2024 NYS Medicaid & Home Care Updates

2024 ELDER LAW FORUM

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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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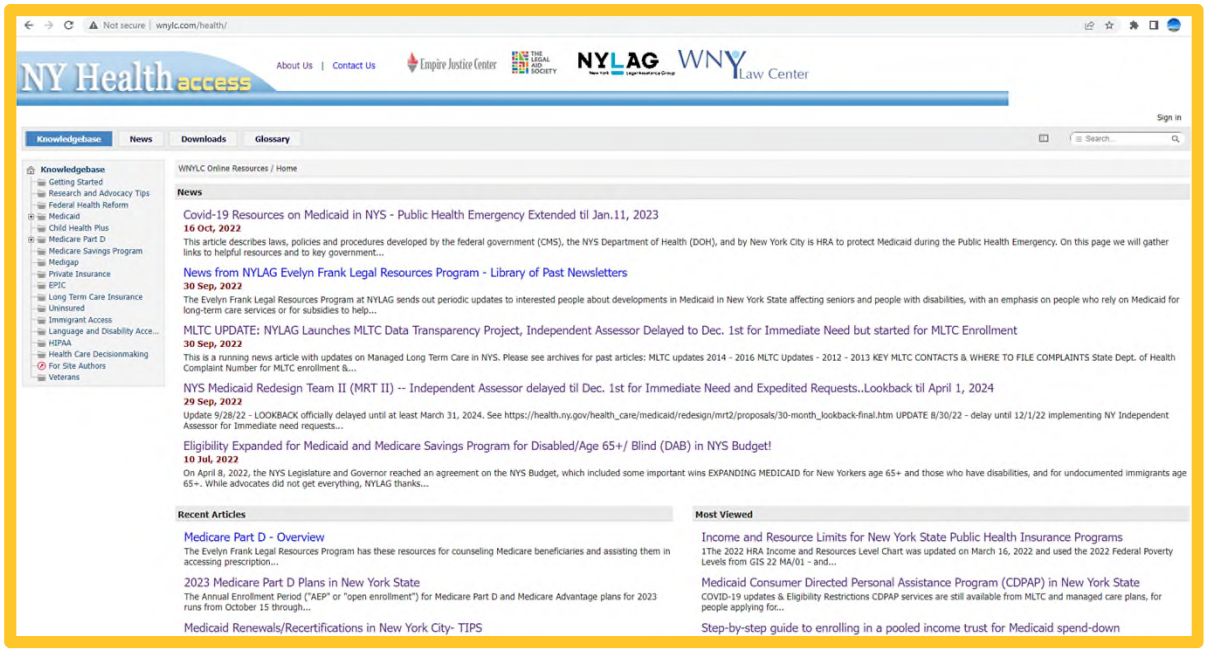
EFLRP Services (continued)

- Educating the public through the website www.nyhealthaccess.org or http://health.wnylc.com/health/



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

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AGENDA

- Changes in CDPAP enacted in recent NYS Budget FY 24-25
- Medicaid for Undocumented Immigrants 65+
- "Unwinding" of Public Health Emergency – special rules for Medicaid renewals til 12/31/24
- On the horizon:
  - 30-month lookback for home care, ALP
  - ADL restrictions on eligibility for personal care, CDPAP
- NY Independent Assessor Update
- Not covered – see info on:
  - MLTC Involuntary disenrollment – when can plan kick you out? New MLTC Policy 23.03
  - Transportation Carved out of MLTC Benefit Package – Mar. 1, 2024
  - MEDICAID DENTAL COVERAGE -- EXPANDED 1/31 2024

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CDPAP CHANGES IN NYS BUDGET FY 2024-25

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CDPAP Changes Enacted Eff. 4/1/25

We will cover:

1. **What was enacted?**
2. **What was proposed but rejected?**
3. **WHY Did Governor Propose to Cut CDPAP – Myths and Facts**

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CDPAP – Background

- About 200,000 NYS Medicaid recipients receive CDPAP. This includes:
  - About half of all MLTC members, who receive CDPAP instead of traditional personal care out of preference or because of aide shortage.
  - "Mainstream" managed care plan member (who mostly have Medicaid only -- do not have Medicare or other insurance)
  - People in waivers (OPWDD, TBI, NHTDW) who receive CDPAP from their Local DSS/HRA.
  - and others who receive CDPAP from local DSS/HRA.
- Now, there are 600-700 Fiscal Intermediaries (FI) – the agencies that administer payroll and benefits for CDPAP Personal Assistants (PA's). They contract with MLTC and managed care plans, and with local Medicaid agencies like HRA to provide CDPAP services.
- About 300,000 Personal Assistants (PA's) provide CDPAP services.
- Consumers prefer CDPAP because they can hire family or friends who speak their language and know cultural preferences, and can perform skilled tasks not allowed for traditional aides. Also vital because of aide shortage.

