New York Independent Assessor

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Thanks to David Silva, Program Director, ICAN!

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Housekeeping

- All participants are on mute.
- Use Questions and Answers function for substantive questions or technical concerns.
- Problems with the webinar? cle@nylag.org.
- Written materials are available under **handouts** drop down menu in webinar.
- Requesting CLE?
  - Please record the **two CLE codes** that will be announced during the presentation and complete the survey.
  - The survey link will be shared with all participants via chat in GoToWebinar.

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ABOUT NYLAG

The New York Legal Assistance Group (NYLAG) is a leading non-profit that provides free civil legal services, financial counseling, and engages in policy advocacy efforts to help people experiencing poverty.

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About the Evelyn Frank Legal Resources Program

Focuses on fighting for seniors and people with disabilities, ensuring that they have access to health care and home care services they need to age safely in their home and communities. Services include:

- **Counseling** client on Medicaid, Medicare and home care eligibility and services
- **Training** legal, social services and health care professionals about changes in Health Care programs and how to best serve the health and long-term care needs of seniors
- **Representing** clients in denials and reduction of Medicaid, Medicare Savings Program and Medicaid Home Care
- **Assisting clients with accessing Medicaid home care** through Managed Long Term Care plans.

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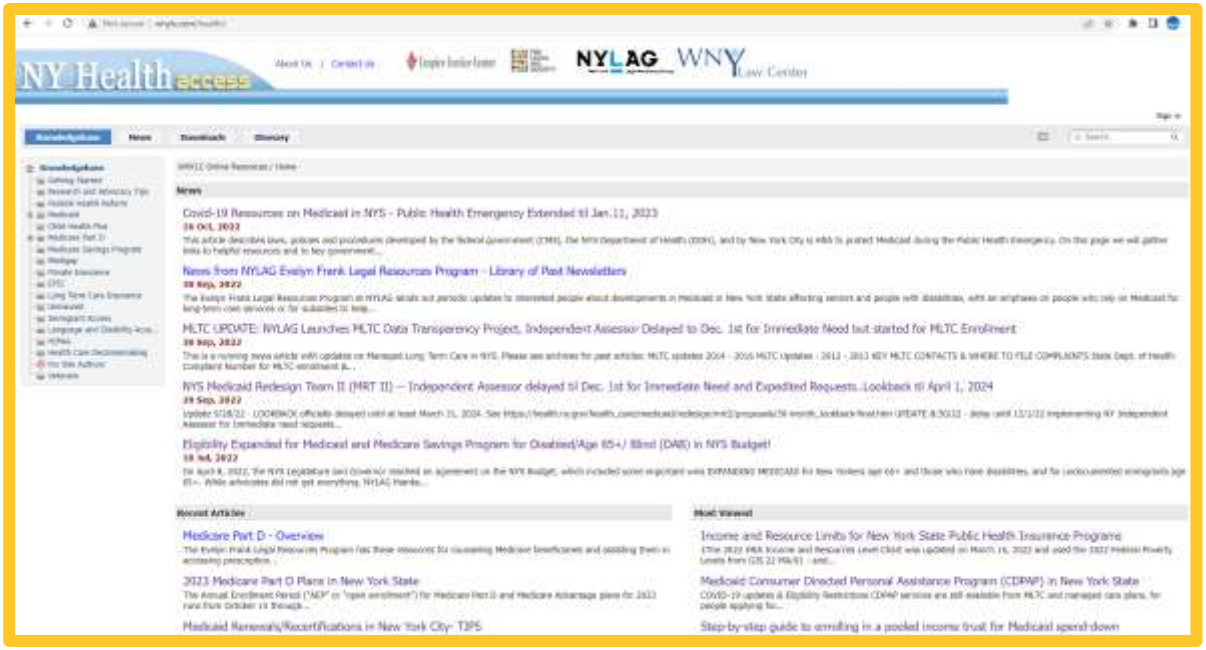
EFLRP Services (continued)

- Educating the public through the website http://nyhealthaccess.org



- Policy Updates
- Consumer Materials
- Expansive resources on coverage criteria and eligibility

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Please donate if receiving CLE credit!

- Help us keep these trainings free to the public.
- We suggest a $100 donation if you are requesting CLE credit (or even if you're not! ☺)
- Please send a check payable to "NYLAG" earmarked to EFLRP and send to:
  - Development– NYLAG, 100 Pearl St., 19th fl. NY NY 10004
- Or donate at https://nylag.org/donate-now/ and earmark for EFLRP/ Evelyn Frank program
- THANK YOU!

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Agenda

- Introduction
- Background on Community Based LTC
- NYIA Overview
- Immediate Need & NYIA
- Mainstream Expedited Requests & NYIA
- Fair Hearings
- Complaints, Resources

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What is the New York Independent Assessor? (NYIA)

As of May 2022, NYIA assesses Medicaid members over the age of 18+ to determine if they are eligible to receive Community-Based Long Term Care ("CB-LTC")

Sounds simple, but it's complicated!

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What changed (and what didn't)

What changed

- Replaces Conflict-Free assessment (CFEEC) for MLTC enrollment
- NEW Assessment process for home care from mainstream managed care plans (MMC) or local Depts. of Social Services (LDSS)
- WHO does the nurse assessments
- WHO does physician's orders for home care
- The order of physician's order and nursing assessment
- Independent review now required for > 12 hours/day

What didn't change

- Eligibility criteria for home care or MLTC enrollment
- Assessment tool (UAS-NY) now called Community Health Assessment (CHA)
- Who develops the plan of care (number of hours of home care) – still plan or LDSS

What isn't changing *yet*

- Reassessments of home care by MLTC, MMC or DSS
- Assessments for children under 18

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Reference: Regulations, Guidance, Websites

- **NYS DOH NYIA website** - https://www.health.ny.gov/health_care/medicaid/redesign/nyia/
  Document Repository tab on site has links to NYIA Policies
  1. **Regulations** - Amended Personal Care & CDPAP
     18 NYCRR 505.14 & 505.28
  2. **DSS** - 22 OHIP/ADM-01 (4/20/22)
     - GIS 22 MA/09 (12/1/22) -- **Immediate Need**
  3. **MLTC** - MLTC Policy 22.01 (4/27/22)
  4. **Mainstream Managed Care** – Guidance 4/28/22 (mostly people without Medicare or other primary insurance)
     - https://www.health.ny.gov/health_care/managed_care/plans/mmc_guidance.htm (11/17/22) - **Expedited** Mainstream Assessments

  Trainings tab has PowerPoints DOH presented to plans and Local DSS
- **2nd NYIA website** – https://nyia.com/en (also in Spanish) has FAQs
- **NY Medicaid Choice** website - https://nymedicaidchoice.com/ask/do-i-qualify-managed-long-term-care
- NYLAG updates http://health.wnylc.com/health/news/85/#Independnet%20Assessor%20NEW

BACKGROUND ON CB-LTC

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What is CBLTC?

- **Personal Care** Services (PCS)
  - Includes “Housekeeping”
- **CDPAP** -Consumer Directed Personal Assistance
- Certified Home Health Agency (**CHHA**) services
- **Private Duty Nursing** Services
- **Adult Day Health Care** (ADHC) & Social Adult Health Care
- **Home & Community Based Waiver** programs --- 1915(c) – offer “boutique” services solely available through waivers – OPWDD, Traumatic Brain Injury (TBI), Nursing Home Transition & Diversion (NHTD)

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Service	Overview	Eligibility Criteria	Citation
Personal Care Services (PCS) & Consumer Directed Personal Assistance Program (CDPAP)	Assistance with daily needs essential to maintain health and safety at home. Hours -- up to 24-hour continuous "split shift" care for assistance with ADLs & IADLS.* Personal Care Aide may not assist with "skilled care" such as injections, suctioning – but CDPAP aide may	- Consumer must be **self-directing** or have someone to direct care - Consumer must have a **stable medical condition** – not expected to need frequent nursing judgment	18 NYCRR 505.14 PCS 18 NYCRR 505.28 CDPAP
CDPAP Only	Consumer or person directing care must recruit, train & schedule personal assistants (PA), including back-ups. - PA may not be the same person who is "directing care" if the consumer is not self-directing. 505.28(b)(3) - PA may be consumer's adult child, parent of a child > 21, or other relative, but NOT spouse or parent of a minor child.		18 NYCRR 505.28

*ADL = Activity of Daily Living – dressing, bathing, toileting, walking, eating, transfer, turn & positioning
IADL – Instrumental Activity of Daily Living – shopping, meal prep, laundry, cleaning

How & Where do you access CBLTC?

It depends! Does consumer have Medicare?

