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NEW YORK LEGAL ASSISTANCE GROUP

# Accessing Home Care in 2016

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## Health Insurance Vocabulary

- **Dual Eligible**: Has both Medicare and Medicaid
- **Managed care**: Health insurance plan paid a fixed "per member per month" rate (capitation) to provide a specified package of services, usually using in-network providers, may require prior authorization. ("Advantage" often means managed care; e.g., Medicare Advantage/ Medicaid Advantage/ Fully Integrated Dual Advantage (FIDA)). Benefit package depends on payor.
- **Long term care**: Services that assist person with activities of daily living (ADLs)(personal care) or Instrumental ADLS (cooking, cleaning etc.) at home (home care) in a community setting (e.g., assisted living care) or in a facility (nursing home)
- **Consumer**: someone who needs or receives services
  - **Member** or **Enrollee** - a consumer in a managed care plan
- **Provider**: doctor or service vendor, like a home care agency

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## Roadmap


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## APPLYING FOR MEDICAID AND HOME CARE

NEW FAST TRACK MEDICAID APPLICATION IF "IMMEDIATE NEED" FOR HOME CARE

- Solves delays in Applying for Medicaid and then Enrolling in an MLTC plan
- CAN USE Spousal Impoverishment Protections

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## The REGULAR path to home care if you have Medicare…

1. Financial Eligibility **45 days** → Apply to LDSS **HRA Home Care Serv. Prog.** 785 Atlantic Ave. 7th Fl. Bklyn, NY 11238 *Include Supplement A + proof resources*

**If you don't need long term care stop here – don't need Supp. A!**

2. Conflict-Free Eligibility Determination "CFEEC" **2 weeks** → Call Maximus (NY Medicaid Choice) for in-home Evaluation 1-855-222-8350 -- Should schedule in 2 weeks

**3. Schedule assessments with health plans**! You have 60 days to enroll or CFEEC expires.

4. Enrollment → by 20th of month for enrollment 1st of next mo.

5. Get Care → Plan makes coverage determinations; these are appealable

For info on choices, or if face delays or problems enrolling, call ICAN at 1-844-614-8800.

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**TOTAL 3-6 MONTHS**

## TIPS to Expedite Medicaid

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### Approval and MLTC Enrollment

Enrollment in MLTC can be held up by mysterious "coding issues" stemming from NY's antiquated Medicaid WMS computer system. Codes may wrongly show client is **ineligible** – leading MLTC to deny enrollment.

Take these **Preventive Measures**:

1. Submit **Supplement A of Application** w/ bank statements, etc. to prove resources – do not just "attest" to resources. Otherwise not coded to enroll in MLTC - DOH-4495A
2. **If will have a SPEND-DOWN** - ask for "Provisional Medicaid" approval with Code 06 per GIS 14 MA/010 – so Medicaid activated even though spend-down not yet met.
3. **In NYC – apply only at HRA--HCSP Central Medicaid Unit**
   785 Atlantic Avenue, 7th Floor, Bklyn NY 11238 T: 929-221-0849
4. **Advocate with MLTC if refuses to enroll -**Give MLTC the DSS Notice approving Medicaid with a spend down. Ask to speak to supervisor.
   - Ask MLTC to request LDSS for "*conversion*" of eligibility to full Medicaid. NYC HRA has "conversion" form HCSP-3047a (updated 1/2015)*.

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## New Expedited Medicaid Application if in Immediate Need for Personal Care or CDPAP

- April 2015 - NYS law required DOH to create procedures for local DSS to process a Medicaid application in **SEVEN DAYS** for any applicant **with an immediate need** for personal care (**PCS**) or consumer-directed personal assistance (**CDPAP**) services & approve PCS/CDAP in 12 days. NY Soc. Serv. L. §366-a(12).
- July 2016 – new regulations effective. 18 NYCRR 505.14(b)(7) and (8) and 505.28(k);
- **DOH 16-ADM-02** - Immediate Need for PCS & CDPAP
- **2016 LCM-2** (Q&A) Both at https://www.health.ny.gov/health_care/medicaid/publications/index.htm
- **HRA Procedures 10/19/16** – NY MICSA Alert http://www.wnylc.com/health/download/615/

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## New Regs & ADM for Expedited 7-Day Medicaid Applications

**16-ADM-02 --**Who can use the new procedures?

1. **New Applicants** - or those with a **Medicaid application pending**,
2. **Individuals who already have Medicaid but not coverage of community-based long term care** (they "attested" to the amount of their assets and did not submit "Supplement A" with the application [alternate languages and formats of forms posted at this link)
3. **Individuals who have a MAGI Medicaid** case at NY State of Health ("Marketplace" or "Exchange"), who are *not* in a managed care plan. Their Medicaid must be transferred from NYSOH to the LDSS through procedures described in pages 5-6 of 16-ADM-02 - the transfer can only be initiated with an email to hxfacility@health.ny.gov.

**Includes people applying from hospital or nursing home**.

See **Attestation Form**, attachment to 16-ADM-02.

