheduled. Previous language defined continuous 24-hour personal care as the provision of uninterrupted care, by more than one person, for a patient who required total assistance with toileting and/or walking and/or transferring and/or feeding at unscheduled times during the day and night. The new definitions and standards serve to provide local districts with guidance in the assessment of individuals and authorization of continuous personal care services and continuous consumer directed personal assistance.

- The amended regulations also provide definitions of live-in 24 hour personal care services and live-in 24 hour consumer directed personal assistance, where no such definitions previously existed in regulation.

- The amended regulatory language expands the role and responsibilities of the local professional director (LPD) in cases involving the provision of continuous personal care services and continuous consumer directed personal assistance. The LPD, or designee, must review the physician's order and the social, nursing and other required assessments and is responsible for the final determination of the level and amount of care to be provided. In making this determination, the LPD or designee may consult with the consumer's treating physician or other health care professional associated with the physician and may conduct an additional assessment of the consumer in the home.

- It is expected that the LPD would consult with the consumer's physician if there are discrepancies with the assessments presented for review including, but not limited to, a disagreement between the nurse assessor's observations and the consumer's physician regarding the physical limitations of the consumer or the nurse determines certain efficiencies are appropriate to the service plan, such as a bedside commode or urinal, and the individual or family refuses the efficiency. In such cases the LPD should discuss with the physician or other health care professional associated with the physician.

- The regulations promote the efficient use of resources. The nursing assessment must include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively. Additionally, assessments need to demonstrate that all alternative arrangements for meeting the consumer's needs have been explored or are infeasible. Such assessments would evaluate the availability of informal and formal supports and/or services.

III. PROGRAM IMPLICATIONS

A. Continuous Personal Care Services – Continuous Consumer Directed Personal Assistance

The regulations repeal the definitions of "continuous 24 hour personal care services," and "continuous 24 hour consumer directed personal assistance", replacing them with definitions of "continuous personal care services" [§505.14 (a)(3)] and "continuous consumer directed personal assistance" [§505.28 (b)(4)].

The prior definitions meant the provision of uninterrupted care by more than one person for a patient who, because of his or her medical condition and disabilities, required total assistance with toileting, walking transferring or feeding at unscheduled times during the day and night. Such uninterrupted 24 hour care could not be authorized unless the local professional director had approved the services. This meant that, if the consumer received uninterrupted care provided by more than one person for fewer than 24 hours, it was not automatically subject to the local professional director's review and approval.

The new definitions merely subject additional cases to the local professional director's review; specifically, those cases involving uninterrupted care provided by more than one person for more than 16 hours per day.

Specifically, the new definitions of continuous personal care services or continuous consumer directed personal assistance mean the provision of uninterrupted care, by more than one person, for more than 16 hours per day, for a consumer who, because of his or her medical condition and disabilities, requires total assistance with toileting, transferring, walking or feeding at times that cannot be predicted or scheduled.

As in the past, the consumer's need for assistance is not capable of being scheduled; that is, it occurs at times that cannot be predicted, which is the language used in the amended regulations. This is not a substantive change from past practice. The only substantive difference from the prior definition of continuous services is that additional cases are now subject to the local professional director's review and approval. In the past, the local professional director was required to review cases in which the patient would require uninterrupted care for 24 hours. Under the amended regulations, the local professional director must continue to review such 24 hour cases. In addition, the local professional director must also review cases in which the consumer would require uninterrupted care for more than 16 hours per day.

"Total assistance" remains defined in the regulations as meaning that a specific function or task (for continuous care, the tasks of toileting, walking, transferring or feeding) is performed and completed for the patient.

In instances when continuous personal care services or continuous consumer directed personal assistance is being considered, the nursing assessment must determine and document that the consumer requires total assistance with toileting, walking, transferring or feeding at times that cannot be predicted or scheduled [§505.14 (b)(4)(i)(c)(2) and §505.28 (d)(3)(ii)(g)]. Additionally, in such cases, the LPD, or designee, must review the physician's order and the social, nursing and other required assessments and make the final determination of the level and amount of care to be provided. In making this determination, for purposes of clarifying any assessment information related to the consumer's medical condition or functional abilities, the LPD or designee may consult with the consumer's treating physician. The LPD may also determine if an additional assessment, conducted by the LPD, of the consumer in the home [§505.14 (b)(4)(ii) and §505.28 (d)(5)], will be necessary.