1. **Has Medicaid *not Medicare – must enroll in***

   Mainstream Medicaid managed care plan (SSL 364–j) which authorizes CBLTC unless:

   - ***exempt*** from managed care if in OPWDD, TBI or NHTD waiver
   - ***excluded*** if has Third Party Health Insurance or spend-down

   Mostly includes people under 65, but also **older immigrants on SSI** who are not eligible for Medicare.

2. **Has Medicaid *AND Medicare* -** must enroll in MLTC unless
   - ***excluded*** from MLTC (PHL 4403-f)
     - In a 1915(c) waiver such as OPWDD, NHTD, TBI
     - In home hospice program
   - ***exempt*** from MLTC
     - Immediate need request – but after 120 days transfer to MLTC
     - Age 18-21 – may enroll if nursing home-eligible
3. If ***excluded or exempt*** from managed care - next slide

How & Where do you access CBLTC?

3. **If Exempt or Excluded from Mainstream Managed Care or MLTC –** Obtain CBLTC from **Local Dept. of Social Services (LDSS)**

   NYC - HRA Home Care Services Program (HCSP) - CASA.

   a. In OPWDD, TBI or NHTDW waiver
   b. Do not have Medicare -- but has other Third Party Health Insurance or has a spend-down
   c. Has Medicare -- and in home hospice

   Called “Fee for Service” (FFS) because home care provider bills Medicaid, not an MLTC or mainstream plan. But services must go through Prior Approval by LDSS, which now includes NYIA assessments.

MLTC – 2 Types of Plans PHL 4403-f

Fully Capitated Plan (Medicaid Advantage Plus (**MAP) or PACE** Plan – includes all Medicare and Medicaid services in one plan including MLTC package (see below)

Partially Capitated MLTC —most popular – includes ONLY Medicaid services below.

- Member keeps preferred Medicare coverage separate from MLTC.

MLTC Benefit Package includes:

- **Home Care --** personal care, CDPAP, CHHA, Private duty nursing
- **Adult Day Health Care** (medical and social models)
- **PERS** - Personal Emergency Response System
- **Nutrition** -- Home-delivered meals congregate meals
- **Medical equipment**, **medical supplies, and Home modifications**
- **Physical, speech, and occupational therapy** in community
- Non-emergency **medical transportation** to doctor offices, clinics (ambulette) - NOTE This service will be "carved out" of the MLTC benefit package
- Nursing home care only up to 3 months, then disenrolled once determined eligible for nursing home Medicaid.
- FOUR Medicaid services NOT usually considered long term care:
  1. **Podiatry**
  2. **Audiology** + hearing aids and batteries
  3. **Dental**
  4. **Optometry** + eyeglasses

NYIA: WHO? AND WHEN?

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NYIA Roll-Out

- NYIA is being implemented in stages.
- Since NYIA started May 16, 2022, it is SOLEY required for Medicaid recipients who are newly APPLYING for Personal Care or CDPAP or MLTC enrollment – and were not receiving any of these services earlier.
- May 16, 2022 – NYIA started for those:
  - Seeking new MLTC enrollment
  - In mainstream plans making a “standard” time request for PCS or CDPAP (Plan has 14 days to approve, extendable by 14 days)*
  - Exempt or excluded from managed care/MLTC seeking PCS or CDPAP from LDSS
- Dec. 1, 2022 – started for those –
  - In mainstream plans seeking PCS or CDPAP on an EXPEDITED basis (plan has 72 hours to approve, extendable by 14 days)*
  - Applying for Immediate Need services from LDSS

*42 CFR 438.210, defines criteria for expedited request - delay "would seriously jeopardize the enrollee’s life or health or ability to attain, maintain, or regain maximum function." See http://health.wnylc.com/health/entry/233/.

Which Medicaid Recipients DO NOT need a NYIA Assessment?

1. Any Medicaid recipient **ALREADY receiving PCS/ CDPAP services** from DSS, MMC or MLTC plan.
   a. Their annual reassessments and requests for increases *will be phased in at a later date.*
   b. Immediate Need recipients do NOT need NYIA when they transition to MLTC after 120 days.

      Warning: Immediate Need recipients should not enroll in MLTC until they receive notice from NY Medicaid Choice! Otherwise may require NYIA and lose Transition Rights! http://health.wnylc.com/health/entry/232/.
   c. Transfers from one MLTC plan to another, or from mainstream to MLTC if received PCS/CDPAP from mainstream plan do NOT need NYIA.
2. **Under age 18** needing PCA/CDPAP
   – Mainstream Managed Care enrollees < 18
   – New DSS requests for < 18
3. **PACE** Enrollment

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Which assessments will MLTC plans still do?

- **Routine annual reassessments** for authorizing PCS and/or CDPAS
- Non-routine reassessments as necessary including:
  - **return from institutionalization** assessments
  - significant **change in condition** assessments
  - assessments **at the individual's request**

- **MLTC to MLTC plan transfer** assessments where the last assessment was conducted by the first plan; the new plan would code this as an initial assessment.
  - Note, if the last CHA was completed by NYIA and is still valid, the new plan should use the NYIA CHA and not conduct another CHA.
- **Auto-assignments into MLTC plans** will follow current process (MLTC Policies 13.10 and 15.02).

N.Y. Health, MLTC Policy 22.01:NYIA for PCS & CDPAP at 1 (4/27/2022).

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Medicaid Population	Eligibility & Plan Enrollment	Prior Authorization of PCS/CDPAP	Reassessment / Concurrent Review Change in Condition
MLTC	Yes - 5/16/22	NA	TBD
MMC Standard Request (18+)	NA	Yes, 5/16/2022	TBD
MMC Expedited Request (18+)	NA	Yes, 12/1/2022	TBD
DSS LTSS Recipients (18+)	NA	Yes, 5/16/2022	TBD
DSS Immediate Need Request (18+)	NA	Yes, 12/1/2022	TBD
MMC or DSS Under 18 y.o.	No	No	No

CLE Code #1

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NYIA: HOW?

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NYIA Conducts 2 Assessments (sometimes 3)

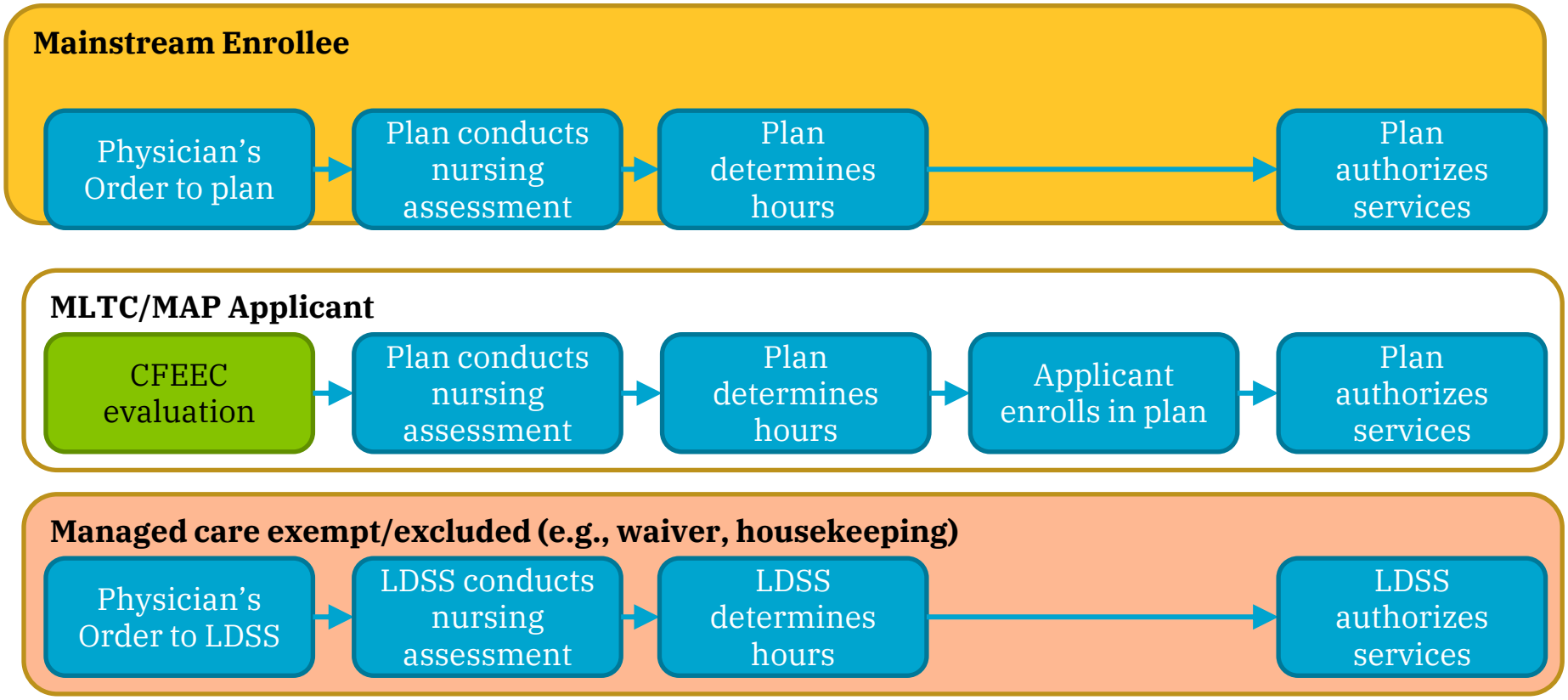
1. **CHA or IA** **Community Health Assessment** (Maximus Nurse assessment using the **UAS-NY**) –same as the old CFEEC.
2. **IPP** **Independent Practitioner Panel** –Maximus doctor, nurse practitioner, or physician assistant who will now schedule:
   - **CA** **Clinical Appointment** – Examination by the IPP, which then prepares PO
   - **PO** **Practitioner's Order** – *Replaces* the M-11q or DOH-4359 Physician's Order. Signed by IPP. Decides if eligible to enroll in MLTC or eligible for PCS/CDPAP if mainstream member or applying to DSS