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## Procedures for New Medicaid Applicants with Immediate Need for PCS/CDPAP

1. **7 calendar days** after receipt of complete Application, DSS must determine **Medicaid eligibility.**
   a. If application incomplete, DSS must request missing documents within 4 calendar days after receipt of physician's order & Attestation of Immediate Need.
2. Within **12 calendar days** of receiving complete Medicaid app, Attestation form and Physician's order, DSS must:
   a. Conduct social & nursing assessments
   b. Determine eligibility for & **authorize PCS/CDPAP and Number of hours**
   c. "Promptly notify" the recipient of the amount authorized
3. DSS arranges for services to be provided "as expeditiously as possible." 18 NYCRR 505.14(b)(8)(ii).
   - DSS contracts with home care agencies to provide care or approves CDPAP

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## What to Include in Application for Immediate Need Medicaid

1. **In NYC – Cover Sheet / Transmittal Form (**posted at http://www.wnylc.com/health/entry/203/)
2. **COMPLETE Medicaid application (or approval Notice if already have Medicaid)**
   a. May "attest" to value of real property & assets – but better to verify
   b. May request Spousal Impoverishment budgeting if favorable
3. **Physician's order** for personal care (M11q)- 18 NYCRR 505.14(b)
4. Signed "**Attestation of Immediate Need**" Form – posted at https://www.health.ny.gov/health_care/medicaid/docs/ohip_form-0103.pdf - - and attached to 16-ADM-2 -described on next slide.
5. **HIPPA RELEASE** - OCA Form No. 960 - http://www.nycourts.gov/forms/Hipaa_fillable.pdf
6. **Cover letter** describing Immediate need circumstances

[1]505.14(b)(7), 505.28(k), 16 ADM 02

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## New Attestation Form - Immediate Need

- **"Attestation of Immediate Need"** Form –OHIP-0103. https://www.health.ny.gov/health_care/medicaid/docs/ohip_form-0103.pdf and attached to 16-ADM-2 . Must attest ou:
  a. **Have no informal caregivers** available, able and willing to provide or continue to provide care;
  b. Are **not receiving *needed* help from a home care services agency;**
  c. Have no adaptive or specialized equipment or supplies in use to meet your needs; and
  d. **Have no third party insurance or Medicare benefits available** to pay for ***needed*** help.

(Arguably, even if Medicare, hospice or private services in place, explain why not enough to provide "NEEDED" help, or that won't continue etc.)

- Form says may be submitted while hospitalized or in nursing home.

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## Transition from Immediate Need to MLTC

- **Immediate Need PCS or CDPAP is only temporary.**
- **AUTO-ASSIGNMENT** - after 120 days receiving the temporary Immediate Need services, Maximus/ NY Medicaid Choice will send individual a letter that if she doesn't select & enroll in an MLTC plan in 60 days, she will be auto-assigned to an MLTC plan (partial capitation).
  - TIP - Use that time to select a plan – find plan that contracts with same home care agency, if client wants to keep aides.
  - No Conflict Free assessment necessary.
- MLTC plan should continue the DSS Plan of Care for a **90-Day Transition Period.** MLTC Policy 13.10.* (see FH **7214923Z** (Erie Co. ).
  - After 90 days, plan may reassess hours but under *Mayer v. Wing*, may reduce only if alleges and proves change in circumstances. See more later re REDUCTIONs. Must give advance notice with right to request hearing with aid continuing.

http://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policies.htm

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## NEW: Spousal Impoverishment available on application for IMMEDIATE NEED Medicaid

- Before DOH issued 16 ADM-02, a married Medicaid applicant seeking MLTC had to initially apply using regular Medicaid rules – combining both spouse's income using couple level of $1209/mo. or using Spousal Refusal. Soc. Serv. L. § 366.3(a).
- This is because NYS sees Spousal Impoverishment as a "post-eligibility" budgeting methodology. GIS 14 MA/025 - Spousal Impoverishment Budgeting with Post-Eligibility Rules Under the Affordable Care Act.
- **Under 16 ADM-02, married person may request Spousal Impoverishment budgeting with Medicaid application based on IMMEDIATE NEED for personal care or CDPAP**.
- Good for couples with combined income under $3,364 after deducting Medigap premiums, and countable assets under $90,000. See more at http://www.wnylc.com/health/entry/165/

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## Example budget with spousal impoverishment

* Applicant Spouse - $2,130/mo. Income
* "Community Spouse" - $1,500/mo. income

| | | |
|---|---|---|
| Gross monthly income – Applicant | | $2,130 |
| Personal Needs Allowance (2016) | | - 384 |
| Community Spouse Monthly Income Allowance (CSMIA) | MMMNA ($2,980) - Otherwise Available Income of spouse ($1,500) = | - 1,480 |
| Health insurance premiums | (Medicare Part B) | - 105 |
| | (Medigap) | - 161 |
| **Excess income** | ✓ | **$0** |

DOH **GIS 14 MA/025, reinstating** DOH GIS 12 MA/013 (April 16, 2012); & NYS **DOH GIS 13 MA/018**, N.Y. Dep't of Health, MEDICAID REFERENCE GUIDE: INCOME at 278-282 (June 2010).

See http://www.wnylc.com/health/entry/165

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# MLTC LANDSCAPE & SERVICES

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**When you need LTC, these are the Medicaid services that must come from an MLTC or managed care plan – with some exceptions**

- **Various types of home care (More than 120 days):**
  1. **Personal Care (home attendant and housekeeping)**
  2. **Consumer-Directed Personal Assistance Program (CDPAP)**
  3. **Home Health Aide, PT, OT (CHHA Personal Care)**
  4. **Private Duty Nursing**

- **Adult day care** – medical & social
  - But social day care alone is not enough for MLTC
- Medical alert button, home-delivered meals, congregate meals
- **Medical equipment, supplies**, prostheses, orthotics, hearing aids, eyeglasses, respiratory therapy, Home modifications
- **4 doctors—Podiatry, Audiology, Dental, Optometry**
- Non-emergency medical transportation
- **Nursing home**

**SeniorHealthChoiceWell-PlusCare**
MLTC Plan
John Doe
Member ID: 123456ABC

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# Who is **EXCLUDED** from MLTC?

