

TO: Local District Commissioners, Medicaid Directors

FROM: Trisha Schell-Guy, Director
Bureau of Medicaid Long Term Care Policy
Division of Program Management and Development

SUBJECT: Clarification on Legal Guardians Serving as CDPAP Personal Assistants

EFFECTIVE DATE: Immediately

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The purpose of this General Information System (GIS) message to Local Departments of Social Services is to clarify the ability of a legal guardian to serve as a consumer directed personal assistant in the Consumer Directed Personal Assistance Program (CDPAP) and who may be assigned the role of the designated representative.

Where inconsistent, this GIS supersedes [GIS 16 MA/06](#) and [06 OMM/LCM-02](#). Question 1 in 06 OMM/LCM-02 should be considered moot and replaced by the information in this GIS as it pertains to legal guardians and designated representatives (previously referred to as “self-directing others”).

As outlined in statute at SSL 365-f passed in 2016 and regulations at 18 NYCRR § 505.28 revised in 2021, a person legally responsible for the person’s care and support, a consumer’s spouse or the consumer’s designated representative cannot be the consumer directed personal assistant. As detailed in this GIS, a parent or legal guardian of an adult consumer, age 21 or older, is **not** expressly restricted from being a CDPAP consumer’s personal assistant.

A consumer in receipt of CDPAP services may require a designated representative to carry out the responsibilities of the consumer per CDPAP regulations at 18 NYCRR § 505.28(h). The designated representative must be approved by the Local Department of Social Services (LDSS) and may be a consumer’s parent, legal guardian or a responsible adult surrogate who is willing and able to perform consumer responsibilities.

Legal Guardian

This is to clarify that a court-appointed (legal) guardian, including a parent-guardian of an adult aged 21 or older, may serve as an adult individual’s CDPAP personal assistant provided they are not also the individual’s designated representative.

A Representative Payee (legal guardian) authorized by the Social Security Administration (SSA) to receive a consumer's Social Security or SSI benefits has very limited and discrete authority bestowed by the SSA such that one's status as a Representative Payee does not equate to being legally responsible for an individual's care and support equal to the responsibility of a parent for a child under the age of 21.

Similarly, an agent under a Power of Attorney or a court-appointed legal guardian does **not** have the same personal support responsibility and legal obligations as that of a parent of a child under the age of 21. An agent under a Power of Attorney or a court-appointed guardian, is issued enumerated and limited fiduciary duties or powers. In the CDPAP law and regulations when the term "legally responsible for the consumer's care and support" is used, that is a reference to the legal obligation of a parent to a minor child to provide personal and financial support to that child, it is not a reference to the obligations of an agent under a Power of Attorney or court-appointed legal guardian.

The express purpose of the 2016 statutory revisions to SSL 365-f was to permit parents of adult children aged 21 or older to be able to be hired and work as their adult children's CDPAP personal assistants. The law was intended solely to expand the pool of who can be a CDPAP personal assistant to include parents of adult children. It was not intended to narrow the pool of who can be a CDPAP personal assistant.

The revision to the definition of personal assistant in regulations at 18 NYCRR § 505.28 was again solely intended to align with SSL 365-f and not to narrow the ability of parents of adult children to be their personal assistants.

When verifying if a legal guardian may provide CDPAP services, the LDSS may not allow said legal guardian to be the consumer's primary point of contact, or otherwise oversee any decisions related to the consumer's care under CDPAP. These responsibilities remain solely that of the designated representative.

Designated Representative

When authorizing a designated representative, the LDSS must approve a person who can make themselves available and be present for any scheduled assessment or visit by the independent assessor, examining medical professional, or LDSS staff and to ensure that the consumer responsibilities as outlined in CDPAP regulations 18 NYCRR § 505.28(h) are carried out without delay.

If a designated representative is unable or unwilling to fulfill their responsibilities under CDPAP, the LDSS must immediately assign a new designated representative or send a notice of intent to discontinue CDPAP services.

The designated representative may not be the consumer directed personal assistant or a fiscal intermediary employee, representative or affiliated person.

Please direct any questions related to this GIS to the LDSS' Bureau of Medicaid Long Term Care Policy district liaison. General questions related to CDPAP should be directed to consumerdirected@health.ny.gov.