If NYIA says may enroll in MLTC or obtain PCS/CDPAP in mainstream plan or LDSS – then MLTC, DSS, or MMC plan use above NYIA assessments to develop a Plan of Care.

If that plan is for > 12 hours/day then a third assessment is required.

3. **IRP** **Independent Review Panel** – New "high needs review" required if Plan or LDSS proposes hours more than 12 per day on average, *for the first time*

Old process – Before NYIA



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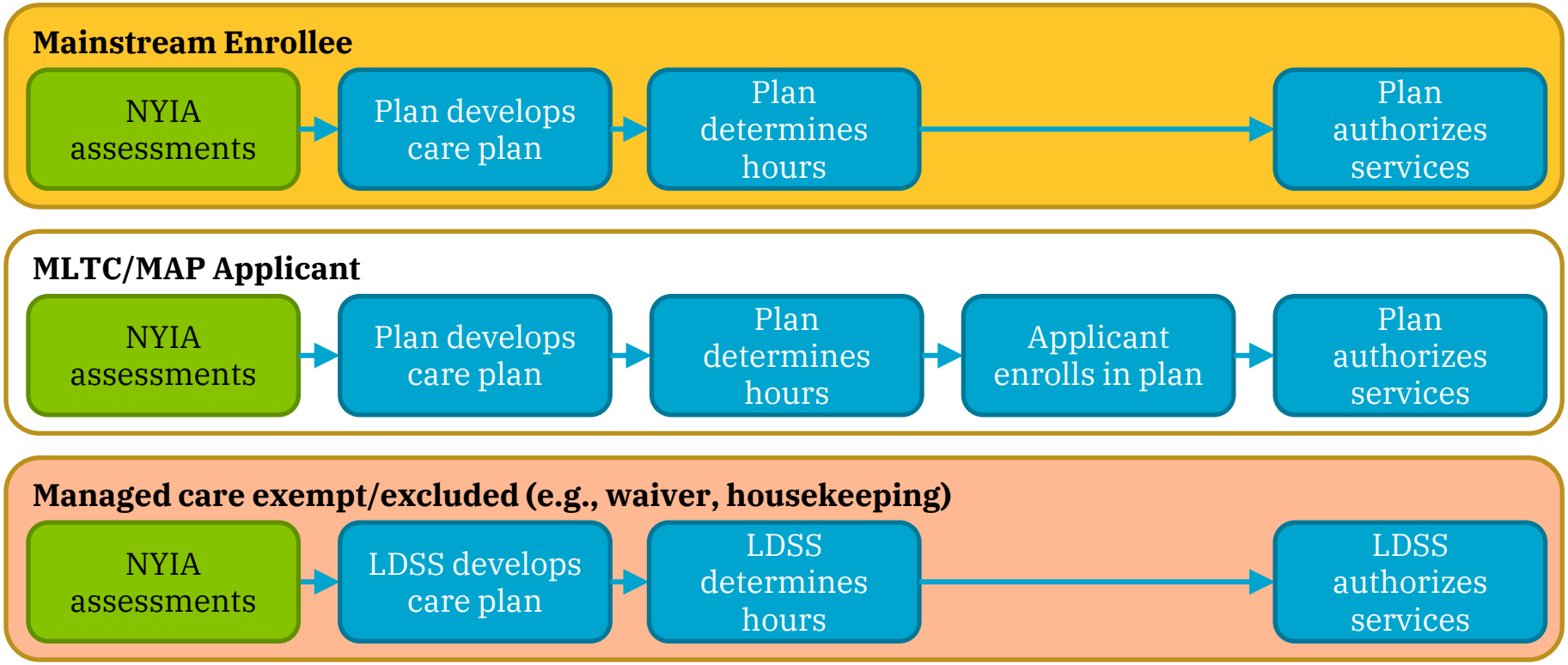
New process with NYIA



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Step 1: Call NYIA

- Same number as calling CFEEC: **855-222-8350**
- **Call center** is open M-F 8:30am-8:00pm, Sat 10:00am-6:00pm
- Purpose of call is to **schedule two appointments**: CHA and CA
- Consumer, caregiver, authorized rep, LDSS, or plan can call NYIA to initiate process
  - If plan calls, consumer must also be on the line
- Unlike CFEEC, NYIA will not schedule assessments if Medicaid application pending. Medicaid must be active. DOH MLTC Policy 22-01, pp. 5-6.

If seeking **Immediate Need** PCS/CDPAP – Apply at LDSS, which will arrange NYIA assessments. **DO NOT CALL NYIA directly**. See slides below

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Step 1: Call NYIA (Rep or Family)

- Caregiver, authorized rep should be able to call NYIA to initiate process
- To submit POA by FAX: (917) 228-8601
- MAIL: New York Medicaid Choice, POB 5009, New York, NY 10274
- Or submit NYIA Authorized Rep Designation form to same fax or address*

*https://nyia.com/content/dam/digital/united-states/new-york/nymc-ia/language-masters/en/pdf/MM-CF-0822.pdf; see https://nyia.com/en/can-i-choose-have-authorized-representative

Step 2: Schedule Two Appointments

- Both assessments should be within 14 days
- Consumer chooses either Zoom or in-person appointment – but longer wait for in-person
- CHA and CA can occur M-F 8:30am-5:00pm, Sa-Su 10:00am-6:00pm
  - 1-2 days before CHA appointment, NYIA will call consumer to remind them
- Must advocate for in person assessment if desired!
- Prep them for Zoom call (if chosen)
- Reminder to have Medicaid card and medications readily available

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Step 3: Community Health Assessment (CHA)

- Nurse from NYIA conducts UAS-NY assessment
- Virtually identical to former CFEEC assessment
- Takes about 2-3 hours
- Informal supports are encouraged to participate to give fuller picture of client's needs
- Regs provide that there may need to be an additional assessment of the home
- Expiration extended from **75 days** to **12 months**

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Tips for CHA

- **Someone who knows consumer's needs should be present** and point out help needed with each ADL and IADL
- **3-day rule –** UAS/CHA instructions require assessor to record the person's ***actual*** level of involvement in self-care and the type and amount of support ***actually*** received during the ***last 3 days only.****
  - Assessor does NOT record what they think consumer SHOULD receive or what consumer COULD do for themselves.
  - ***FH Judge might reject this reasoning but advocate should be prepared for this standard. Best if appellant has help during the 3 days before assessment!***
    (eg FH 8477309M ("any task that was completed by the Appellant without assistance in the three days prior to the assessment … gets marked that the Appellant is independent with the task, regardless of how difficult, insufficient, time consuming, or dangerous the task was for the Appellant. For example, the Appellant being labeled as "Independent" when bathing is because he bathed within the last three days without assistance, even if it was extremely difficult or dangerous for him to do by himself…").
- **Cueing & Verbal assistance** – this counts! Point out need for this type of assistance with each ADL (reminding to use walker, reminding to eat, cueing on post-elimination hygiene after toileting, cueing/contact guarding on stairs)
- **Informal care** – Be clear about whether and how much care each caregiver can and CANNOT continue to provide in the future –specify days and hours
- **Ask for in-person assessment**! May be worth the delay

UAS-NY Reference Manual, Aug. 2022 edition pp. 28-33 (Handout)

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Step 4: Clinical Appointment (CA) by Independent Practitioner (IP)

- Can be a MD, DO, Nurse Practitioner (NP), Physician Assistant (PA), or a Specialist Assistant licensed in New York State
  - IP cannot have any existing relationship with consumer
- Examines the consumer – telehealth or in-person
- Reviews the CHA
- Determines if consumer:
  - is self-directing (or has someone else who can direct care) who can fulfill responsibilities if seeking CDPAP
  - has a stable condition to receive PCS/CDPAP (see next slide)
  - can safely receive CBLTSS in the community
- Completes the **Practitioner's Order (PO)**

May also interview providers and others who may have insight into the individual's needs. 22 OHIP ADM-01 at 7; MLTC Policy 22.01 at 2.

