



**Office of Health Insurance Programs  
Division of Long Term Care**

**Managed Long Term Care Policy 21.01: Transition Policies for Fiscal Intermediaries (FIs) and Consumers under the Consumer Directed Personal Assistance Program (CDPAP)**

**Date of Issuance: February 11, 2021**

This policy supersedes and replaces MLTC Policy 20.01 originally issued on March 6, 2020.

The purpose of this policy is to provide transition guidance for current fiscal intermediaries that were not selected as a lead fiscal intermediary pursuant to Request for Offers (RFO) #20039: New York State Fiscal Intermediaries for the Consumer Directed Personal Assistance Program.

**Background**

In 2019, Social Services Law (SSL) Section 365-f, which governs the Consumer Directed Personal Assistance Program (CDPAP), was amended to require a procurement process through which the Commissioner of the Department of Health (the Department or DOH) would enter into contracts with eligible entities that submit offers under a Requests for Offers (RFO) and are selected to contract with the State to provide fiscal intermediary (FI) services required by the program. In response to this legislative requirement, the Department published RFO #20039 New York State Fiscal Intermediaries for the Consumer Directed Personal Assistance Program on December 18, 2019, with a proposal due date, as amended, of March 3, 2020. RFO #20039 is posted at <https://www.health.ny.gov/funding/rfo/20039/>.

**Introduction**

The purpose of this policy is to facilitate the transition of services from entities currently providing FI services ("Current FIs") that will be required to cease operations following the issuance of awards under the RFO. This policy is effective immediately and provides guidance primarily to Current FIs, Local Departments of Social Services (LDSS), and Managed Care Plans for required consumer transitions resulting from the Department's announcement of the entities selected to provide FI services as a result of the RFO, and the Department's upcoming announcement of the "Contract Notification Date" which is defined as the date the Department first publishes on the [RFO web page](#) a list of Lead FIs that have contracts executed by the Office of the New York State Comptroller (OSC) resulting from awards under the RFO.

For ease of use, this policy is divided into two scenarios. In each scenario, the process, timeframes and responsibilities for Current FIs and other entities regarding how to cease operations are different. The two scenarios are as follows:

- 1) Current FIs that were not awarded a contract that elect to cease FI operations prior to the Contract Notification Date as defined above (p. 3); and
- 2) Current FIs that were not awarded a contract that elect to continue FI operations until the Contract Notification Date as defined above (p. 5).

Within these two scenarios requiring Current FIs to cease operations, there are three types of Current FIs that will have to transition consumers to Department contracted Lead FIs depending on their actions taken under the RFO, as follows:

- 1) Current FIs that submitted an offer under the RFO as a Lead FI and were not awarded a contract;
- 2) Collaborating Partners of contracted FIs; and
- 3) Current FIs that did not submit an offer as Lead FI under the RFO, nor were a Collaborating Partner in any offer made in response to the RFO.

Questions regarding these FI transition provisions should be directed to the Department of Health at [ConsumerDirected@health.ny.gov](mailto:ConsumerDirected@health.ny.gov)

### **Definitions**

The following terms are defined to enhance the clarity and consistency to the transition processes described herein and the materials specifically related to these transitions.<sup>1</sup>

*Collaborating Partner* means an entity identified in a Lead FI's offer to the Department under the RFO that intends to assist the Lead FI in providing FI services.

*Consumer or CDPAP consumer* means an individual authorized to receive or receiving services under the CDPAP.

*Consumer Directed Personal Assistance Program (CDPAP)* means the program established pursuant to Section 365-f of the Social Services Law to provide individuals greater flexibility to self-direct home care services provided under the New York State medical assistance program.

*Contract Notification Date* means the date on which the Department first publishes on the [RFO web page](#) a list of Lead FIs that have contracts executed by OSC resulting from awards under the RFO.

*Current FI* means an entity providing FI services prior to the Contract Notification Date.

*Lead FI* means an entity that submitted an offer to the Department under the RFO and was selected by and has signed a contract with the Department to provide FI services pursuant to the RFO process.

*Receiving FI or new FI* means any Lead FI a Consumer selects or could select to provide FI services on behalf of the Consumer when their Current FI decides or is required to cease operations.

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<sup>1</sup> These definitions do not necessarily align with the way these terms are used in the procurement of FIs or CDPAP generally and should not be solely relied upon for interpreting the RFO or other materials, documents, or statements made by the Department related to the RFO or CDPAP. The Department may use or develop different definitions for the terms in this section or other terms used throughout this policy, including definitions provided in statute, regulation, or other policies and guidance of the Department, which may narrow, expand, overlap, contradict and/or supersede the definitions provided herein.

## **Scenario 1: Current FIs that were not awarded a contract as a Lead FI and Elect to Cease Operations Prior to the Contract Notification Date**

### **Transition Policies and Procedures**

Current FIs that were not awarded a contract as a Lead FI and do not want to continue operations through the Contract Notification date must deliver written notice at least **forty-five (45) calendar days** before discontinuing operations to the affected CDPAP consumers (or the CDPAP Consumers' designated representatives), the CDPAP Consumers' personal assistants (PAs), the LDSS and Managed Care Plans with which the Current FI contracts, and the Department.

FIs must use the following templates, located on the Department's [CDPAS](#) web page, to provide such written notices:

- [FI Cease Operations Template FI to Consumer](#)
- [FI Cease Operations Template FI to LDSS or Managed Care Plan](#)
- [FI Cease Operations Template FI to PAs](#)

The templates include information regarding the date the Current FI plans to cease operations and the following information.