- **Duals who may not enroll in MLTC – apply to LDSS/HRA for PCS:**

1. In **Traumatic Brain Injury, Nursing Home Transition & Diversion or Office for People with Developmental Disabilities waivers**
2. Have **hospice** care at time of enrollment (but may stay in MLTC if enroll in hospice once already in MLTC. MLTC Policy 13.18 (June 25, 2013)* or
3. Live in **Assisted Living Program**
4. Under **age 18**
5. **Needs not extensive enough to qualify -- If need only --**
   - **Housekeeping** services – apply at HRA HCSP (See MLTC Policy 13.21*). Maximum 8 hours/week.
     - If have housekeeping and then later need upgrade to home attendant, submit M11q to HCSP – will get thru CASA. Eventually must join MLTC.
   - **Social Adult Day** Care services – not available thru Medicaid

- Who **MAY** enroll but not required? Age 18-21 with or without Medicare, if would otherwise need Nursing Home
- posted at http://www.health.ny.gov/health_care/medicaid/redesign/mrt_90.htm .

# News re CDPAP

**Consumer Directed Personal Assistance Program (CDPAP)**
18 NYCRR 505.28

Covers same services as Personal Care levels I and II with these differences:

- "Personal assistants" (PA) may do SKILLED tasks.
- Instead of licensed home care agency hiring, training and scheduling aides, PA's are independent contractors registered with & paid by "Fiscal Intermediary" like CONCEPTS. Client or person directing care must recruit, train & schedule aides, including back-ups. Immigrants must have work authorization.
- **Aide may be client's adult child, the parent of a child > 21, or other relative, but can't also be the person directing care.** 505.28(b)(3)
- http://www.wnylc.com/health/entry/40 /

## Short-Term CHHA still available outside MLTC

**3. CHHA – Certified Home Health Agency**

Agency "certified" under Medicare and Medicaid to provide:

1. "visiting nurse" services ("part-time or intermittent),
2. physical, occupational or speech therapy (PT/OT) in home,
3. "home health aide" (HHA) services (may perform semi-skilled tasks because under RN supervision, unlike PCS – see scope of tasks http://www.wnylc.com/health/download148/ ,
4. and medical supplies.

- Both Medicare and Medicaid cover, but Medicaid more expansive (HHA can be up to 24/7, no "homebound" requirement)
- Find a CHHA or hospice - **http://homecare.nyhealth.gov/ .**
- May access CHHA directly, but if > 120 days then will be assigned to MLTC plan.

- http://www.wnylc.com/health/entry/40/

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## How to access LTC services

- Beginning 2011, NYS began requiring most Medicaid recipients to access the LTC services cited above through a managed care plan, with some exceptions.

1. **Most Medicaid recipients without Medicare** – Are required to enroll in "mainstream" Medicaid managed care plans (**MCO**) - responsible for delivering PCS, CDPAP, CHHA and Private Duty Nursing. Includes SSI, seniors wo/Medicare
2. **Most DUAL ELIGIBLES** are required to enroll in Managed Long Term Care (MLTC) plans (3 different types) for home care/LTC.

- Plans must give same amount, duration & scope of services as in "Fee for Service"

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# Where to Obtain LTC Services

| Service | BEFORE | NOW | |
|---|---|---|---|
| | | Medicaid only | Dual Eligibles |
| 1. Personal care | HRA CASA/ LDSS | MCO | I. Housekeeping - CASA |
| | | | II. PCS – MLTC* |
| 2. CDPAP | HRA CASA/LDSS | MCO | MLTC* |
| 3. CHHA | Contact CHHA directly | MCO | • **Short-term -** from CHHA directly (often with Medicare)<br>• **Long term** – MLTC (gets transferred if in CHHA >120 days) |
| 4. Private Duty Nursing | Request Prior Approval from State DOH | MCO | MLTC |

* But new "immediate need" procedure – get PCS/CDPAP from HRA CASA / LDSS and see EXLUSIONS from MLTC below.

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# CHOICES FOR DUAL ELIGIBLES FOR MEDICARE AND MEDICAID

Choices for Dual Eligibles in how to access Medicaid and Medicare Services

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# Duals have Both Medicare & Medicaid Choices

- Dual Eligibles have some choices in how they access both Medicare and Medicaid. **TERMS**:
- **Fee for Service (FFS)**– Use Medicaid or Medicare card for any provider that takes that insurance. Provider bills Medicare or Medicaid directly.
- **Managed Care** – "Advantage" plans – Insurance plan paid flat monthly fee by Medicaid and/or Medicare to provide defined service package. Member must use in-network providers, who bill plan, not Medicaid or Medicare.

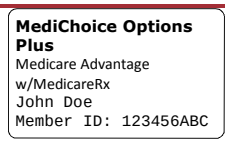
# Options for Medicare Coverage

**No long term care**

**OPTION 1**: ORIGINAL MEDICARE (FEE FOR SERVICE)


- Part A: Hospital, rehab, home health, hospice
- Part B: Doctors, medical equipment, labs, x-rays, mental health, ambulance, PT, and *very* short term home health
- No networks, referrals, or prior authorizations
- Standalone Part D: Prescription Drug Coverage


**OPTION 2**: MEDICARE ADVANTAGE "PART C"




- Covers Parts A, B, sometimes D
- Managed care - must stay in provider network
- Might need referrals and prior authorizations for services

## Comparing Benefit Packages

**Medicare (seniors and people with disabilities)** **vs.** **Medicaid (people with limited finances)**

| | Inpatient | Outpatient | Drugs | Long Term Care, dental, glasses, hearing aids |
|---|---|---|---|---|
| **Medicare Part A** | ✓ | | | |
| **Medicare Part B** | | ✓ | | |
| **Medicare Part D** | | | ✓ | |
| **Medicare Advantage ("Part C")** | ✓ | ✓ | ✓ | |
| **Medicaid** | ✓ | ✓ | ✓ | ✓ |

- The only ways to pay for long term care are: out of pocket, through a long term care insurance policy, or through Medicaid—most Medicaid consumers must now access long term care through one of various managed care products.