The local district cannot authorize services based on initial assessment, or reauthorize services based on reassessment, until the entire assessment or reassessment process is completed, including the LPD review.

B. Live-in 24 Hour Personal Care Services - Live-in 24 Hour Consumer Directed Personal Assistance

Definitions of live-in 24 hour personal care services and live-in 24 hour consumer directed personal assistance have been added to the regulations [§505.14 (a)(5) and §505.28 (b)(8)]. This level of service has existed, but is now defined in the Department's regulations. Potentially eligible individuals must have a medical condition and disabilities (functional deficits) requiring some or total assistance with one or more personal care or CDPAP functions during the day and night and have a need for such assistance during the night that is infrequent or that can be predicted or scheduled. "Some assistance" remains defined in the regulations as meaning that a specific function or task is performed and completed by the patient with help from another individual.

The regulations require that, for recipients who may be eligible for live-in 24 hour services, the social assessment must include an evaluation whether the recipient's home has adequate sleeping accommodations for a live-in aide [§505.14 (b)(3)(ii)(c) and §505.28 (d)(2)(v)]. Examples of adequate accommodations include an available spare bedroom, room partition or a fold-out sofa. Availability of sleep-in space for the aide shall be determined on a case by case basis by the local district, taking into account the consumer's living situation. In determining the appropriateness of live-in 24 hour services, the local district should also assess whether the client can be safely left alone without care for a period of one or more hours per day.

An individual determined to be inappropriate for live-in 24 hour services and who does not meet the eligibility criteria for continuous 24-hour personal care services or continuous 24-hour consumer directed personal assistance, is ineligible to receive personal care services or CDPAP, but may be eligible for other programs.

C. Efficiencies and Informal Caregivers or Formal Services

The regulations promote the efficient use of resources designed to enhance the independence of individuals in support of their desire to remain in the community. To that end, the regulations require that personal care services and consumer directed personal assistance shall not be authorized if the patient's need for assistance can be met by:

- adaptive or specialized equipment or supplies including, but not limited to, beside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely, and, by promoting the consumer's independence in the home or other location, services provided would also be cost-effective; or
- voluntary assistance available from informal caregivers including, but not limited to, the patient's family, friends or other responsible adult; or formal services provided by an entity or agency. [§§ 505.14(a)(4)(iii) and 505.28(e)(1)]

With regard to adaptive or specialized equipment (the "efficiencies"), the nursing assessment shall include a professional evaluation whether such adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively when compared to the provision of aide services. Such adaptive or specialized equipment or supplies include, but are not limited to, bedside commodes, adult diapers, urinals, walkers and wheelchairs
[§§ 505.14(b)(3)(iii)(b)(5) and (b)(3)(iv)(a)(7)and
§505.28(d)(3)(ii)(f)].

Regulations found at § 505.14(b)(3)(iv) requiring that the assessment process review the efficacy and cost-effectiveness of alternative services, programs or arrangements, remain essentially unchanged, although minor revisions were made to ensure conformity.

With regard to informal caregivers, such support cannot be required but should be evaluated and discussed with the patient and the potential caregivers.

IV. REQUIRED ACTIONS

As a result of these regulatory changes, local districts are directed to take the following actions:

A. Assessment of Service Need

- When determining if PCSP and/or CDPAP services can be provided, assessments must include an evaluation of whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance. In such a case, whenever feasible, equipment should be obtained prior to start of services and be integral to the overall plan of care. Additionally, consideration must be made as to whether such equipment or supplies can be provided safely and cost-effectively to meet the goal of increased independence. If the nurse assessor, and when necessary following consult with the consumer's personal physician, determine that adaptive or specialized equipment or supplies are not contraindicated and can be provided safely, cost-effectively and the consumer does not already possess the equipment, the assessor should follow Medicaid procedures, for obtaining such equipment in order to increase the consumer's independence. Unless contraindicated by the physician or assessing nurse, this equipment must be incorporated into the plan of care. For example, when provision of grab bars or a bedside commode allows a consumer to remain independent and decreases the need for service hours, the equipment must be utilized.

- Assessments must include an evaluation whether voluntary assistance is available from informal caregivers including, but not limited to, the consumer's family, friends or other responsible adults so such support can be captured. The addition of language to the assessment section of the regulations reinforces the policy that the local district must incorporate any voluntary assistance from informal supports (e.g. family, friends, or local community organizations) when developing an overall plan of care. The PCSP and CDPAP should not be used to supplant or replace assistance that is available and acceptable to the consumer. However, the contribution of family members or friends is voluntary and cannot be coerced or required in any manner whatsoever.