CDPAP – Changes Enacted Effective 4/1/25

Under the NYS Budget enacted 4/2024:

- **On 4/1/25, all but a handful of current FI's must stop providing Medicaid CDPAP services. Many will go out of business, or will still offer traditional home care services as Licensed Home Care Services Agencies (LHCSA).**
- **Between now and then, the State will contract with a new FI to serve as the SOLE FI for the whole state. A few existing FI's will remain in business as subcontractors to the new FI – see next slide.**

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CDPAP – Single FI + Subcontractors

- **The single FI must have operated as a statewide FI in other state. This narrows the possible FI's to just a few – most likely PPL https://pplfirst.com/. Or Tempus Unlimited, Acumen, & GT Independence.**
- **The single FI *shall* subcontract with:**
  1. **An FI housed in an Independent Living Center (ILC) since before 1/1/24. (There are 11) https://ilny.us/membership**
     - **Law unclear if single FI must subcontract with only ONE ILC – or with all 11**
  2. **AND at least 1 FI in each "rate-setting region" that has been providing FI service since 1/1/2012, with a track record of providing services to individuals with disabilities and the senior population.**
     - **Unclear what these regions are and how many there are (4? 8-9?)**

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CDPAP changes to happen by April 1, 2025

1. State must select the new FI
2. FI must select its subcontractors
3. All plans and local DSS must enter contracts with the new FI and transfer all 200,000 consumers with their Plans of Care to the new FI.
4. All PAs (300,000!) must enroll with the new FI – or a subcontractor -- to get paid, keep health insurance, etc.
5. Consumers (200,000) must receive notice of changes. Will they have opportunity to keep FI if it becomes a subcontractor?

BIG CONCERNS about DISRUPTION IN CARE! And disruption in PAYMENT to PAs. Other states with single FI are MUCH smaller, less complicated. And still they had problems – workers not paid, consumers without services.

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Training for CDPAP PA's

- The budget law authorizes DOH to adopt regulations "to carry out the objectives of the program including minimum safety, health & immunization criteria and training requirements for PA's."
- A hallmark of CDPAP since it started as a demo in the 1980's, and statewide under 1995 state law*, is that the consumer or their rep trains the PA. Only people who can show ability to direct and train PAs are approved for CDPAP – so no outside training is necessary.
- Standard aide training doesn't cover skilled tasks PA's may perform – injecting insulin, administering oxygen or tube feeding, etc. Now, family trains or arranges training.
- Adding this burden will deter PA's from working – and will cause more delays and access problems for consumers.

*NY Social Services Law SSL Sec. 365-f

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REJECTED CDPAP Proposals

Gov. Hochul proposed these other CDPAP changes that were rejected in the Budget:

1. **Elimination of wage parity for CDPAP workers in NYC and metro area –**
   - **Would have reduced wages, making it harder for consumers to find a PA and denying PA's a living wage**
2. **Limiting CDPAP to Self-Directing Consumers –**
   - **Would have disqualified from CDPAP all consumers with dementia and other cognitive impairments, and minor children under 18, whose family or other trusted person directs their care.**

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WHY the Push to Cut CDPAP?

CDPAP usage has grown a lot in the last 5+ years, so DOH wants to cut it back.

- **FACT: More consumers MUST use CDPAP because of the dire home care workforce shortage in NYS. MLTC plans often REQUIRE them to join CDPAP to get home care.**
- **FACT: The State has charged fraud within CDPAP with no evidence.**

  In 2022, the Medicaid Inspector General found 99% claims accuracy in a review of CDPAP claims. 7 out of about 350,000 PAs were referred to AG Medicaid Fraud Control Unit, or 0.002% of CDPAP workers

  In the same year the Medicaid IG identified $19.1 million in MLTC fraud and the NYS Comptroller found that over six years, MLTC plans had received $700 million in improper payments for individuals who were not enrolled in the program and another $2.8 billion for individuals who received virtually no care

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WHY the Push to Cut CDPAP?

- **FACT: In 2016, NYS law newly allowed certain family members to serve as PAs – adult children of aging parents, parents of adult disabled children. Before, family was torn between the need to work and earn a paycheck and care for their loved one. Now they could do both.**
- **This caused some growth in CDPAP – improving health & safety and preventing nursing home placement for thousands of consumers who, because of the workforce shortage, would otherwise lack access to home care.**
- **Cutting CDPAP defeats national & state priority of supporting caregivers!**

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Scapegoating CDPAP for MLTC Growth

- Since 2015, when MLTC was fully rolled out statewide, MLTC enrollment has more than doubled – from 143,000 to 296,000.
- State blames CDPAP for that explosive growth without looking at the incentives baked into the MLTC model.
- Plans make money by recruiting and enrolling new members/ Since plans are paid the same premium *per member per month*, they make money on enrolling members who receive few hours of care.
- Plans enlist and reward all of their providers – home care agencies, FI's, adult day care centers – who bring them new members who need few hours of home care.
- When plans deny an increase in hours, they hope a member with higher needs will change plans. Or they force the member through the long chain of appeals – or refuse to reinstate services for a member who was hospitalized or in rehab – leading to disenrollment from the plan. This all saves the plans money while the state pays a high premium.
- CDPAP is just a scapegoat.

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Solution: Replace MLTC Model with Managed Fee for Service

- **NYLAG supports a the Home Care Savings and Reinvestment Act (S7800/A8470) (Rivera/Paulin) that would end the perverse incentives of capitation that are to blame for rising home care costs.**
- **The bill would replace the MLTC system with a Managed fee-for-service model, where a Care Coordination Entity (CCE) paid by the State would determine the service plan, including hours of home care. Providers would bill Medicaid fee for service.**
- **Connecticut replaced its managed care program with this model.**
- **Estimated savings of billions by SEIU and by Paul Francis, a former Deputy Secretary in NYS govt.***
- **This would eliminate the middleman MLTC plans with all of their administrative costs and profits. Since plans give most of their members few hours of care, while pocketing large capitation premiums, the State would save money by paying just for the care that is used.**

***Step Two Project report on MLTC**
https://tinyurl.com/StepTwoMLTC

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Solution – Senate Bill 9266:

Increase Data Transparency & Accountability

NYS Senator Rachel May just introduced Senate Bill 9266 that will increase transparency about:

- **How much home care and other services plans provide, with the percentage of members receiving the highest and lowest amounts of home care and in between. See next slide.**
- **Plans' administrative costs and profits**
- **ADA/Olmstead issues – the percentage of members admitted to nursing homes who return home, vs. how many are permanently institutionalized or disenrolled after 120 days in a nursing home. See http://health.wnylc.com/health/entry/199/**
- **Access & Plan capacity– how long do members wait before services start? How many members go without services because of lack of aides?**
- **Appeals – How many members win challenges to denials of sufficient hours?**

https://www.nysenate.gov/legislation/bills/2023/S9266

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See next slide re what the hourly categories mean

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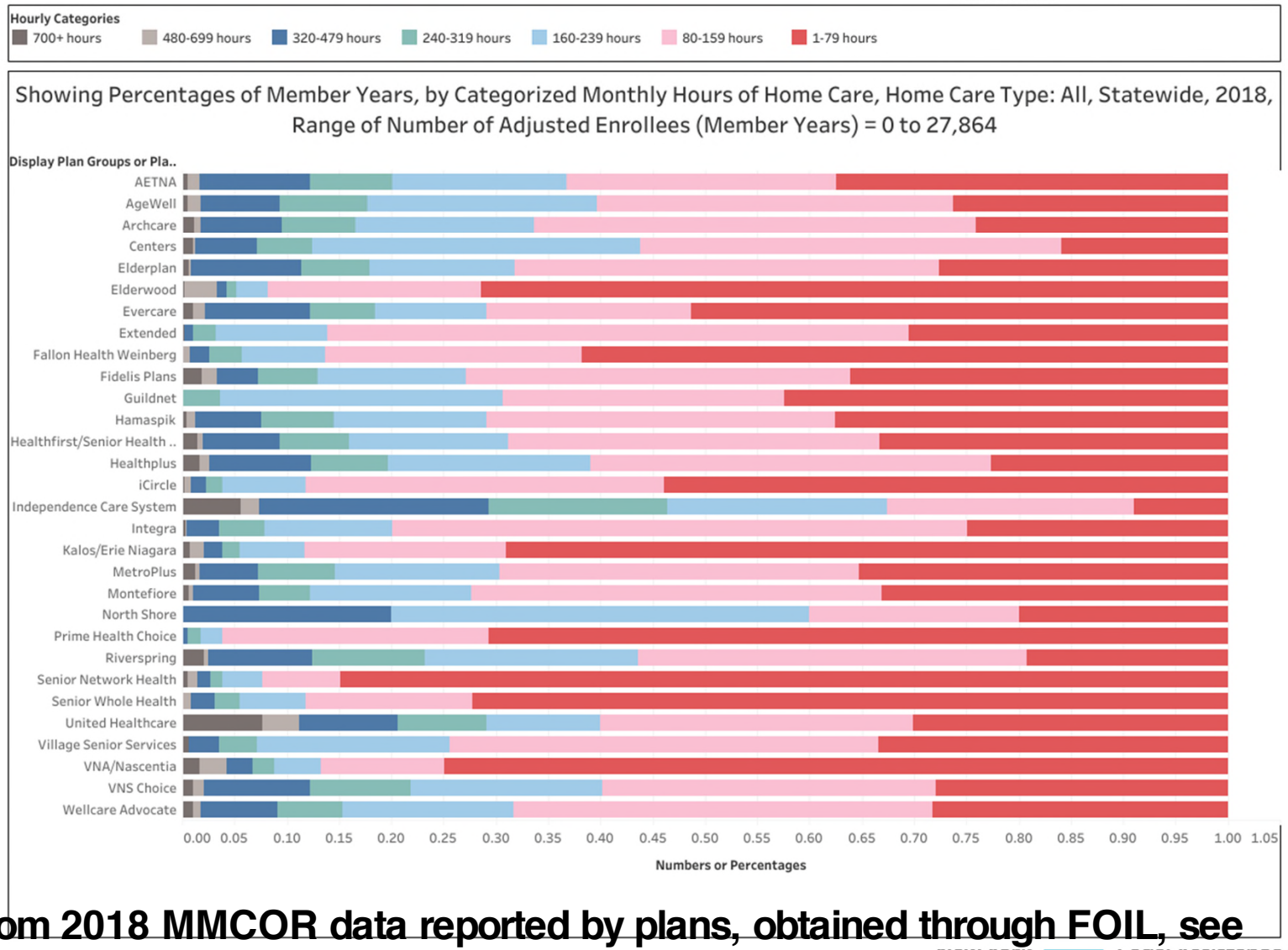
Distribution of Hours of Home Care Service by Plan

Show Numbers or Percenta..	Home Care Type	Show Plans or Plan Groups	Plans	Year	Region	Filter by Total Member Years with Home Care
Percentages of Member Y..	All	Plan Groups	All	2018	Statewide	0.416666667 to 27,863.5 and Null values



DATA from 2018 MMCOR data reported by plans, obtained through FOIL, see https://nylag.org/home-care-member-years-by-hourly-category/

Groupings of Hours/Month in Chart on Preceding Slide

Color	Hour grouping (per mo.)	Max. hours/week @ 4.3 weeks/mo.	Typical Care Plans
	1-79	18	4 hrs x 4 days
	80-159	37	7 hrs x 5 days; 5 hrs x 7 days
	160-239	55	8 hrs x 5 days + 7 x 2 days; or 7 x 7
	240-319	74	8-10 hrs x 7 days; or 12 hrs x 5 + 7 x 2
	320-479	111	24-hour live-in x 7 = 91 hours/week; 12 x 7 days
	480-699	162	16 x 7; 2×12 x 5 days = 12 x 2
	700+	168	2 12-hour/shifts x 7 days

https://nylag.org/home-care-member-years-by-hourly-category/

More data in NYLAG's MLTC Data Transparency Project
https://nylag.org/MLTCdatatransparency/

Full Prject Report
https://nylag.org/wp-content/uploads/2022/09/MMCOR-Report-FINAL.3.pdf

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Many Members Receive NO Services – DOH Oversight Needed!