## Plan Combinations with LTC

| | Medicare (A, B, D) | Medicaid (medical) | Medicaid LTC |
|---|---|---|---|
| **Partial capita-tion** | Choose:<br>**(1) Orig. Medicare**<br>+ Part D + Medigap (optional)<br>OR | Regular Medicaid covers what MLTC doesn't (hospital copay, etc.) | Managed Long-Term Care (MLTC) |
| | (2) Medicare Advantage | | |
| **Medicaid only** | | Mainstream Managed Care | |
| **Full Capita-tion** | 1. Medicaid Advantage Plus (MAP) | | |
| | 2. Program of All-inclusive Care for the Elderly (PACE) | | |
| | 3. Fully Integrated Duals Advantage (FIDA) | | |

- The name of the insurance company, alone, tells us little because companies offer multiple "products"

## Consumer choice which type of MLTC

- Consumer selects type of plan depending on how they want their Medicare services. If they want Original Medicare to keep all their current doctors, then choose MLTC – partial capitation.
- When MLTC started in 2012, PCS & CDPAP recipients were ASSIGNED to MLTC plans if they didn't pick their own – partial capitation only.
- In 2015, MLTC members were "passively enrolled" into FIDA plans (full capitation – Medicare + Medicaid) unless they opted out. Most opted out, and passive enrollment stopped in 2016. Now totally optional to pick FIDA, MAP or PACE.
- **Lists of plans with contact info are** posted on www.nymedicaidchoice.com. At bottom of home page, click on Brochures & lists. Brochures are on top. Plan lists are below. Look for Long Term Care Plans for NYC or other region and FIDA plans. (Other "Health Plans" are mainstream managed care plans for those without Medicare).

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## Combination Example 1- Partial Capitation (1)

- Dual Eligible with Original Medicare Part D and MLTC



**Medigap**
Plan F
John Doe
Member ID: 123456ABC


**SeniorHealthChoiceWell-PlusCare**
MLTC Plan
John Doe
Member ID: 123456ABC

**NOTE: Extra Help - Part D subsidy is automatic.**

**Medigap is optional**

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# Combination Example 2

## Partial Capitation (2)

- Dual Eligible with Medicare Advantage and MLTC

**MediChoice Options Plus**
Medicare Advantage w/MedicareRx
John Doe
Member ID: 123456ABC


**SeniorHealthChoiceWell-PlusCare**
MLTC Plan
John Doe
Member ID: 123456ABC

**NOTE: Extra Help - Part D subsidy is automatic.**

**NO Medigap allowed.**

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# Combo Option 3 - Full Capitation

FIDA, PACE, or Medicaid Advantage Plus

**ONE CARD**




**SeniorHealthChoiceWell-PlusCare**
MLTC Plan
John Doe
Member ID: 123456ABC

**Medigap**
Plan F
John Doe
Member ID: 123456ABC

**SeniorHealthChoiceWell-PlusCare FIDA**
FIDA Plan
John Doe
Member ID: 123456ABC

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# FIDA: FULLY INTEGRATED DUAL ADVANTAGE

Demonstration program launched January 2015
- Currently only available in NYC and Nassau
- Delayed for Westchester and Suffolk (2017?)

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# What is FIDA? [NYC, Nassau*]

- **WHAT?** FIDA plans provide all **Medicaid** services, including home care and all **Medicare** services
  - Some services <u>are</u> available to FIDA participants but paid by government, not plan:
    - ❖ Methadone maintenance, out of network family planning services, direct observation therapy for tuberculosis, and **<u>hospice care</u>**
    - ❑ Cannot join FIDA if you are on hospice care but can *<u>stay</u>* in FIDA if you later enroll in hospice; FIDA still coordinates <u>all</u> services even if doesn't pay
- **WHO?** Most adult dual eligibles who need more than 120 days of long term care services – MLTC, PACE, MAP:
- 2016 - No more "Passive Enrollment" from MLTC BUT MLTC members receiving letters from State DOH to recruit them to join. May be misleading. See handout.
- **Suffolk and Westchester** possible in 2017.
- Demo now extended thru 2019.

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# FIDA Considerations: Benefits

- **One insurance card**
- **Integrated/unified appeals process** (except for Part D) **that favors the consumer**
  - Internal appeal →OTDA→Medicare Appeals Council→Federal Court
    - Streamlined process: Auto-forwarded to the next level at every step.
    - Checks/balances: Most win Fair Hearings
    - ONE notice: not separate Medicare and Medicaid notices.
    - Aid continuing in ALL appeals: if requested within 10 days of the notice.
- **Limited cost sharing**
  - No deductibles, premiums, or copays (prescription drugs/doctors)
  - You *may* pay: Medicare Part B premium if ineligible for Medicare Savings Program and Medicaid spend down (but no disenrollment for nonpayment of spend down)
- **Interdisciplinary Team** makes care planning decisions
  - Consumer, family, and doctors MAY participate
- **Participant Advisory Councils** give plan feedback
- **Ombuds program** "**ICAN**" (available for MLTC too); 1-844-614-8800 http://icannys.org