  Assessors must also consider the availability of formal services or supports provided by an entity or agency available to meet the consumer's need for assistance. Examples of formal supports include certified home health agencies, the Veterans Administration or adult day health care programs. Local districts need to be aware that consumers who have other third party insurance such as Medicare or Worker's Compensation, or who participate in a waiver or other programs, should be evaluated as to the efficacy of accessing those services as part of the overall assessment process. As always, Medicaid remains the payor of last resort.

- The nursing assessment must document: the ability of the consumer to perform activities of daily living (ADLs) and instrumental activities of daily living (IADLs) independently, the functions required by the consumer; the degree of assistance required for each function, including if the consumer requires total assistance with toileting, walking, transferring or feeding and whether the consumer's need for such assistance can be scheduled or predicted or scheduled. Additionally, determination must be made if the need for assistance requires the provision of continuous personal care services or continuous consumer directed personal assistance. Determination of the functional ability of the consumer to complete these functions must be based on observation and must be supported by documentation on the DMS-1, M27r, or any other Department approved form utilized by a local district. In addition, case notes summarizing the findings of the assessment should provide a more complete depiction of the consumer's abilities and personal assistance needs.

B. Continuous Care

The following actions are to be taken at time of initial assessment and service authorization for new cases and at time of reassessment and reauthorization for existing cases.

- In conducting assessments the local district must apply the functional criteria delineated in the regulations. In order to be eligible for continuous care, the consumer must be determined to require <u>total assistance</u> with toileting, walking, transferring or feeding at times that cannot be predicted or scheduled. If it is determined that a consumer requires total assistance with one or more personal care or CDPAP functions during the day and night but the consumer's need for assistance during the night is infrequent or can be predicted or scheduled, then live-in 24 hour care should be considered. In sum, if the consumer does not meet the eligibility requirements for continuous care, such care should not be authorized. When such cases are encountered, consideration should be given to referrals to the Nursing Home Transition and Diversion Waiver since supervision and/or monitoring can be provided in addition to hands on care.

- Prior to authorization of continuous care, the social assessment needs to have demonstrated that all alternative arrangements for meeting the consumer's needs have been explored or are infeasible. Examples in this regard include provision of personal care services or consumer directed personal assistance functions in combination with other formal services (e.g. medical or social model adult day care) or in combination with contributions of informal caregivers.

- Cases involving continuous personal care or continuous consumer directed personal assistance must be referred to the LPD or designee. The expansion of the LPD's role to permit a home visit for the purpose of observing and evaluating the functional abilities of the consumer enhances the LPD's ability to make a more informed decision regarding the appropriate level of care. Additionally, the LPD, or designee, may consult with the consumer's treating physician for purposes of clarifying any assessment information related to the consumer's medical condition or functional abilities. These activities strengthen the district's ability to support its ultimate decision regarding service authorization.

- Prior to the amended regulations, following referral to the LPD, the timeframe for a final determination of the level and amount of care to be provided required completion within five business days of the request. Amended regulations now provide that following a referral to the LPD, the LPD's final determination must be made with reasonable promptness, generally not to exceed seven business days after the LPD's receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.

C. Live-in 24 Hour Care

- For consumers who may be eligible for live-in 24 hour personal care services or live-in 24 hour consumer directed personal assistance, the nursing assessment must evaluate if the consumer requires some or total assistance with one or more personal care or CDPAP functions during the day and night and, if so, whether the consumer's need for assistance during the night is infrequent or can be predicted or scheduled.

- For consumers who may be eligible for live-in 24 hour care, the social assessment must evaluate whether the consumer's home has adequate sleeping accommodations for the live-in aide, taking into account the consumer's living situation. Various arrangements may be considered in this evaluation, including but not limited to; privacy screen, furniture rearrangement, fold-out sofa, etc.

D. SYSTEMS IMPLICATIONS

There are no systems implications to this directive.

E. EFFECTIVE DATE

The effective date of changes limiting PCSP and CDPAP nutritional and environmental support functions to no more than 8 hours per week was April 1, 2011, the effective date of the statutory change to Social Services Law § 365-a(2)(e)(iv).

The requirements of this directive as it relates to the PCSP and CDPAP are effective immediately for new requests and at the time of next reassessment for current cases.

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