Percent of Members Receiving No Long-term Care Services in 2018

by Plan and Region (selected plans)

Plan	Statewide	NYC Metro	Mid-Hudson	NE Western	Rest of State
VNS	14.74%	13.50%	9.58%	33.73%	25.0%
UnitedHealth	33.92%	30.54%	NOT OPERATING	47.23%	24.12%
Fidelis	22.06%	19.74%	29.06%	22.13%	24.92%

Source: *https://nylag.org/mmcor-long-term-care-service-mix/* - highlighting regional rates that exceed plan's Statewide rate

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OTHER RECENT OR COMING MEDICAID CHANGES

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Changes Now in effect or coming:

1. **Medicaid for Undocumented Immigrants Age 65+**
2. **Unwinding of Public Health Emergency through 12/2024**
3. **COMING:**
   A. **30-month lookback for MLTC & all other Home Care, Assisted Living Program**
   B. **ADL Eligibility restrictions for home care, MLTC**

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Medicaid for Age 65+ Undocumented

- Effective Jan. 1, 2024, undocumented immigrants who are age 65+ and meet non-MAGI income and resource limits are eligible for **full Medicaid**.
- Must receive Medicaid through a Mainstream Managed Care Plan* - including home care – except use NYRx** for prescriptions.
  - Screenings, lab tests, doctor visits, prescription drugs, supplies, home care, nursing home inpatient, outpatient, etc.
  - **NO coverage at all until enrolled in a plan**. See next slide.
  - **Not eligible for MLTC**.
- Previously, this population was only eligible for "emergency Medicaid." http://health.wnylc.com/health/entry/70/.
- 3-month retroactive coverage limited to EMERGENCY Medicaid,

***These are called 'individual and family health plans" at https://www.nymedicaidchoice.com/program-materials**

****https://www.health.ny.gov/health_care/medicaid/redesign/mrt2/pharmacy_transition/index.htm and see http://health.wnylc.com/health/entry/91/**

Step by Step Guide – 65+ Undocumented

Step 1: Apply for Medicaid at Local DSS/HRA – regular process.

- **Application should be processed within 45 days.**
- **Client will have Emergency Medicaid Code 07.**

Step 2: Client receives a notice from NY State of Health (NYSOH) with instructions to choose a Medicaid Managed Care "mainstream" plan.*

- **Ask Community Health Advocates (CHA) for assistance selecting a plan. https://communityhealthadvocates.org/ They make sure everything goes smoothly!**
- **Consumer must pick a plan by the 15th of the month for the services to start the first of the following month.**
  - **Example: if a plan were picked today, May 16th, the client would have full Medicaid on July 1st.**

Step 3: Three to five months later the client has full Medicaid in a Mainstream Managed Care plan.

Step 4: Annual renewal through NYSOH.

***These are called "individual and family health plans" at https://www.nymedicaidchoice.com/program-materials**

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Additional Information

- NYHealthAccess.org Article http://health.wnylc.com/health/entry/251/
  - Has links to DOH webinar,
  - how those 65+ who had Emergency Medicaid before 1/2024 & those who turn 65 in the future transition to full Medicaid
  - Nursing home- special procedures
  - “Public Charge” concerns and where to get help
- DOH Fact Sheet https://info.nystateofhealth.ny.gov/new-health-insurance-option-undocumented-immigrants-age-65-and-over-fact-sheet

- Complaint Email MCfor65PlusUndoc@health.ny.gov

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"UNWINDING" MEDICAID AFTER THE PUBLIC HEALTH EMERGENCY (PHE)

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Continuous Coverage Review

- Between March 18, 2020 and June 30, 2023, a recipient's Medicaid case could **NOT** be closed even if income or assets increased. **Families First Coronavirus Response Act (FFCRA).**
- During that period, eligibility was extended for 12 months.
- Resumption of renewals began in spring 2023.
- First discontinuances allowed July 1, 2023 after renewals processed (but not in NYC, see slide 35)

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NYS Adopted Consumer-Friendly "Unwind" Flexibilities called "Easements"

NY received approval from CMS for ten (10) E14 waivers to promote eligibility and reduce administrative burden – see https://info.nystateofhealth.ny.gov/PHE-unwind-dashboard

These waivers will remain in effect at least through Dec. 31, 2024.

Next slides describe the main waivers that affect those who are Age 65 or Disabled.

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1. Waiver of the Non-MAGI Resource Test -- for Renewals only – not Applications

For renewals conducted during the unwind, the resource test is waived for Medicaid recipients who would normally have one – Aged, Blind and Disabled.

- GIS 23-MA-14: No action is taken to discontinue Medicaid coverage if a recipient is determined to have resources above the applicable resource level prior to July 1, 2023 or on/after July 1, 2023.

- Assets should still be reported on LDSS renewals, but eligibility won't be discontinued if excess assets.

BUT new applicants still have a resource test

- **And those upgrading coverage to nursing home care** have an asset test and lookback.