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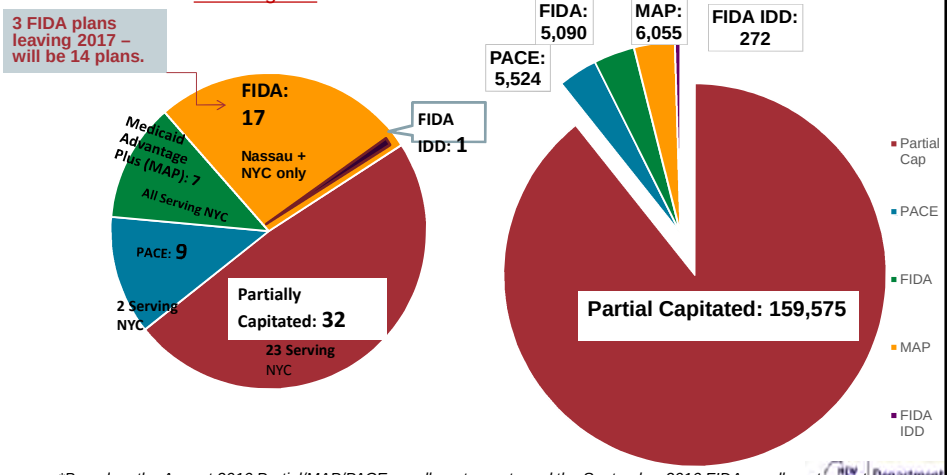
# FIDA Considerations: Risks

- **Are Providers in network?** Doctor, clinic, pharmacy, hospital, nursing home, home care agency
  - Guildnet has a "point of service" network; any Medicare provider will be paid the Medicare rate; unclear if providers will agree to procedures
- **Drug formularies - FIDA includes Part D**
  - Is pharmacy in plan network? Are client's drugs covered?
- **Supplemental Coverage—requires a personal decision**
  - **Retiree coverage**: may be terminated for member and dependents
    - Should receive notice from Maximus to confirm that you want to enroll in FIDA; **If you don't respond in 30 days, no enrollment!**
  - **Medigap**: serves no purpose with FIDA, so you may be tempted to drop your Medigap voluntarily, but can't get a Medigap while you have Medicaid
    - Dual eligibles can suspend Medigap policy for up to 24 months, to be reinstated if the beneficiary loses Medicaid eligibility.

# MLTC Statewide Enrollment*

Number of Plans Statewide Actively Enrolling: **66**

Total Enrollees Statewide: **176,516**




*Based on the August 2016 Partial/MAP/PACE enrollment reports and the September 2016 FIDA enrollment report.

## FIDA plans with 2017 changes

| Plan | Enrollment (May 2016) |
|---|---|
| 1. RiverSpring | 7 |
| 2. VillageCareMax | 24 |
| 3. FIDA Care Complete (Centers Plan) | 25 |
| 4. North Shore | 28 |
| **AlphaCare (closing)** | **36** |
| 5. AgeWell | 41 |
| 6. Aetna | 52 |
| 7. Senior Whole Health | 67 |
| **WellCare (closing)** | **155** |
| 8. ICS | 161 |
| **CenterLight (closing)** | **169** |
| 9. MetroPlus | 179 |
| 10. Elderplan | 289 |
| 11. Fidelis | 318 |
| 12. GuildNet | 822 |
| 13. Healthfirst | 1,058 |
| 14. VNSNY | 1,939 |

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# ASKING PLAN FOR NEW OR INCREASE IN SERVICES

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Applies to MLTC and Mainstream plans

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## Requesting Services: Terminology

- **"Prior Authorization"**
  - Asking the plan for a **new service** or to change a service in the plan of care for a new authorization period
  - **Consumer or Provider** can make the request
- **"Concurrent Review" –**
  - Asking the plan for additional services (i.e., more of the same service) that are currently authorized in the plan of care (more hours of home care); or
  - Medicaid covered home health care services following an inpatient admission.
- **Authorization Period**: a specific time period for which plan has authorized services, must reassess & reauthorize every 6 months.
  -

Model Contract, Appendix K, 42 CFR 438.210

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# When must plan decide request for Increase or New Service?

| Type of Request | Maximum time for Plan to Decide |
|---|---|
| **Expedited** | **3 business days from receipt -** plan may extend up to 14 calendar days if needs more info. If plan determines or provider indicates that a delay would **seriously jeopardize** the enrollee's **life or health or ability to attain, maintain, or regain maximum function.** |
| **Standard** | **14 calendar days from receipt of request,** though plan may extend up to 14 calendar days if needs more info. |
| **Medicaid covered home health care services following an inpatient admission** | (1) business day after receipt of necessary info; except when request made the day before a weekend or holiday, **no more than three (3) business days** after receipt of the request for services. |

Model Contract, Appendix K. Same time for Concurrent Review & Prior Authorizations , 42 C.F.R. 438.210(d)

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# How/ when to ask for Increased or New Services?

- **WHEN** –
  - May ask at in-home reassessment conducted every 6 months
  - OR any time – by calling Member Services or care manager or by FAX or certified mail.
- **HOW**: Make request **in writing** – or confirm an oral request with WRITTEN request. This way you have proof that you requested it and when – starting clock for plan to respond.
  - Letter from your doctor helpful. Use detail.
  - Include request to EXPEDITE if urgent.

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## What if Plan Doesn't Make Decision by Deadline?

- If the plan does not issue a decision on a request for services within the deadlines stated above –
- this constitutes a **denial** and is thus an adverse action, which can be appealed just as a written decision can be appealed. 42 CF.R. 438.404(c)(5). (Request Fair Hearing)
- This is why it is important to make request for increase/new service in writing - And keep proof that you made it. Otherwise you cannot appeal if plan fails to decide on your request.