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Practitioner Order (PO) – Is Medical Condition Stable?

- Whether medical condition is stable used to be a Yes/No question on the M11q/Physician's request for home care form.
- Definition of "stable medical condition" has been in state regulations for decades* – this is not new. It is defined as follows:
  a) the condition is not expected to exhibit sudden deterioration or improvement; and
  b) the condition does **not require frequent medical or nursing judgment** to determine changes in the individual's plan of care; and
  c) (1) the condition is such that a physically disabled individual is in need of routine supportive assistance and does **not need skilled professional care** in the home; or
  (2) the condition is such that a physically disabled or frail elderly individual does **not need professional care but does require assistance in the home to prevent a health or safety crisis from developing**.
- Definition disqualifies people who need "skilled" care by a nurse – above the level of training and scope of tasks of a personal care aide. NOTE that CDPAP aides MAY perform skilled needs.
- **TIP**: If seeking PCS *not* CDPAP – make sure you are not asking aide to put meds in consumer's mouth, administer insulin, etc. See Fair Hearing slide below.

*18 NYCRR 505.14(a)(3)(i)(a) – (c)

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Step 5 – Outcome Notice –Seeking MLTC

- 2-3 business days after completion of CHA & CA, NYIA mails consumer & authorized rep written Outcome Notice
- **If approves MLTC/MAP enrollment –**
  - Like CFEEC, notice says whether eligible to enroll
  - Consumer contacts MLTC/MAP plans for potential enrollment. Plans use NYIA assessments to determine hours but still do a "mini-assessment" to assess night needs, informal supports,* consumer preferences
  - If plan of care > 12 hours per day (24/7) – Plan must refer back to NYIA for Independent Review Panel (IRP). See STEP 6. ***Consumer may enroll while IRP pending***.
  - **Enrollment must be completed by the 18th of the month for services to start the 1st of the following month.**
- **If denies MLTC enrollment**, right to request a Fair Hearing against NYIA. See more below.

18 NYCRR § 505.14(b)(2)(iii)(a), MLTC Policy 22.01

Step 5 – Outcome Notice & Approval

Mainstream Members or LDSS applicants

- 2-3 business days after completion of CHA & CA, NYIA mails consumer & authorized rep written Outcome Notice
- Notices say whether medical condition is stable – required for PCS or CDPAP.
- Notice says ***may*** be eligible for CBLTSS, and whether can receive services safely in the community
- Consumer must contact their Mainstream plan or DSS and provide copy of Outcome notice. NYIA does not notify plan/LDSS of outcome. (Immediate need is different – see below).
- Plan/LDSS should follow up to develop care plan and authorize services.
  - See STEP 6 if plan of care > 12 hours.
- **If services denied**, Plan or LDSS give denial notice – NOT NYIA.

Step 6: If Plan/LDSS Approve > 12 hours – refer to NYIA Independent Review Panel (IRP)

- 3rd NYIA assessment *only required if* Plan/LDSS recommend > 12 hrs/day.
- IRP reviews NYIA assessments and determines if plan of care is "reasonable and appropriate" to maintain health & safety at home. May *recommend* changes in plan of care but **NOT specific amount of hours**. 505.14(b)(2)(v)(f).
- IRP *may* speak to applicant, representative, and/or primary care practitioner
- **Plan/DSS make final decision and issue notice. Does not have to take IRP recommendation**. 505.14(b)(2)(iii)(f)
- MLTC may enroll prospective member while IRP is pending.
- When NYIA later starts doing reassessments for current MLTC members & PCS/CDPAP recipients, those receiving > 12 hours/day will be **grandfathered and no** IRP will be required, even if requesting increase from live-in to split-shift*
- Since few plans authorize 24/7 care initially, IRP is rare – more common with HRA in Immediate Need cases.

* 22 OHIP/ADM-01 at 9-10; MLTC Policy 22.01 at 5, 10, MMC policy p. 6 – clarifies 18 NYCRR 505.14(b)(4)(xi)(b)

The Gray Areas

- The above slides say how process SHOULD work.
- But slides below show that the Outcome Notices can be very confusing.
- Also, the reality of how MLTC works causes problems.

Two Questions and Two Possible Answers on Each Outcome Notice

		Are you eligible for PCS/CDPAS?	
		No	Maybe
Are you eligible to enroll in MLTC/MAP?	No		
	Maybe		

There are no definitive "yes" answers, because MCO/LDSS makes final eligibility determination.

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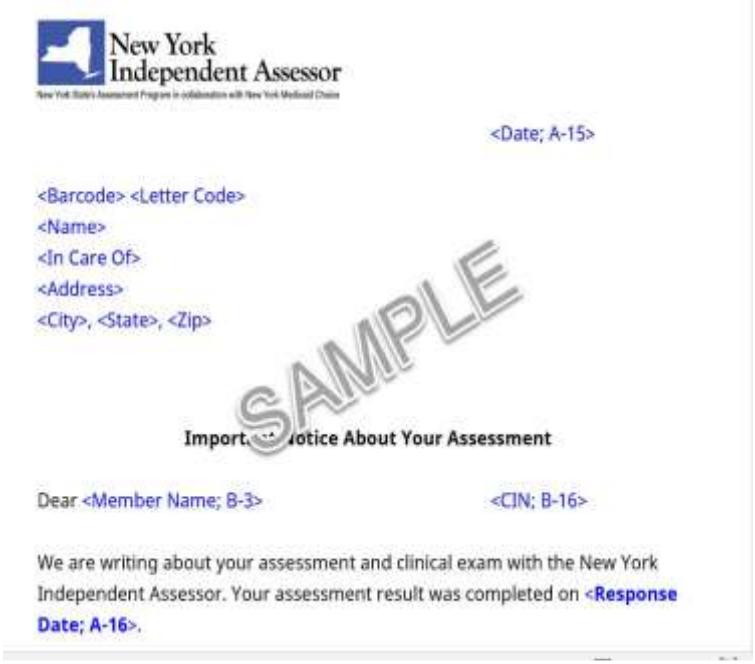
Outcome Notice Content



New York Independent Assessor

<Date; A-15>

<Barcode> <Letter Code>
<Name>
<In Care Of>
<Address>
<City>, <State>, <Zip>

SAMPLE

Import[illegible]otice About Your Assessment

Dear <Member Name; B-3> <CIN; B-16>

We are writing about your assessment and clinical exam with the New York Independent Assessor. Your assessment result was completed on <**Response Date; A-16**>.

- Section titled **Your assessment showed.** Informs the consumer of the outcome
- Multiple possible outcomes, depending upon the consumer's situation (MLTC/Mainstream/Immediate Need) and NYIA's findings
  - "You may be eligible for CBLTSS"
  - "You may qualify to receive LTSS through a MLTC plan"
  - "...however your health condition is not stable enough to get...care at home"
- These notices are very confusing, so **it's important that you get a copy of the notice** to properly advise them!

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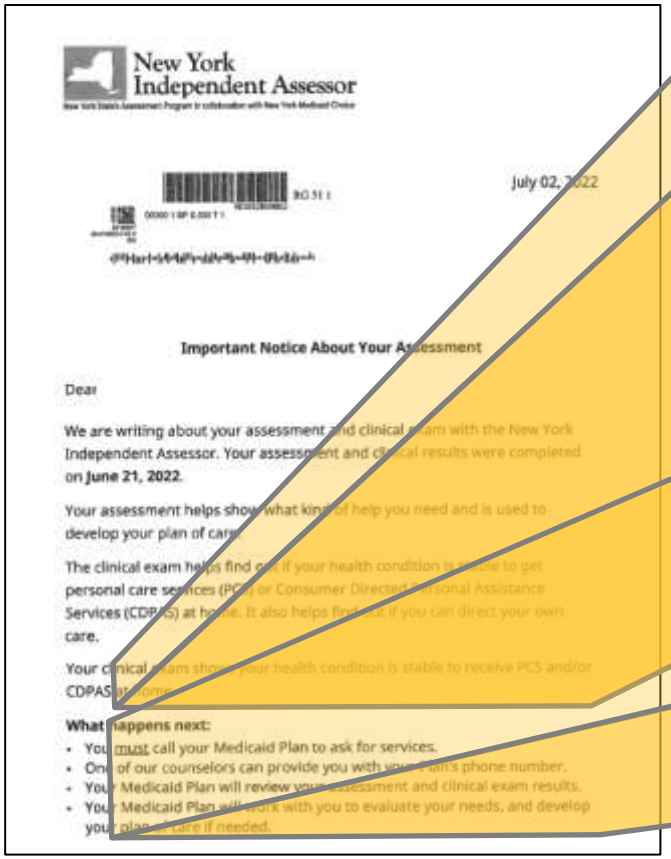
Outcome Notice:
Mainstream Enrollee *Might* be Eligible for PCS/CDPAS

Are you eligible for PCS/CDPAS?	
No	Maybe
	X



New York Independent Assessor

July 02, 2022

Important Notice About Your Assessment

Dear

We are writing about your assessment and clinical exam with the New York Independent Assessor. Your assessment and clinical results were completed on **June 21, 2022**.