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Waiver of Resource Test Example

- Fred has Medicaid and Medicare. He has been enrolled in Medicaid since 2019 and receives 35 hours a week of home care from an MLTC Plan.
- In January 2024, Fred receives an inheritance of $100,000, so had $120,000 in countable resources when his Medicaid renewal was due to HRA/DSS on March 10, 2024. **Is Fred still eligible for non-MAGI Medicaid?**

YES!

Fred remains resource-eligible for Medicaid because of the waiver of the asset test. He should speak with an attorney ASAP about maintaining his eligibility for next year.

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2. Extra Fair Hearing Protections During the Unwind

From **April 1, 2023 through March 31, 2025:**

- OTDA must order Aid Continuing even if hearing is requested ***after*** the effective date of the reduction or discontinuance (but within statute of limitations)(usual 10-day limit for Aid Continuing waived).
- No recoupment of cost of *aid continuing* provided during this period
- In hearings not entitled to aid continuing (e.g. denial of an application or of a request for a new service), and requests for "expedited" hearings, State agrees to schedule hearings without delay

WHY? Because of backlog in fair hearings, State can't comply with federal 90-day deadline for OTDA to make a final administrative decision. CMS granted "E14 waiver" relaxing this deadline. In exchange, NYS agreed to these consumer protections in fair hearing process

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3. Unwind Flexibility: Most Duals Stay on NYSOH

- NYSOH-enrolled Medicaid recipients who obtained Medicare (duals) during the COVID Public Health Emergency on NYSOH will keep their Medicaid cases on NYSOH. Normally, their Medicaid would be transferred to the local DSS/HRA.
- For renewals through *Dec. 31, 2024*, their eligibility will be determined using **MAGI** rules.
- But - certain duals will be transitioned to the LDSS
  - Spenddown referrals if income exceeds MAGI limits.
  - Individuals applying on NYSOH who need retroactive Medicaid coverage
  - Duals receiving LTSS (but this has been ***paused***)

Heads up: NYS DOH aims to move non-MAGI Medicaid recipients' eligibility onto NYSOH - https://media.uhfnyc.org/filer_public/5f/98/5f98c749-b632-4dce-9b0c-aa4fd2828668/slides_-_uhf_convening_iii.pdf

4-6. Auto-renewal of Medicaid for some recipients – No paper renewal sent

Medicaid will be auto-renewed without a paper renewal:

4. If Non-MAGI Medicaid recipient* receives SNAP, but this does not apply to:
   - People renewing MSP only
   - People turning 65
   - People in nursing homes, long term with chronic budgeting
   - MBIWPD (only available to <65 until Jan. 2025 opens to >65)
   - People referred from the marketplace NYSOH
   - A few others– see GIS 23 MA 14 at p. 2
5. If receives only Social Security or pension income, or
6. If income < 100 Percent FPL

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* As well as Essential Plan and Child Health Plus (CHP) recipients

In NYC- Medicaid Cases Do Not Close for Failure to Return a Renewal Packet

In NYC HRA: If consumer fails to return a paper renewal HRA extends the case and sends another renewal packet to the consumer.

Very few case closures in NYC since the resumption of renewals. (However, see slide 35.)

Outside NYC DSS: Medicaid cases can be discontinued (with 10-day notice) with prior notice and right to a fair hearing.

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Renewals Tips

- For some -- this will be their first renewal since becoming Medicaid eligible. They don't know how to do renewals!
- Remind clients to check the mail!
- Remind clients to report a change of address.
- **Best Practices:**
  - Mail the renewal back in the grey Business Reply Envelope (BRE)
  - Make TWO copies – mail one certified return receipt requested and Keep second copy for your records
- **Status of a client's renewal at HRA**
  - Open an Access HRA account to check status - https://a069-access.nyc.gov/accesshra/
  - Call automated Medicaid helpline 1-888-692-6116. Follow prompts. Will tell you whether the case is active, authorization period, if the renewal is being processed.
- Medicaid renewals article and fact sheet:
  - http://health.wnylc.com/health/entry/227/
  - http://health.wnylc.com/health/afile/227/763/

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Problems to Watch for with Renewals

- **Renewal returned on time but DSS doesn't process it before end of coverage period (ie HRA Home Care Services Program)**
  - In NYC, staff extend eligibility to allow more time for staff to process renewal, but staff shortage causes Medicaid to "lapse" without renewal being processed.
  - **What can go wrong**? Consumer is disenrolled from MLTC plan, home care stops *without notice* because HRA has not actively closed case – it just lapsed.
  - **What to do?** Immediately request a fair hearing against HRA/DSS, the MLTC plan (if any), and New York Medicaid Choice. Request aid continuing. See https://otda.ny.gov/hearings/request/. In NYC email eflrp@nylag.org.
- **Discontinuances During Transition from NYSOH to HRA**
  - Under "Unwind," most dual-eligibles' Medicaid cases stay on NYSOH.
  - When NYSOH processes renewal, if income is over 138% FPL, case is transferred to DSS/HRA to process case with non-MAGI budgeting. May be approved with a spenddown, spousal refusal, etc.
  - **What can go wrong?** Instead of extended coverage while DSS/HRA processes the case, the consumer's case is closed and they are sent a new application.
  - **What to do?** Same as above.

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ON THE HORIZON . . .