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## REDUCTIONS BY MLTC PLANS

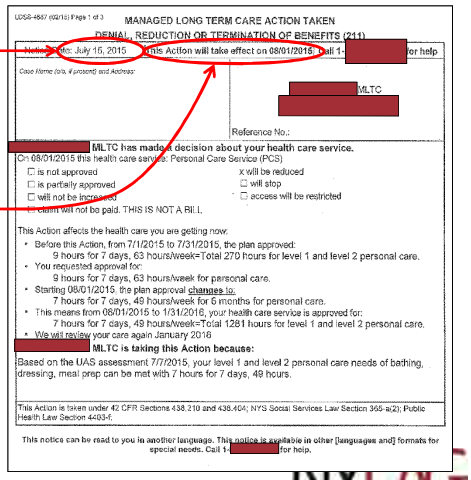
# Plans reducing hours of home care

- Since 2015 pattern of some MLTC plans reducing hours of personal care services and CDPAP, especially Senior Health Partners, VNS Choice, Centerlight.
- Medicaid Matters NY and NAELA NY released "**Mis-Managed Care"**
  - Report analyzed 1000+ MLTC FH decisions on reductions for 7 months June – Dec. 2015. See NYT Story July 21, 2016. Report posted at http://tinyurl.com/nytimes-FairHearing. DOH recognized increase in Fair Hearing requests for MLTC in 3rd quarter 2015.*
- Most people win hearings because plans fail to give any **written notice** or fail to give **adequate notice** with justification for reduction. But many lack the wherewithal to request or attend a hearing or get a lawyer, or they agree to accept a reduction without knowing their rights.
- Date of plan's proposed reduction must be 10 days or more after date of notice or date notice is mailed, if later.

*http://www.health.ny.gov/health_care/medicaid/redesign/docs/partnership_plan_2015_annual_rpt.pdf p. 16

# How to read a notice: Dates

- Notice Date
  - This is the date the plan printed the notice and, hopefully, mailed it to the member
- Effective Date[1]
  - If the Notice Date or Postmark Date are fewer than 10 calendar days before the Effective Date, then this is a Defective Notice.
  - Get Postmarked envelope!



MANAGED LONG TERM CARE ACTION TAKEN

DENIAL, REDUCTION OR TERMINATION OF BENEFITS (211)

Notice Date: July 15, 2015 — This Action will take effect on 08/01/2015. Call 1- [redacted] for help

Case Name (c/o, if present) and Address:

[redacted] MLTC

Reference No.:

[redacted] MLTC has made a decision about your health care service.

On 08/01/2015 this health care service, Personal Care Service (PCS)

☐ is not approved
☐ is partially approved
☐ will not be increased
☐ claim will not be paid. THIS IS NOT A BILL.

X will be reduced
☐ will stop
☐ access will be restricted

This Action affects the health care you are getting now:

- Before this Action, from 7/1/2015 to 7/31/2015, the plan approved: 9 hours for 7 days, 63 hours/week=Total 270 hours for level 1 and level 2 personal care.
- You requested approval for: 9 hours for 7 days, 63 hours/week for personal care.
- Starting 08/01/2015, the plan approval changes to: 7 hours for 7 days, 49 hours/week for 6 months for personal care.
- This means from 08/01/2015 to 1/31/2016, your health care service is approved for: 7 hours for 7 days, 49 hours/week=Total 1281 hours for level 1 and level 2 personal care.
- We will review your care again January 2016

[redacted] MLTC is taking this Action because:

Based on the UAS assessment 7/7/2015, your level 1 and level 2 personal care needs of bathing, dressing, meal prep can be met with 7 hours for 7 days, 49 hours.

This Action is taken under 42 CFR Sections 438.210 and 438.404; NYS Social Services Law Section 365-a(2); Public Health Law Section 4403-f.

This notice can be read to you in another language. This notice is available in other [languages and] formats for special needs. Call 1- [redacted] for help.

(1) 42 CFR § §438.404(c)(1) & 431.211;
(2) 18 NYCRR §358-2.2(a)(2).

## Get. The. Notice. EVERY PAGE.

- This is the best source of evidence about the action being taken by the plan
- Fax, photograph with smartphone and email, scan and email, or visit
- If none of the above options of getting the notice is possible, read the notice word-for-word over the phone

- **Get the envelope too!** Postmark shows actual date of mailing – client gets Aid Continuing if mailed less than 10 days before effective date.
- If the notice is defective, you may be able to get the plan to withdraw it. If the plan refuses to withdraw a defective notice, then there will be strong grounds for reversal at a Fair Hearing.

- **Oral notice** not sufficient! But that's sometimes how client learns hours will be reduced. Ask if mail delivery reliable.

## Notice Literacy: Aid Continuing

- **Aid continuing**: your services do not change until your appeal is decided; aid continuing is only available when:
  - Hearing is **requested before the effective date of the adverse action** – you get Aid Continuing even if the latest Authorization Period has expired, SSL 365-a, subd. 8, and
  - The **plan wants to take services *away* from you** (reductions and terminations; NOT denials); and:
    - In MLTC and MMC, if you ask for a **fair hearing**—there is no right to aid continuing in these plans when you ask for an internal appeal or an external appeal
    - In MAP, PACE, and FIDA, if you ask for an **internal appeal**
    - Also, in FIDA, if you requested an internal appeal before the effective date, and you lose your internal appeal, your case is auto-forwarded to the next level of appeal with aid continuing

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## Reductions: Content of Notice

- Notice must state specific **change in medical condition or circumstances,** such as increased availability of family to help, justifying reduction. *Mayer v. Wing*, 922 F. Supp. 902 (SDNY 1996)
  - 18 NYCRR 505.14(b)(5)(c)(2) was amended in 2015 to require more specific description of change - see FH # 7284013H (5/27/2016), 7224444Y (4/26/16), 7208804Q (Tompkins Co**)**
  - Not enough just to recite that not "medically necessary" or proposed hours are what their task plan shows.