Your assessment helps show what kind of help you need and is used to develop your plan of care.

The clinical exam helps find out if your health condition is stable to get personal care services (PCS) or Consumer Directed Personal Assistance Services (CDPAS) at home. It also helps find out if you can direct your own care.

Your clinical exam shows your health condition is stable to receive PCS and/or CDPAS at home.

What happens next:

- You must call your Medicaid Plan to ask for services.
- One of our counselors can provide you with your Plan's phone number.
- Your Medicaid Plan will review your assessment and clinical exam results.
- Your Medicaid Plan will work with you to evaluate your needs, and develop your plan of care if needed.

Your clinical exam shows your health condition is stable to receive PCS and/or CDPAS at home.

Translation: NYIA says you meet one requirement to get PCS or CDPAS from your Mainstream plan – a stable medical condition. But your Mainstream plan must still decide whether *they* believe you need help with ADLs and are eligible, and if so how many hours to approve.

What happens next:

- You must call your Medicaid Plan to ask for services.
- One of our counselors can provide you with your Plan's phone number.
- Your Medicaid Plan will review your assessment and clinical exam results.
- Your Medicaid Plan will work with you to evaluate your needs, and develop your plan of care if needed.

Translation: Your plan will need to schedule another "assessment," which is not really an assessment, to develop the plan of care and determine the number of hours.

Plan may still deny services! Right to request a Plan Appeal, then a Fair hearing.

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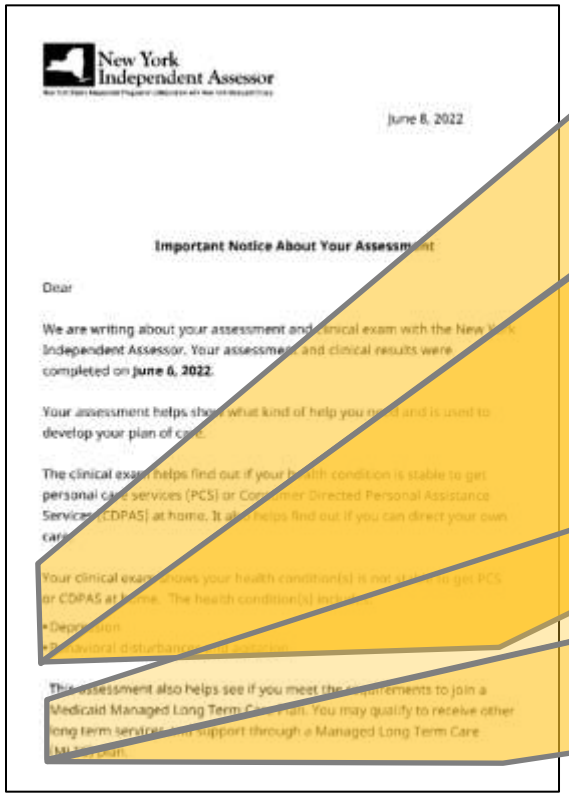
Outcome Notice:
MLTC applicant approved for enrollment but denied for home care

Are you eligible to enroll in MLTC/ MAP?	Are you eligible for PCS/CDPAS?	
	No	Maybe
No		
Maybe	X	


New York Independent Assessor

June 8, 2022

Important Notice About Your Assessment

Dear

We are writing about your assessment and clinical exam with the New York Independent Assessor. Your assessment and clinical results were completed on **June 6, 2022**.

Your assessment helps show what kind of help you need and is used to develop your plan of care.

The clinical exam helps find out if your health condition is stable to get personal care services (PCS) or Consumer Directed Personal Assistance Services (CDPAS) at home. It also helps find out if you can direct your own care.

Your clinical exam shows your health condition(s) is not stable to get PCS or CDPAS at home. The health condition(s) includes:

- Depression
- Behavioral disturbances and agitation

This assessment also helps see if you meet the requirements to join a Medicaid Managed Long Term Care Plan. You may qualify to receive other long term services and support through a Managed Long Term Care (MLTC) plan.

Your clinical exam shows your health condition(s) is not stable to get PCS or CDPAS at home. The health condition(s) includes:

- Depression
- Behavioral disturbances and agitation

Translation: NYIA finds your medical condition is not stable so you are not eligible to get PCS or CDPAS. If you enroll in MLTC/MAP, your plan might seek a variance if they disagree with us, or you can file a fair hearing if you disagree with us, or you can enroll in MLTC/MAP and receive services other than PCS/CDPAS (private duty nursing)

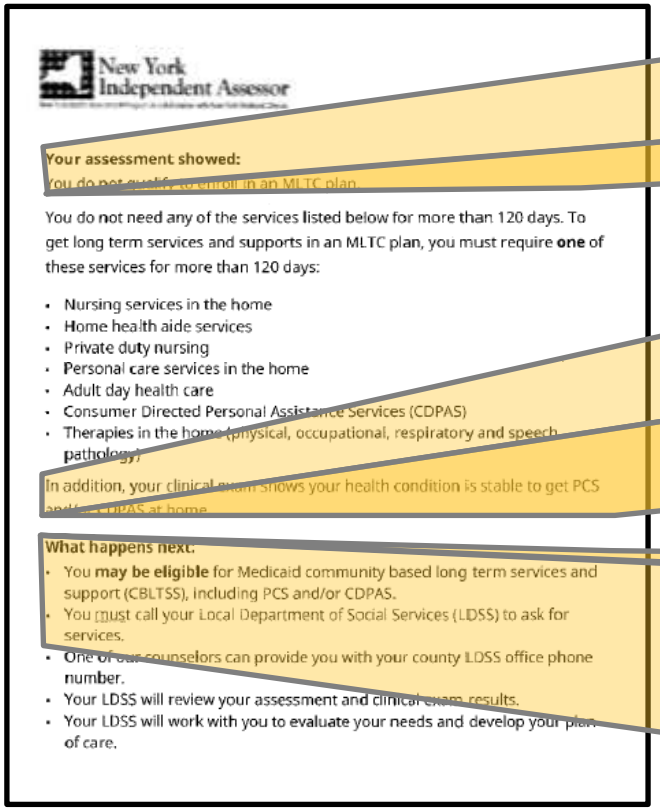
Medicaid Managed Long Term Care Plan. You may qualify to receive other long term services and support through a Managed Long Term Care (MLTC) plan.

Translation: NYIA believes you may be eligible to enroll in MLTC/MAP (because you need >120 days of CBLTC), even though you are not eligible for PCS/CDPAS but you might need Private Duty Nursing services or adult day health care.

May request Fair hearing to appeal NYIA Determination that Not Stable to get PCS/CDPAP

Outcome Notice:
MLTC applicant denied for enrollment but found medically stable for home care at LDSS

		Are you eligible for PCS/CDPAS?	
		No	Maybe
Are you eligible to enroll in MLTC/ MAP?	No		X
	Maybe		



New York Independent Assessor

Your assessment showed:
You do not qualify to enroll in an MLTC plan.

You do not need any of the services listed below for more than 120 days. To get long term services and supports in an MLTC plan, you must require **one** of these services for more than 120 days:

- Nursing services in the home
- Home health aide services
- Private duty nursing
- Personal care services in the home
- Adult day health care
- Consumer Directed Personal Assistance Services (CDPAS)
- Therapies in the home (physical, occupational, respiratory and speech pathology)

In addition, your clinical exam shows your health condition is stable to get PCS and/or CDPAS at home.

What happens next:
- You **may be eligible** for Medicaid community based long term services and support (CBLTSS), including PCS and/or CDPAS.
- You must call your Local Department of Social Services (LDSS) to ask for services.
- One of our counselors can provide you with your county LDSS office phone number.
- Your LDSS will review your assessment and clinical exam results.
- Your LDSS will work with you to evaluate your needs and develop your plan of care.