1. 30-Month Lookback
2. PCS/CDPAP Eligibility Restrictions

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30-Month Lookback for Home Care, ALP

Summary:	**30-month review of financials for MLTC enrollment, new applicants for PCS/CDPAP, ALP; uncompensated transfer results in a transfer penalty**
Authority:	**Enacted in the 2020-2021 Executive Budget, amending New York SSL § 366(5)(e)**
Procedural Posture:	**Sec. 1115 Waiver Amendment pending at CMS since 3/25/21*; NYSDOH has not yet submitted a State Plan Amendment (SPA) to CMS or issued GIS/ADM**
When:	**If not repealed, no sooner than early 2025 because of administrative lift and** Maintenance of Effort requirements under American Rescue Plan Act (ARPA)

*https://www.health.ny.gov/health_care/medicaid/redesign/mrt2/proposals/index.htm;
https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ny-medicaid-rdsgn-team-pa9.pdf

Client Considerations – 30 Month Lookback

- ONLY NEW APPLICANTS for Medicaid seeking long-term care services in the community. Gray area for those on Medicaid but not yet on home care.
- **TIP** if applying before lookback starts - be sure to use Supplement A and document resources, rather than *attest* to the amount of resources.
- Applications filed BEFORE the lookback begins (some time in 2025) need to provide one month of financials (four if they need retroactive coverage).
- **CAUTION:** Remember transfers now will be captured by lookback if they apply for **nursing home** Medicaid in the next **five years** and could be subject to a penalty!
- Tread carefully. Consult a Medicaid planning attorney!

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3 ADL Minimum Requirement

Summary:	Restricts eligibility for PCS & CDPAP and MLTC enrollment to persons requiring *limited assistance* with a minimum 3 ADLs (*cueing* assistance with 2 ADLS if dementia/Alzheimers)
Authority:	**Enacted in the 2020-2021 Executive Budget, amending New York SSL § 365-a and 365-f; PHL § 4403-f**
Procedural Posture:	**CMS determined a State Plan Amendment (SPA) wasn't necessary; 1115 Waiver Amendment pending since 11/2020 to restrict eligibility for MLTC**
Timing of Implementation:	If not repealed, earliest implementation is 7/1/2024 due to Maintenance of Effort requirements under American Rescue Plan Act (ARPA); could be later.

*Waiver amendment request - https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ny-medicaid-rdsgn-team-pa7.pdf ; view comments at https://1115publiccomments.medicaid.gov/jfe/form/SV_1YbhGzdijrBxCId (Summary of responses)

3 ADL Requirement

ADL counts only if need "Limited Assistance with "Physical Maneuvering"

Unless dementia or Alzheimer's diagnosis, ADL counts toward the minimum only if needs "at least limited assistance with physical maneuvering."

The **UAS (CHA) instructions** define seven degrees of assistance:

1. Independent
2. Independent, setup help only – Article or device placed within reach, no physical assistance or supervision in any episode.
3. **Supervision – Oversight/cuing. Will Not Count unless has Dementia diagnosis (or "serious mental illness")**
4. **Limited assistance – Guided maneuvering of limbs, physical guidance without taking weight. This is minimum amount of need to count. We think includes "Contact guarding" (hovering).**
5. Extensive assistance – Weight-bearing support (including lifting limbs) by one helper where person still performs 50% or more of subtasks.
6. Maximal assistance – Weight-bearing support (including lifting limbs) by two or more helpers; or, weight-bearing support for more than 50% of subtasks.
7. Total dependence – Full performance by others during all episodes.

3 ADL Minimum Requirement con'd.

- **Bill to Repeal this not passed in 2024 Budget -- big lift because projected significant savings -- as much as $250 million.**
- **Will likely deny home care services to many people, forcing them into *nursing* homes at a greater cost to the State, in violation of *Olmstead* that requires least restrictive setting.**
- **Discriminates against blind, those with Developmental Disabilities, Traumatic Brain Injuries, etc. who need "cueing & supervision" with 2 ADLs, just like those with dementia, rather than physical assistance with 3 ADLs.**
- **Eliminates Medicaid's Housekeeping program (8 hours max/Level 1 PCS) for those with NO ADL needs**
- **Violates Community First Choice Act (CFCO), which requires cueing as well as physical assistance with ADLs and IADLs (housekeeping) to those with a nursing home level of care.**

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Client Considerations – ADL Restrictions

- Current recipients are **grandfathered** in - meaning new definition will not apply.
- If a client needs Medicaid Personal Care or Consumer Directed Personal Assistance Program (CDPAP) services now, encourage them to apply NOW.
- If a client needs Medicaid **housekeeping** (CASA-HRA), encourage them to apply NOW. This ends as a stand-alone service once this takes effect.
- All initial applicants for PCS/CDPAP and MLTC must go through **New York Independent Assessor Program (NYIAP)**. NYIAP will be the one deciding whether applicant meets the new criteria.

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NEW YORK INDEPENDENT ASSESSOR PROGRAM UPDATES (NYIAP)

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New York Independent Assessor Program (NYIAP)

Rolled out in phases since May 2022, NYIA assesses eligibility for Medicaid recipients over the age of 18+ seeking home care.

A. Replaces Conflict-Free Assessment for eligibility to enroll in a Managed Long Term Care (MLTC), adding a Practitioner's assessment to the Nurse's.

B. NEW with NYIA – Eligibility to receive Personal Care (PCS), Consumer-Directed Personal Assistance (CDPAP) from:

   i. **Local DSS** (if exempt from MLTC) or for *Immediate Need*

   ii. From **Mainstream Medicaid managed care plans** (for those who do not have Medicare or other Third Party Health Insurance) on a standard or expedited time frame.

NYIA is run by Maximus under a NYS DOH contract.

1. **NYIA Website** (Maximus): https://nyia.com/en (also Spanish)
2. **NYS DOH NYIA website** - https://www.health.ny.gov/health_care/medicaid/redesign/nyia/ *Document Repository* tab on site has links to NYIA Policies
3. **NYLAG** webpage on NYIA - http://health.wnylc.com/health/news/85/#Independnet%20Assessor%20NEW

NYIA was enacted in state law in 2020.