- 1) Notice to the CDPAP consumer (or the consumer's representative) indicating the consumer has a right to select a new FI of their choosing, and that their Managed Care Plan or LDSS (as appropriate) will be contacting them to provide options for choosing a new FI as well as supervise and assist them with transitioning to a new FI. In addition, the notice indicates the Current FI has also notified their Managed Care Plan or LDSS, their PA(s), and DOH.
- 2) Notice to the CDPAP consumer's PA(s) indicating the Current FI has notified their CDPAP consumer of the election to cease FI operations and the need for them to select a new FI. The notice also indicates the Current FI has also notified DOH, and the CDPAP consumer's Managed Care Plan or LDSS, and that the Managed Care Plan or LDSS will supervise and assist with the transition process.
- 3) Notice to any LDSS or Managed Care Plan with which the Current FI contracts indicating the Current FI has notified their CDPAP consumer, the CDPAP consumer's PA(s), and the DOH of their change in FI operations. The notice must identify each CDPAP consumer that has received the notification.
- 4) Copies of all notifications must be sent to DOH via a HIPAA compliant email to [ConsumerDirected@health.ny.gov](mailto:ConsumerDirected@health.ny.gov) with the subject line: "FI Withdrawal Notices"

Within five (5) business days of receiving a records request, with written consent from the CDPAP consumer, FIs must transfer all records relating to the CDPAP consumer's care authorizations to the consumer's Receiving FI. Within five (5) business days of receiving a records request, with written consent from the CDPAP PA, a Current FI must transfer records related to the PA's health status, including immunization records to the consumer's Receiving FI. Upon transmittal to the Receiving FI, the current FI must acknowledge it assumes all liability for omissions or errors in such records.

The Model Consent Forms, also posted to the Department's [CDPAS](#) web page, may be used by the consumer to provide written consent to transfer their records.

- [CDPAP Consumer Service Authorization Transfer – Model Consent Form](#)
- [CDPAP Medical Record Authorization Transfer – Model Consent Form](#)

#### Transition Requirements for Managed Care Plans and LDSS

Within five (5) business days of receipt of a notice from a contracted Current FI that they are ceasing operations, the Managed Care Plan or LDSS, depending on whether the CDPAS consumer is enrolled in Medicaid managed care or Medicaid fee-for-service, must send each affected member receiving CDPAP a written acknowledgement of receipt of the notice from the Current FI using the following templates located on the Department's [CDPAS](#) web page.

- [FI Cease Operations Template Managed Care Plan or LDSS to Consumer](#)
- [FI Cease Operations Template Managed Care Plan or LDSS to Consumer 2<sup>nd</sup> Notice](#)

The templates include the following information.

- A statement that the Managed Care Plan or LDSS has received notice of the change in their FI's operations and is charged with overseeing and assisting the CDPAP consumer with selecting a new FI;
- The CDPAP consumer has the right to select a new FI of their choice and the change in the Current FI's business operations does not impact their care plan or their choice of PA(s);
- A list of all other FIs, including contact information, the Managed Care Plan or the LDSS contracts with and operates in the member's service area;
- To ensure continuity of FI services, a request that the CDPAP consumer select another FI within ten (10) calendar days from the date the CDPAP consumer receives the CDPAP consumer notice;
- A contact at the Managed Care Plan or LDSS, including a telephone number, to address CDPAP consumers' questions or concerns; and
- A reminder that CDPAP consumers are entitled to a copy of their care plan, and instructions on how the consumer may obtain a copy of their care plan.

As part of the Managed Care Plans and LDSS role in supervising the transition to a new FI, Managed Care Plans and LDSS will oversee the transfer of records by the Current FI to the Receiving FI and maintain regular contact with CDPAP consumer to ensure services from the Receiving FI are in place prior to the change in operations noticed by the Current FI.

Within five (5) business days of the requested 10-day period provided to CDPAP consumers to select a new FI, Managed Care Plans and LDSS, shall issue a second notice and contact the member directly to notify and assist them with selecting a new FI. Managed Care plans and LDSS should continue to follow up with CDPAP consumers until the transition to a new FI is complete.

## **Scenario 2: Current FIs that were not awarded a contract as Lead FI but Elect to Continue Operating until the Contract Notification Date**

To ensure continuity of care and an orderly and efficient transition for CDPAP consumers that may need to select and transition to a new FI, the Department will permit all Current FIs that were not selected as a Lead FI to continue to serve CDPAS consumers for no longer than **90 calendar days** after the Contract Notification Date at which time the Current FI will have to cease operations. Under the provisions of Section 365-f of the Social Services Law, the Department, rather than the Current FI, will issue the following notifications (also identified above), to consumers or their designated representatives, PAs, LDSS and Managed Care Plans that the Current FIs must cease operations and transition consumers to Department contracted FIs:

- FI Cease Operations Template FI to Consumer;
- FI Cease Operations Template FI to LDSS or Managed Care Plan; and
- FI Cease Operations Template FI to PAs.

The Department will work with Current FIs, and the Managed Care Plans and LDSS who are responsible for supervising the transition of consumers to a new FI, to obtain the information required for the Department to effectuate initiating notices to the required parties.

The Department may issue additional transition policies and procedures and notices to draw on the ability of the Managed Care Plans and LDSS to assist before or during the 90-day period following the posting of contracted FIs to the website to ensure seamless continuity of services for CDPAP consumers.