Your assessment showed:
You do not qualify to enroll in an MLTC plan.

Translation: This is equivalent to a CFEEC denial. You cannot enroll in MLTC/MAP unless you win a fair hearing or are found eligible on a subsequent assessment.

In addition, your clinical exam shows your health condition is stable to get PCS and/or CDPAS at home.

Translation: NYIA finds you do not need help with ADLs as required to qualify for MLTC/MAP, but you might qualify for Housekeeping (PCS Level I) through LDSS – capped at 8 hours/week

What happens next:
- You **may be eligible** for Medicaid community based long term services and support (CBLTSS), including PCS and/or CDPAS.
- You must call your Local Department of Social Services (LDSS) to ask for services.

Translation: You must contact your LDSS to be evaluated for Housekeeping (Level I PCS)

Strategy: Request new NYIA assessment. Or ask Plan to request a Variance – disputing a particular finding on the CHA – this results in a new CHA and PO.

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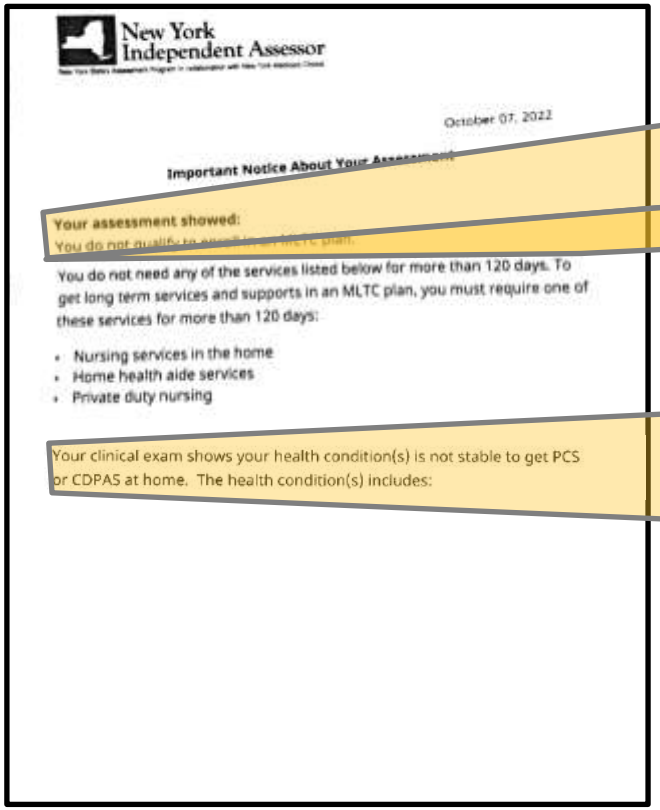
Outcome Notice:
MLTC applicant denied for both enrollment and home care

Are you eligible to enroll in MLTC/ MAP?	Are you eligible for PCS/CDPAS?	
	No	Maybe
No	X	
Maybe		



New York Independent Assessor

October 07, 2022

Important Notice About Your Assessment

Your assessment showed:
You do not qualify to enroll in an MLTC plan.

You do not need any of the services listed below for more than 120 days. To get long term services and supports in an MLTC plan, you must require one of these services for more than 120 days:

- Nursing services in the home
- Home health aide services
- Private duty nursing

Your clinical exam shows your health condition(s) is not stable to get PCS or CDPAS at home. The health condition(s) includes:

Your assessment showed:
You do not qualify to enroll in an MLTC plan.

Translation: This is equivalent to a CFEEC denial. You cannot enroll in MLTC/MAP unless you win a fair hearing or are found eligible on a subsequent assessment.

Your clinical exam shows your health condition(s) is not stable to get PCS or CDPAS at home. The health condition(s) includes:

Translation: NYIA believes you are not eligible to get PCS or CDPAS because of unstable medical condition. You can file a fair hearing if you disagree with us. NYIA does not refer you to LDSS because you need a stable medical condition for PCS Housekeeping services too.

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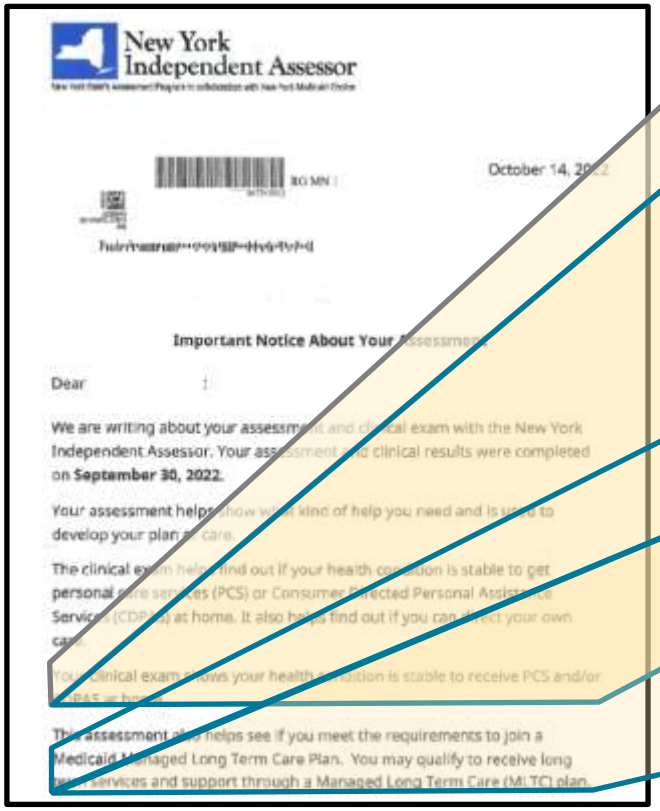
Outcome Notice:
MLTC applicant approved for both enrollment and home care

Are you eligible to enroll in MLTC/MAP?	Are you eligible for PCS/CDPAS?		
		No	Maybe
	No		
	Maybe		X



New York Independent Assessor

October 14, 2022

Important Notice About Your Assessment

Dear

We are writing about your assessment and clinical exam with the New York Independent Assessor. Your assessment and clinical results were completed on **September 30, 2022.**

Your assessment helps show what kind of help you need and is used to develop your plan of care.

The clinical exam helps find out if your health condition is stable to get personal care services (PCS) or Consumer Directed Personal Assistance Services (CDPAS) at home. It also helps find out if you can direct your own care.

If your clinical exam shows your health condition is stable to receive PCS and/or CDPAS at home.

This assessment also helps see if you meet the requirements to join a Medicaid Managed Long Term Care Plan. You may qualify to receive long term services and support through a Managed Long Term Care (MLTC) plan.

Your clinical exam shows your health condition is stable to receive PCS and/or CDPAS at home.

Translation: NYIA believes your medical condition is stable so you might be eligible for PCS/CDPAS

Medicaid Managed Long Term Care Plan. You may qualify to receive long term services and support through a Managed Long Term Care (MLTC) plan.

Translation: NYIA believes you may be eligible to enroll in MLTC/MAP (because you need >120 days of CBLTC)

WARNING: MLTC plan may still deny enrollment, saying CHA doesn't show any or enough ADL needs. See next slide.

What if MLTC Plan says …

MYTH: "We can only give you 12 hours/week because of NYIA assessment."

Fact: Plan -- not NYIA -- decides number of hours. MLTC Policy 22.01 pp. 4-6.

- **Reality**: MLTC Plan payments (capitation rates) are based partly on the NYIA ADL scores of their members. So they discourage enrollment of consumers with low ADL scores.
- **Strategy 1**: Ask plan to request a **VARIANCE** from NYIA.* This is a re-do of the CHA based on factual or clinical error. Ask plan to show you the ADL scores on NYIA CHA and point out the errors. Downsides - can cause a delay, and might not help! Also, plans get penalized for asking for too many assessments.
- **Strategy 2**: Enroll in plan, accepting the low hours initially. Then request an increase in hours immediately, providing doctor's letter, night logs, etc. to demonstrate need.
  - Appeal the denial of the increase – first in a Plan Appeal, then at a Fair Hearing and/or External Appeal.

*18 NYCRR §§505.14(b)(2)(iv)(d); MLTC Policy 22.01 pp. 6-7

What if Mainstream Plan or NYIA Says --

Myth: "If you want PCS/CDPAP you need to switch to an MLTC plan."

- **FALSE** – Mainstream plans are required to give same PCS/CDPAP services that MLTC plans give. A mainstream member may only switch to MLTC if they need one of 3 services only available in MLTC: Social adult day care, environmental modifications (ie. stairlift), or home delivered meals. DOH MLTC Policy 14.01.

