NEW YORK STATE | Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

February 19, 2025

DAL #: DHCBS 25-02
Subject: Consumer Directed Personal Assistance Services Program Transition Single Fiscal Intermediary

Dear Administrator:

As New York State implements the April 1, 2025, transition of Consumer Directed Personal Assistance Services (CDPAS) to a Statewide Fiscal Intermediary (PPL, Inc.), some consumers may choose to transfer from receiving CDPAS to receiving Personal Care Services (PCS) administered through a Licensed Home Care Services Agency (LHCSA). We encourage providers to be familiar with and aware of programmatic differences that exist between CDPAS and PCS. If you admit CDPAS consumers and onboard Personal Assistants (PAs) from a Fiscal Intermediary line of business, there are regulatory requirements that must be met and will be enforced, including, but not limited, to the following:

1. Moving from CDPAS to PCS, and from a Fiscal Intermediary (FI) to a LHCSA, must be the consumer's choice, made in consultation with their social services district or MMCO. *See* 18 NYCRR 505.14(b)(2)(iii), 505.28(a) and 505.28(d)(3). Consumers moving from CDPAS to PCS will no longer have joint-employer status with the ability to hire, train, schedule, and dismiss their PA. *See* 18 NYCRR 505.28(b)(3). Under PCS, aides are assigned by the LHCSA as their sole employer. *See* 10 NYCRR 766.2.

2. The Nurse Practice Act exemption under CDPAS (18 NYCRR 505.28(17), is not applicable under PCS. Aides working for LHCSAs are not permitted to provide certain health related tasks under the consumer's direction and certain tasks are only permitted for self-directing consumers. *See* the Home Health Aide Matrix; Permissible and Non-Permissible Activities, https://www.health.ny.gov/facilities/home_care/docs/activities_matrix.pdf, and 18 NYCRR 505.14.

3. Personal Care Aides (PCAs) and Home Health Aides (HHAs) working in a LHCSA must pass a criminal background check prior to commencing services. *See* 10 NYCRR Part 402. CDPAS PAs do not require a criminal background check.

4. CDPAS PAs are not required to have any specialized training and instead are trained by the consumer. A PCA or HHA employed by a LHCSA must have a valid certificate obtained after successfully completing an approved training program. PCAs must have training of at least 40 hours with 6 in-service hours

annually, and an HHA employed by a LHCSA must have a valid training certificate after successfully completing an approved training program of at least 75 hours, with 12 hours of in-service hours required annually thereafter. The training classes and trainee name must be entered into the Home Care Worker Registry and successful completion of the course verified for both types of aides employed by LHCSAs. *See* 18 NYCRR 505.14, 10 NYCRR Part 403 and 10 NYCRR 700.2.

5. CDPAP PAs are selected by the consumer and can include any adult that meets the definition of a "consumer directed personal assistant" in 18 NYCRR 505.28 (b)(4). PCS cannot be provided by a parent, son, son-in-law, daughter, or daughter-in-law, or other relative residing in the home of the recipient. In limited circumstances, an allowable relative that resides with the consumer may provide PCS if the amount of care the consumer requires makes such relative's presence necessary and the consumer has received the approval of the LDSS or MCO. Approval must be documented. *See* 18 NYCRR 505.14.

6. A consumer that switches from CDPAS to PCS needs to have a new prior authorization, plan of care and person-centered plan completed before PCS services begin. *See* 18 NYCRR 505.14.

LHCSA operators and administrators are reminded that not only are all personnel employed by the agency to perform personal care or home health services subject to the requirements of 10 NYCRR 766.11 regardless of whether they were initially employed by the LHCSA or an affiliated or unaffiliated Fiscal Intermediary, the regulations in 10 NYCRR Part 766 pertain to all individuals admitted to LHCSAs as patients. The Department will use its regulatory authority to enforce the regulations governing the LHCSA license and all third-party complaints will be reviewed. Such enforcement action may include a recommendation for licensure revocation and referral to the appropriate authorities for investigation of possible Medicaid fraud subject to recoupment.

Questions regarding billing and payment should be directed to: StatewideFI@health.ny.gov.

Questions regarding LHCSA regulations should be directed to: homecare@health.ny.gov.

Sincerely,

Amir Bassiri
Medicaid Director
Office of Health Insurance Programs

EN ESPAÑOL

Estimado administrador:

A partir del 1 de abril de 2025, el estado de Nueva York implementará la transición de los Servicios de Asistencia Personal Dirigidos por el Consumidor (CDPAS) a un Intermediario Fiscal Estatal (PPL, Inc.). Algunos usuarios podrían optar por cambiar de recibir CDPAS a recibir Servicios de Cuidado Personal (PCS) administrados por una Agencia de Servicios de Cuidado en el Hogar con Licencia (LHCSA). Animamos a los proveedores a familiarizarse con las diferencias programáticas entre CDPAS y PCS. Si acepta usuarios de CDPAS y emplea Asistentes Personales (PAs) de una línea de negocio de Intermediario Fiscal, debe cumplir con ciertos requisitos regulatorios, incluyendo, pero no limitado a, lo siguiente:

1. La decisión de cambiar de CDPAS a PCS, y de un Intermediario Fiscal a un LHCSA, debe ser del usuario, hecha en consulta con su distrito de servicios sociales o MMCO. Los usuarios que cambian de CDPAS a PCS ya no tendrán el estatus de empleador conjunto con la capacidad de contratar, entrenar, programar y despedir a su PA.

2. La exención del Acto de Práctica de Enfermería bajo CDPAS no es aplicable bajo PCS. Los auxiliares que trabajan para LHCSAs no pueden realizar ciertas tareas relacionadas con la salud bajo la dirección del consumidor y ciertas tareas solo están permitidas para consumidores que se auto-dirigen.

3. Los Auxiliares de Cuidado Personal (PCAs) y los Auxiliares de Salud en el Hogar (HHAs) que trabajan en un LHCSA deben pasar una verificación de antecedentes penales antes de comenzar los servicios.

4. Los PAs de CDPAS no requieren una verificación de antecedentes penales ni entrenamiento especializado; son entrenados por el consumidor. Un PCA o HHA empleado por un LHCSA debe tener un certificado válido obtenido después de completar un programa de entrenamiento aprobado.

5. Los PAs de CDPAS son seleccionados por el consumidor y pueden incluir cualquier adulto que cumpla con la definición de "asistente personal dirigido por el consumidor". PCS no puede ser proporcionado por un padre, hijo, yerno, hija, nuera u otro pariente que resida en el hogar del receptor. En circunstancias limitadas, un pariente permitido que reside con el consumidor puede proporcionar PCS si la cantidad de cuidado que requiere el consumidor hace necesaria la presencia de dicho pariente y el consumidor ha recibido la aprobación del LDSS o MCO.

6. Un consumidor que cambia de CDPAS a PCS necesita tener una nueva autorización previa, un plan de cuidado y un plan centrado en la persona completado antes de que comiencen los servicios de PCS.

Los operadores y administradores de LHCSA deben recordar que todo el personal empleado por la agencia para realizar servicios de cuidado personal o de salud en el hogar está sujeto a los requisitos regulatorios, y el Departamento utilizará su autoridad reguladora para hacer cumplir las normas que rigen la licencia de LHCSA.

Si tiene preguntas sobre facturación y pago, diríjalas a: StatewideFI@health.ny.gov. Para preguntas sobre regulaciones de LHCSA, diríjalas a: homecare@health.ny.gov.