!

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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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NYIAP phase-in slowed down:

A. NYIAP ASSESSES ONLY NEW APPLICANTS – (start 5/16/22)

1. **Enrollment into MLTC/MAP**
2. ***NEW* requests for PCS/CDPAP to DSS for 18+**
3. **Mainstream managed care – *Standard* NEW* requests for PCS/CDPAP for age 18+ and voluntary transfers to MLTC**
4. **Immediate need applications to DSS/HRA and *expedited new* requests to mainstream managed care.* (started 12/1/22)**

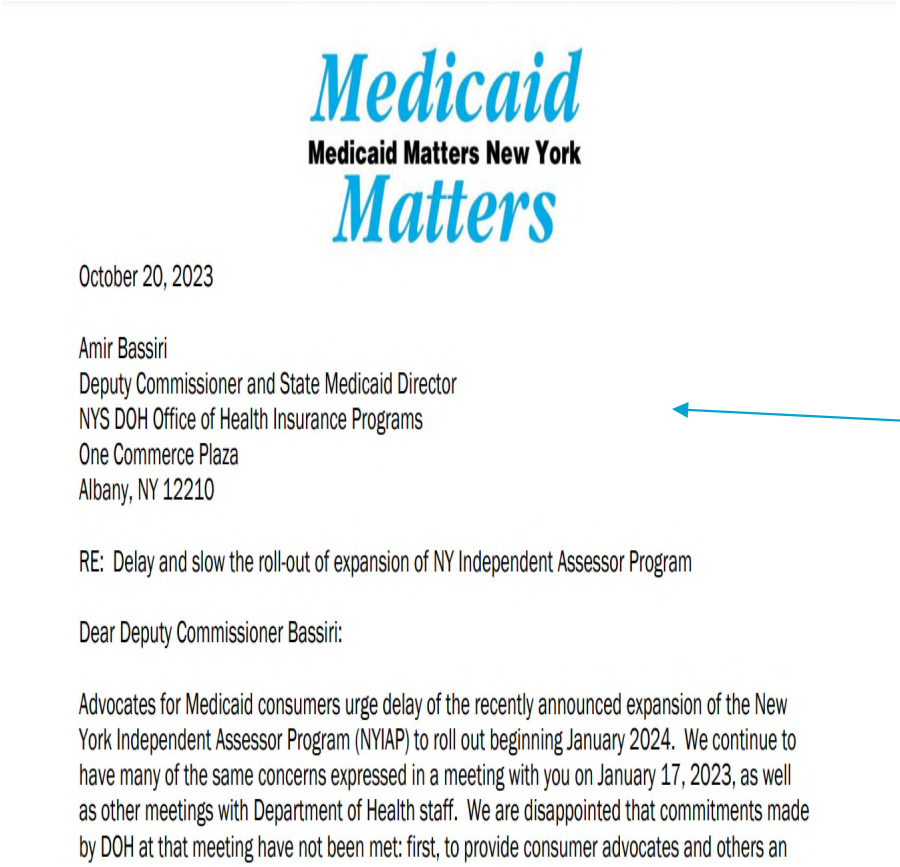
B. Reassessments by NYIA have been POSTPONED INDEFINITELY – were scheduled to start Jan. 1, 2024

1. ***Annual reassessments*– for MLTC, mainstream managed care & DSS/HRA**
2. **Requests to plan or LDSS for an *increase* or on *discharge from NH, hospital*.**
3. **Voluntary transfer from MLTC plan to MLTC plan**

These are all still done by PLAN or DSS.

*Standard requests must be processed in 14 days. Expedited must be processed in 72 hours, if delay would seriously jeopardize enrollee's life or health or ability to attain, maintain, or regain maximum function. Both subject to 14 day extension. 42 CFR 438.210(d)

NYIAP Expansion to Routine/Nonroutine Assessments Postponed - Advocacy Victory!



Medicaid
Medicaid Matters New York
Matters

October 20, 2023

Amir Bassiri
Deputy Commissioner and State Medicaid Director
NYS DOH Office of Health Insurance Programs
One Commerce Plaza
Albany, NY 12210

RE: Delay and slow the roll-out of expansion of NY Independent Assessor Program

Dear Deputy Commissioner Bassiri:

Advocates for Medicaid consumers urge delay of the recently announced expansion of the New York Independent Assessor Program (NYIAP) to roll out beginning January 2024. We continue to have many of the same concerns expressed in a meeting with you on January 17, 2023, as well as other meetings with Department of Health staff. We are disappointed that commitments made by DOH at that meeting have not been met: first, to provide consumer advocates and others an

- **Oct. 2, 2023 - DOH announced NYIAP would expand to renewals (routine reassessments) and non-routine reassessments (request for increase) in Jan 2024(!) on a rolling regional basis.**
- **Oct. 20, 2023 -- Medicaid Matters raised alarms and opposed the rollout***
- **Nov. 17, 2023, NYS DOH postponed expansion of NYIA to routine and non-routine assessments.**

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*https://medicaidmattersny.org/wp-content/uploads/2023/10/MMNY-ltr-delay-slow-NYIAP-expansion-10.20.23.pdf; see appendix

UPDATE: Immediate Need & NYIA

- **Before – Immediate Need applicant had to submit application package to DSS, which made 3-way call with NYIAP to schedule assessments.* Could not contact NYIAP directly.**
- **4/10/24 – State directive* gives Applicant option to schedule and undergo NYIAP assessments first, then submit Immediate Need package to DSS, informing DSS of when assessments conducted and providing Outcome Notice, if any. Or may still follow original procedure. HRA procedures implementing this change awaited as of 5/9/24.**

*GIS 22 MA/09 *Implementation of Assessments Conducted by NYIA Based on Immediate Need*
** GIS 24 MA/02

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Is NYIAP Denying MLTC Enrollment Excessively?