Myth: Under NYIA assessment, plan says we can only give you 6 hours/week of PCS/CDPAP.

- **FACT**: Plan – not NYIA- determines plan of care – which can be up to 24-hour split shift continuous care.

Strategies: If NYIA determined you do not need PCS/CDPAP – or have low ADL needs - ask plan to request a VARIANCE (re-do of CHA)(See previous slide – same as for MLTC).

- If Mainstream plan approves PCS/CDPAP but fewer hours than you requested, they should provide *Initial Adverse Determination* notice, which you appeal first with a Plan Appeal then with a Fair Hearing. You can also request an increase with medical evidence, then appeal if that is denied.

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Role of LDSS – HRA Home Care Services Program Procedures

- If exempt or excluded from MLTC or Mainstream managed care (see Slide 14 above), may apply to LDSS for PCS or CDPAP up to 24/7 split- shift care.
- If not applying with *Immediate Need,* once Medicaid approved by LDSS, consumer may call NYIA directly. There is no direct referral process from LDSS to NYIA except for Immediate Need.
- Once NYIA issues ***Outcome Notice***, it's up to the consumer to contact LDSS and provide copy of notice, even if consumer already told LDSS they were applying for PCS/CDPAP and LDSS told them to call NYIA.
- **In NYC – Fax Outcome Notice** to **HCSP Central Intake (212) 666-1459 and CALL intake at (929) 221-8851/ 8889**. **Warning** these numbers have all been problematic. Call & Fax!
- LDSS/HRA develops Plan of Care (PoC) based on CHA & PO & its own mini-assessment (visits the home to ensure safe environment)
- Obtain applicant's agreement with PoC and provide them a copy
- Issue notices for approvals, denials, reductions and discontinuances
- Appearing in Fair Hearings to challenge those notices (even if based on NYIA determinations)
- LDSS may call NYIA as a witness to a Fair Hearing

N.Y. Health, Administrative Directive: New York Independent Assessor for Personal Care (PCS) and Consumer Directed Personal Assistance Services (CDPAS), 22 OHIP/ADM-01 at 11 (4/20/2022).

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IMMEDIATE NEED AND NYIA

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Background on Immediate Need

- In 2015, NY passed a law requiring Medicaid to create an expedited application process for people with an immediate need for home care services (PCS/CDPAS).
- **Applicants without Medicaid – applying for both Medicaid and PCS/CDPAP**
  - LDSS must issue decision on Medicaid application within 7 days
  - LDSS must issue decision on PCS/CDPAS within 12 days
- **Medicaid Recipients requesting PCS/CDPAP**
  - LDSS must issue decision on PCS/CDPAS within 12 days

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NY Soc. Serv. L. §366-a(12); 18 NYCRR § 505.14(b)(6) & (7); § 505.28(k) & (l).

Who is eligible for Immediate Need?

- Medicaid applicants/recipients who:
  - have an **immediate need for PCS or CDPAS**;
  - have no informal caregivers who can provide *needed* care;
  - are not receiving *needed* assistance from a home care services agency;
  - have no third party insurance or Medicare benefits available to pay for *needed* assistance; and
  - adaptive or specialized equipment or supplies are not in use to meet, or cannot meet, their need for assistance

Eligible even if have some informal care or CHHA care, if it is not enough to provide as much care as is *needed*

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NYIA Immediate Need Process with Changes 12/1/2022

Apply

- Medicaid application if necessary;
- Attestation of Immediate Need form (**revised form**)
- Practitioner Statement of Need (DOH-5779) -- **New form**

LDSS contacts NYIA

- LDSS conducts "due diligence review" to ensure individual has immediate need
- LDSS uploads Expedited/Immediate Need Assessment Request to NYIA portal
- LDSS places a 3-way call with applicant and the NYIA Operational Support Unit (OSU) to schedule CHA and CA

NYIA Assess-ments

- CHA and CA should be completed within 6 calendar days of the 3-way call.

Outcome Notice

- NYIA issues Outcome Notice within 2-3 business days of completion of CHA and CA

LDSS Authorizes Services

- Within 12 days from application – LDSS does mini-assessment, home assessment, develops plan of care and authorizes services. If approves > 12 hours/day must refer for IRP – Independent Review Panel before authorizes care.

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Step 1: Submit Application to LDSS

1. HCSP-3052 Transmittal (NYC only)
2. Medicaid Application (DOH-4220 & 5178A) unless already has Medicaid
3. DOH Attestation of Immediate Need -- **DOH- 5786 REVISED - replaces OHIP-0103**
4. OCA 960 HIPAA Authorization
5. Cover Letter
   - status of Medicaid if previously approved or filed,
   - how the applicant was managing previously and what precipitated the Immediate Need
   - whether there are other services in place, informal supports, or why no longer available
6. Request for Spousal Impoverishment (if applicable)
7. **DOH-5779 Practitioner Statement of Need - NEW**
   - Replaces physician's order (M-11q/DOH-4359)
   - Can be completed by a MD, DO, NP or PA
   - If applicant submits physician's order, DSS should accept it without requesting a DOH-5779

N.Y. Health, 22 OHIP/ADM-01 at 13 (4/20/2022).

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NYC - E-FAX above to HRA-HCSP - 1-917-639-0665

Step 2: LDSS Requests NYIA Assessment

- **Individuals may not call NYIA directly for Immediate Need**! They must file request with LDSS - which then transmits request to NYIA and works with NYIA to schedule assessments.
- "Upon receipt of both the signed Attestation and Practitioner Statement of Need forms, as well as the completed Medicaid application, where applicable, the LDSS must refer adult individuals to the NYIA immediately and without delay."*
- LDSS submits **Expedited/Immediate Need Form** (see next slide) to NYIA via a dedicated URL.
- The LDSS also initiates a three-way call with the Operational Support Unit (OSU) at 855-665-6942, the LDSS and the individual.

*N.Y. Health 22 OHIP/ADM-01 at 13 (4/20/2022).

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NYIA Immediate Need Assessment Request Form

Not for use by consumers/ advocates

Must be completed and submitted by LDSS to NYIA

New York Independent Assessor

Expedited/Immediate Need Assessment Request Form

SECTION 1. MANAGED CARE ORGANIZATION (MCO)/ LOCAL DEPARTMENT OF SOCIAL SERVICES (LDSS) CONTACT INFORMATION

MCO/LDSS Name

MCO/LDSS Contact Name

Contact Email Address

Contact Telephone Number

SECTION 2. INDIVIDUAL'S [illegible] INFORMATION

Last Name

First Name

MI

DOB (MM/DD/YYYY)

Medicaid CIN

Social Security Number

Telephone Number Landline Mobile

Address (No. and Street)

City

State

Zip Code

Email Address

AUTHORIZED REPRESENTATIVE (IF APPLICABLE)

Last Name

First Name

MI

Relationship to Individual

Address (No. and Street)

City

State

Zip Code

Telephone Number Landline Mobile

Email Address

A legally authorized representative for the purpose of sharing health information is defined as "a person or agency authorized by state, tribal, military or other applicable law, court order or consent to act on behalf of a person for the release of medical information."

SECTION 3. EXPEDITED/IMMEDIATE NEED ASSESSMENT REQUEST INFORMATION

Date Supporting Documents/Information Received by MCO/LDSS to Support Expedited/Immediate Need Request (MM/DD/YYYY)

Date Request Sent to Independent Assessor (MM/DD/YYYY)

05/04/2022

Assessment Request Type

- Initial Assessment
- Reassessment
- Change in Condition

MCO/LDSS Authorization

Name (please print)

Signature

Click here to sign

Date (MM/DD/YYYY) 05/04/2022

SAMPLE

SAMPLE

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Step 3: NYIA Conducts Assessments

- Once Immediate Need is verified through the LDSS by submission of the Expedited/Immediate Need Form, NYIA will schedule a CHA and CA to be completed within **6 calendar days**
- At this stage, the NYIA assessment process is the same as for non-Immediate-Need cases (CHA, CA, etc.)

Step 4: NYIA Outcome Notice

- The Outcome Notice must be mailed within **2-3 business days** after completing the CHA and CA – same as other Outcome notices – not expedited.
  - The latest an applicant should learn of the outcome of their NYIA is about 12 days after the LDSS submits the Expedited/Immediate Need form (6 + 3 + 3 days for mailing)
  - This appears to make it virtually impossible for LDSS to comply with law that they must issue decision within 12 days

N.Y. Heallth 22 OHIP/ADM-01 at 14 (4/20/2022).