Use **defects in notice** to win – and to request **tolling of statute of limitations** to appeal past reduction

- # 7060609N (NYC 8/11/2015)(notice not 10 days in advance);
- FH# 7068290Q (NYC 9/29/2015)(notice inadequate);
- #7165494N (3-year old notice found defective so hearing request not barred)

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# STRATEGIES TO INCREASE HOURS OR DEFEND AGAINST REDUCTIONS

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## Plans reducing hours - Strategies

1. **Request a hearing**. https://otda.ny.gov/hearings/
   a. Request before **effective date** of notice to get **AID CONTINUING**, usually within 10 days of notice date. But if notice not timely or adequate – can argue for Aid Continuing even if miss effective date. #7165494N
   b. Plan must give advance notice with right to Aid Continuing, even if plan mischaracterizes action as "denial" -- not a reduction. #7331553Q
   c. Must request FH even if request Internal appeal – No Aid Continuing on internal appeal – only hearing.
   d. Request **evidence packet** from plan to see if assessments show changes, improvement. Include HIPAA release (OCA 960) http://www.nycourts.gov/forms/Hipaa_fillable.pdf)
2. If you can't rep, refer to ICAN – Statewide Ombudsprogram for MLTC - takes referrals of cases statewide. 1-844-614-8800 www.icannys.org

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## Get signed releases

- NYS OCA 960 HIPAA Release – use for MLTC plan, doctors and other health providers, and HRA
  - Standard, DOH-approved HIPAA authorization
  - All MLTC plans are required to honor this form.[1] Download at http://www.nycourts.gov/forms/Hipaa_fillable.pdf
- 
- Authorization to Represent at Fair Hearing
  - Attorneys do not need any written authorization, although it's probably a good idea
  - Non-attorneys working with attorneys need authorization signed by the attorney or by the client. 18 NYCRR § 358-3.9

(1) N.Y. Dep't of Health, MLTC Policy 13.24, at http://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policies.htm

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# OCA 960 HIPAA Release

- Screenshot of part of HIPPA form

OCA Official Form No.: 960

**AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA**

[This form has been approved by the New York State Department of Health]

| Patient Name | Date of Birth | Social Security Number |
|---|---|---|
| | | |
| Patient Address | | |
| | | |

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form:

In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL** and **DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.


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# OCA 960 HIPAA Release (cont'd)

7. Name and address of health provider or entity to release this information:
**Leave blank**

8. Name and address of person(s) or category of person to whom this information will be sent:
**Your name, organization, ICAN, name of someone else at your organization, and address**

9(a). Specific information to be released:
- ☐ Medical Record from (insert date) _____ to (insert date) _____
- ☑ Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.
- ☐ Other: _____

Include: (*Indicate by Initialing*)
- _____ **Alcohol/Drug Treatment**
- _____ **Mental Health Information**
- _____ **HIV-Related Information**

**Authorization to Discuss Health Information**

(b) ☑ By initialing here _____ (Initials) I authorize **leave blank** (Name of individual health care provider)
to discuss my health information with my attorney, or a governmental agency, listed here:
**Your name, organization, ICAN, name of someone else at your organization, and address**
(Attorney/Firm Name or Governmental Agency Name)

| 10. Reason for release of information: | 11. Date or event on which this authorization will expire: |
|---|---|
| ☑ At request of individual<br>☐ Other: | **Date 12 months in future (or more)** |
| 12. If not the patient, name of person signing form: | 13. Authority to sign on behalf of patient: |

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

_____ Date: _____
Signature of patient or representative authorized by law.

* **Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.**

- Leave #7 and first part of #9(b) blank so you can reuse for different providers
- You can use for obtaining evidence packet from plan, and for communicating with doctors or other providers to obtain evidence
- **Have client initial #9(b), sign at bottom, and date**

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# Homebound status

- If the client is unable to travel to the hearing site without great difficulty, then he/she may be eligible for Varshavsky relief in the event of a non-fully-favorable decision
- Varshavsky appellants are entitled to a second hearing, conducted in their home, if they are not fully victorious in the first hearing. While awaiting the 2nd hearing in their home, hours will be increased to amount sought in hearing, if hearing not scheduled in required time.
- You will need a doctor's note to substantiate the client's "homebound status"

(1) Varshavsky v. Perales, 608 N.Y.S.2d 194 (App. Div. 1994).

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# Request evidence packet

- The member (and his/her rep) is entitled to a copy of the evidence packet - documents that the plan intends to submit at the Fair Hearing - **for free**, a reasonable time before the hearing
- It is not necessarily all of the client's case file; it's only the parts that the plan wants to submit at the hearing.
- But member has **right to request additional documents – may want past assessments or initial enrollment assessments.**
- Even though plan has burden of proof when reducing services, you can affirmatively refute their claim.

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## How to Request evidence packet

Call fax or appeals unit of MLTC plan to ask for the "evidence packet"

- Include HIPAA release OCA 960 (see above)
- Specify if you want additional documents from file in addition to those plan used for this decision.
- For example, if member received 12/7 care for 5 years and now plan says it will reduce hours because plan made a "mistake" or that condition "changed" – request all of the assessments and notices for last 5 years to refute basis for reduction.

- It can be difficult to find out where to fax or mail a request for an evidence packet. Some plan contacts are here http://www.wnylc.com/health/entry/179/ but check as not updated. Call member services and ask for APPEALS UNIT phone and fax numbers

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## Documents to Obtain Outside of Plan

1. If client received home care or other LTC services from CASA/DSS, a Lombardi program, a CHHA or other provider before enrolling in MLTC, request those records separately.
   - Need separate HIPPA release.
   - May refute claim that "condition improved" or "mistake" made
2. Medical records – hospital, clinic – may be helpful
3. Work with treating physician to write statement describing client's needs.
4. Night-time aide should keep log of all activities.