- **DOH released data showing that 16% of all NYIA assessments denied MLTC enrollment based on applicant not needing 120 days of service. This was 35,654 people from May 2022 – Feb. 2024 (see next slide).**
- **Advocates have long observed a high rate of denials – far exceeding the 3% rate in the old CFEEC system.**
- **Since the 3-ADL criteria is not yet in effect, the sole requirement for MLTC is the need for assistance with ONE ADL.**
- **Is NYIA improperly finding applicants to be *independent* in ADLs when they need *supervision or cueing with ADLs*?**
- **Is NYIA improperly denying home care for Mainstream plan members and those applying to DSS who are excluded from MLTC (in OPWDD, hospice, TBI, NHTD waivers)? NYIA should not deny for120-day rule, which only applies to MLTC.**
- **Are applicants with no ADL needs being referred to DSS or mainstream plan to assesfor Housekeeping services - assistance with IADLs (housekeeping) up to 8 hours/week**

NYIAP Outcomes

From May 2022 through February 2024, a total of 35,654 CHAs found the individuals did not meet the need for 120 days of service and therefore not eligible for MLTC enrollment.

This represents 16% of the total number of CHAs completed by NYIAP.

From May 2022 through February 2024, a total of 221 Practitioner Orders (PO) found the individual's medical condition was NOT stable **to receive PCS/CDPAS in the home.**

This represents 0.10% of the total number of PO's **completed.**

March 2024

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Reasons NYIA may be wrongly denying services

- **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 assess consumer's CAPACITY (what help consumer SHOULD receive) -- only consumer's PERFORMANCE
  - ***Only a consumer who had help – paid or by family – during 1 or more of the 3 days before assessment -- is found to need ADL assistance!***
  - *At least one fair hearing rejected this standard* **-** *(FH* 8477309M (“any task that was completed …without assistance in the 3 days prior to the assessment … gets marked …[as] independent…, regardless of how difficult … or dangerous the task was .... For example, … labeled as “Independent” when bathing …even if it was extremely difficult or dangerous for him to do by himself…”).
- **Verbal Cueing assistance** – mislabeled as “independent.” E.g. Reminding to use walker, cueing on post-elimination hygiene after toileting
- **Telehealth assessments inevitably miss nuances.** We doubt validity of the UAS tool was tested for telehealth use. DOH recently reported that 65% of NYIA nurse assessments in February 2024 and 68% cumulatively were conducted by telehealth. (next slide)

UAS-NY Reference Manual, Aug. 2022 edition pp. 28-33 (Copy in NYLAG Materials)

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NYIAP offers two appointment modalities

		February 2024 Total	%	Cumulative Total	%
CHA	Telehealth	7,823	65	151,015	68
	Face-to-face	4,204	35	69,639	32
Clinical Appointment	Telehealth	7,501	64	154,133	72
	Face-to-face	4,179	36	59,885	28

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NYIAP Wait Times for Appointments

Average Days from Initial Call to the First Appointment

Initial Call Date	Overall	Telehealth	Face to Face
08/2023	6.33	5.82	7.2
09/2023	5.76	4.79	7.68
10/2023	5.91	5.08	7.71
11/2023	5.04	3.99	8.06
12/2023	5.14	4.15	7.96
01/2024	4.6	3.51	7.55
02/2024	4.38	3.34	7.46

Average Days from Initial Call to the Clinical Appointment

Initial Call Date	Overall	Telehealth	Face to Face
08/2023	8.32	7.93	8.99
09/2023	8.08	7.24	9.27
10/2023	8.33	7.82	9.36
11/2023	7.63	6.83	9.61
12/2023	7.48	6.74	9.27
01/2024	7.04	6.13	9.26
02/2024	6.85	5.9	9.38

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March 2024

NYLAG comment: *Average* wait times conceal longer waits in different counties, especially upstate. Unclear if days include weekends.

Reference: Regulations, Guidance, Websites

1. **Websites – see earlier slide**
2. **Regulations - Amended Personal Care & CDPAP 18 NYCRR 505.14 & 505.28**
3. **DSS policies - 22 OHIP/ADM-01 (4/20/22)**
   - ** GIS 24 MA/02, GIS 22 MA/09 (12/1/22) -- **Immediate Need**
4. **MLTC - MLTC Policy 22.01 (4/27/22)**
5. **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**

- **NY Medicaid Choice website - https://nymedicaidchoice.com/ask/do-i-qualify-managed-long-term-care**
- **NYLAG NYIA updates http://health.wnylc.com/health/news/85/#Independnet%20Assessor%20NEW**

NYLAG's Past NYIAP Advocacy

Advocacy:

- 10/2023 Coaltion Letter to Delay Expanding NYIAP https://medicaidmattersny.org/wp-content/uploads/2023/10/MMNY-ltr-delay-slow-NYIAP-expansion-10.20.23.pdf
- **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

How to Stay Up to Date

- **Sign up for NYLAG EFLRP e-lerts with updates here https://go.nylag.org/Subscribe-to-EFLRP**

- **Look for updates at www.NYHealthAccess.org**
- **See supplemental list of materials online.**

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THANK YOU

More information at nylag.org

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