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Step 5: LDSS Authorizes Services

Ambiguity around timeline:

- "The LDSS continues to have **no more than 12 calendar days** from receipt of the Attestation of Need and Practitioner Statement of Need, and when applicable a completed Medicaid application, **to refer the individual to the NYIA** for an Immediate Need CHA and clinical appointment, review the outcome, develop a POC and authorize PCS and/or CDPAS as needed."*
- If the DSS determines a plan of care of greater than 12 hours/day is medically necessary, LDSS must send case to NYIA Independent Review Panel. See slide 34 (same as for MLTC).
- DSS *may* (not *must*) authorize "temporary" care > 12 hours/ day pending the High Need IRP Review if can't meet deadlines – MLTC Policy 22-01 pp. 5-6

*N.Y. Health, 22 OHIP/ADM-01 at 14 (4/20/2022); 16 OHIP/ADM-2 at 4.

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CLE Code #2

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MMC EXPEDITED AUTHORIZATION AND NYIA

12/1/2022

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NYIA & Mainstream Expedited Process

Call Plan
- MMC/HIV-SNP/HARP enrollee calls their plan to request an expedited service authorization for PCS/CDPAS

Plan Contacts NYIA
- Plan uploads Expedited/Immediate Need Assessment Request to NYIA (using form in MMC 11/23/22 guidance)*
- Plan places a 3-way call with enrollee and the NYIA Operational Support Unit (OSU)

NYIA Assess-ments
- Upon receipt of the form, the OSU Coordinator will schedule both the CHA and CA to be completed within 6 calendar days of the call.

Outcome Notice
- NYIA issues Outcome Notice within 2-3 business days of completion of CHA and CA

Plan Authorizes Services
- 72 hours from application? Not possible! See next slide.

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*MMC Guidance - Process for Expedited Request for NYIA Assessment - (Web) - (PDF) - 11.23.2022
https://www.health.ny.gov/health_care/managed_care/plans/mmc_guidance.htm

Mainstream Service Authorizations

Type of Request	Maximum time for Plan to Decide
Expedited*	**72 hours after receipt of request,** though plan may extend up to 14 calendar days if needs more info.
Standard	**14 calendar days from receipt of request,** though plan may extend up to 14 calendar days if needs more info.

MMC guidance 4/28/22** p. 5 says deadlines run from date of request *only if a current CA & IPP are on file* – under fiction that only physician's order can start the clock. We think this violates federal reg that says time runs from **receipt of the request** for service. 42 CFR 438.210(d).

***Expedited if delay would seriously jeopardize the enrollee's life or health or ability to attain, maintain**, or regain maximum function. 42 CFR 438.210(d)

** https://www.health.ny.gov/health_care/managed_care/plans/docs/mmc_nyia_guidance.pdf

Who is eligible for expedited service authorization?

- Plan must process the request on the expedited timeline where:
  - **a provider indicates** that following the standard timeframe could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function; OR
  - **the plan determines** that following the standard timeframe could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function

42 CFR § 438.210(d)(2)(i)

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FAIR HEARINGS

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Fair Hearings

Statute of Limitations

- 60 days from the date of the outcome notice

How to Request a Fair Hearing:

- Online: https://errswebnet.otda.ny.gov/erequestform.aspx
- Mail or fax form https://otda.ny.gov/hearings/forms/request.pdf
- Request over the phone 1-800-342-3334
- You may request **EXPEDITED FH** – scheduled QUICKLY!

Evidence Packet Requests:

- NYIAfairhearings@maximus.com
- nyfairhearings@maximus.com

NYIA's role at the hearing will depend on Medicaid population:

- Denial of MLTC enrollment—NYIA appears as the agency.
- Denial of PCS/CDPAP for MMC recipient—MMC plan defends the denial and NYIA guidance says appellant or plan may call NYIA as a witness, but does not say how. (MMC policy p. 10).
- Denial of PCS/CDPAP for LDSS consumer—LDSS defends the denial and 2022 OHIP/ADM-01 p.11 says appellant may call NYIA to appear as a witness at the hearing but does not say how.

https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-02-16_mmco.pdf slide 21

Fair Hearing Decisions

- NYIA denial MLTC enrollment based on medical condition not stable; Expedited FH
  - FH 8480913Z (NYC)(risk of falling not render condition unstable!)
- NYIA decisions that no need for 120+ days CBLTC - reversed
  - FH 8477309M (Albany)
  - FH 8483074N (NYC)(87-y-o with dementia – son can't be required to provide "voluntary" care)
- **Warning**: Can be difficult to implement a winning decision. In #8477309M, the CHA indicated no ADL needs, so NYIA claimed a new CHA had to be done, even though FH decision reversed denial of MLTC enrollment.
- **TIP**: Ask ALJ to order enrollment without requiring a new CHA!
- **File complaints** with Independent.assessor@health.ny.gov AND mltctac@health.ny.gov to get compliance!

Look these up at https://otda.ny.gov/hearings/search/

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REFERENCES/ RESOURCES

And WHERE TO COMPLAIN!

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Complaints to the DOH about NYIA

Send to BOTH:

1. Independent.assessor@health.ny.gov
   (518) 474-5888
2. And appropriate DOH Complaint Unit – either:
   - **MLTC DOH Complaint Unit**
     1-866-712-7197 mltctac@health.ny.gov
     OR
   - **MMC (Mainstream)- DOH Complaint Unit**
     managedcarecomplaint@health.ny.gov
     1–800–206–8125
   - **DSS has no DOH complaint unit so just send to #1**

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NYLAG's Past Advocacy

Advocacy:

- 12/15/21 Letter to DOH from NYLAG & Medicaid Matters NY, with 1/6/22 update http://www.wnylc.com/health/download/801/
- 2/2/22 Letter - http://www.wnylc.com/health/download/807/
- 3/25/22 Letter - http://www.wnylc.com/health/download/812/
- 5/3/22 NYLAG questions about the new policies http://www.wnylc.com/health/download/814/

- NYLAG & NYSBA COMMENTS on proposed regs http://www.wnylc.com/health/download/771/ (3/13/21)
- **See prior NYLAG comments from when regulations were proposed** http://www.wnylc.com/health/news/85/#comments

Alphabet Soup! Acronym Reference!

NYIA - New York Independent Assessor – replaces CFEEC (Conflict-Free Evaluation and Enrollment Center) – Has **3 functions:**

1. **CHA or IA Community Health Assessment or Independent Assessment** (Maximus Nurse assessment using the **UAS-NY**)
2. **IPP Independent Practitioner Panel** –Maximus doctor, nurse practitioner, or physician assistant who will now schedule:
   - **CA Clinical Appointment** – Examination by the IPP, which then prepares --
   - **PO Practitioner's Order** – Replaces the M-11q or DOH-4359 Physician's Order. Will be signed by IPP.
3. **IRP Independent Review Panel** –New review required if plan or LDSS proposes hours more than 12 per day on average, *for the first time*

Acronyms used here that are NOT changing --

- **PCS** – Personal care services
- **CDPAP** – Consumer Directed Personal Assistance Program
- **DSS** – Local county Dept. of Social Services (HRA in NYC) --Medicaid agency that handles all applications for Medicaid and requests for PCS/CDPAP

  (1) for people excluded or exempt from MLTC or mainstream managed care or

  (2) applying based on Immediate Need for home care
- **TBI and NHTDW** – Traumatic Brain Injury & Nursing Home Transition & Diversion Waiver
- **MMC - Mainstream Medicaid Managed Care –** mandatory plans for those without Medicare or other primary insurance, and who have no spenddown. Mostly under age 65, but also includes elderly or disabled SSI recipients who don't have Medicare, often because of immigration status. Members of these plans must request PCS or CDPAP from the plan and all other Medicaid services.

How to Stay Up to Date

- Sign up for NYLAG EFLRP e-lerts with updates here http://eepurl.com/deQxtr - select TOPIC: Medicaid, long-term care
- Look for updates at www.NYHealthAccess.org http://www.wnylc.com/health/news/85/
- Visit DOH's NYIA websites: https://www.health.ny.gov/health_care/medicaid/redesign/nyia/ and https://nyia.com/en (also can choose Spanish) has FAQs

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Please donate if receiving CLE credit!

- Help us keep these trainings free to the public.
- We suggest a $100 donation if you are requesting CLE credit (or even if you're not! ☺)
- Please send a check payable to "NYLAG" earmarked to EFLRP and send to:
  - Development– NYLAG, 100 Pearl St., 19th fl. NY NY 10004
- Or donate at https://nylag.org/donate-now/ and earmark for EFLRP/ Evelyn Frank program
- THANK YOU!

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THANK YOU

More information at nylag.org and nyhealthaccess.org

Please donate to support us!

https://www.nylag.org/donate-now/

At prompt please designate Evelyn Frank program!

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