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## Former standards for assessing hours in FFS/DSS apply in MLTC

- All managed care plans must make services available to the same extent they are available to recipients of fee-for- service Medicaid. 42 USC § 1396b(m)(1)(A)(i); 42 CFR §§ 438.210(a)(2), (a)(4)(i). The Model Contract states: "Managed care organizations may not define covered services more restrictively than the Medicaid Program."
- In other words, there has been **NO CHANGE** in the amount or type of services available under MLTC versus under PCA/CHHA as it was administered before by DSS/CASA offices.
- If medically appropriate for 24-hour care (even split-shift) under the PCA regulations, then should receive 24-hour care under MLTC.

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## New Definitions 24-hour Care -

2015 amendments to regs defining two types of 24-hour care for those who, because of medical condition, need assistance daily with toileting, walking, transferring, turning or positioning. No longer require that need "total" assistance.

1. **Split Shift** – "uninterrupted care, by **more than one personal care aide**, for more than 16 hours in a calendar day for a patient who …needs assistance with such frequency that a live-in 24-hour PCA would be unlikely to obtain, on a regular basis, **5 hours daily of uninterrupted sleep** during the aide's eight hour period of sleep."
2. **Live-in** – "care by **one personal care aide** for a patient …whose need for assistance is sufficiently infrequent that a live-in 24-hour personal care aide would be likely to obtain, on a regular basis, **five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.**"
    - Home must have adequate sleeping accommodations for aide.

- GIS 15 MA/024 (12/2015), 18 NYCRR 505.14(a), (b)(3)(ii)(b), MLTC Policy 15.09
https://www.health.ny.gov/health_care/medicaid/redesign/mltc_policy_15-09.htm

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# Aides entitled to Overtime

- Federal labor regulations used to exempt home care aides from the Fair Labor Standards Act overtime requirements.
- Eff. Oct. 13, 2015, Aides must be paid overtime if work over 40 hours/week or Live-In aides working over 3 days in a work week.
- **Travel time** between different clients of the same employer/ home care agency must be paid. Travel to and from aide's home is not paid.
- **Live-in** – Must be paid for 13-hour day, and more if aide reports that 3 meal periods or 8 hours of sleep time are interrupted by a client's needs. Chronic problem of plans not paying 13 hours.
- http://www.health.ny.gov/health_care/medicaid/redesign/2015-11-09_flsa_decision.htm
- Fallout for clients – aides limited to 40 hours per week, wage cuts

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# Standards—authorizing PCS

- When you have 24-hour needs your plan cannot simply add up minutes for each personal care task (aka "task based assessment") *even if some of your care is provided by family, friends or other caregivers*;
  - No one can be compelled to provide care for you just so the plan can give you less care—but you can ask for fewer hours than the plan offers if care will be provided by others
- "**Safety monitoring**" is not a standalone personal care task that you can receive "credit" for, but time must be allotted for assistance that ensures safe performance of ADLs
  - Assistance may be verbal cueing, not only hands-on,
  - If who **cannot "direct" your own care** (e.g., if you have dementia) you are still entitled to services if there is someone else who will direct your care; such person need not live with you (92-ADM-49)
- Plans must **reinstate your services after a hospitalization** or rehab stay, at the same level you had previously GIS 96 MA-023

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## Helping Clients Defend Reduction or Get More Hours

Strategies for advocacy with plan or at a hearing.

1. **Task-based assessment** --Task times are not set in stone – add time for unscheduled needs, individual traits, .. #7298776Z (NYC 8/8/2016), 7085459Y(NYC 9/16/2015) ("these maximum [task] times are not found in the regulation" and can be overridden).
2. **DEMENTIA/ Safety monitoring** – must authorize time to ensure safe performance of activities, which includes verbal cueing not just hands-on assistance. DOH GIS 03 MA/003 , FH # 7242238K
3. **Plan must cover SPAN OF TIME in which needs arise**. NYS DOH GIS 03 MA/003 --"… a care plan must … [meet] the patient's scheduled and unscheduled day and nighttime personal care needs." FH 7297626N , 7311117H

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## More Strategies to keep or get more hours

4. **Informal Help must be Voluntary** - 18 NYCRR 505.14(b)(3)(ii)(b); 12 OHIP-ADM-01 -"…informal caregivers …support cannot be required but should be evaluated and discussed with the patient and the potential caregivers.");
   - GIS 97 MA/033 ("…contribution of family members or friends… cannot be coerced or required in any manner whatsoever." FH #: 7085459Y (9/16/2015); 7111878L (10/16/2015).
   - Have family member state clearly in writing the times they are available and willing to provide care.
5. **Mayer -3:** If client has 24-hour needs, even if family covers one shift, the plan my NOT use "task based assessment" to calculate the number of hours. They must cover the full span of time family is not available. 18 NYCRR 505.14(b)(5)(v)(d); GIS 97 MA 033, FH 7145223P and 7254996Z.

# INDEPENDENT CONSUMER ADVOCACY NETWORK (ICAN)



## What Is ICAN?

- Network includes a toll free helpline and community-based organizations
- Educates and advocates for people who want or get Medicaid long-term care through managed care plans
- Funded by a NYS Department of Health grant

- **ICAN services are free, confidential and independent from all health insurance companies**

# ICAN Can Help

- **Answer questions** about Medicaid programs for people receiving long term care
- **Provide Support** and technical assistance to other advocates
- **Solve problems** with plans and providers
- **Help individuals** understand their rights, file complaints or appeal
- **Assist with concerns** about MLTC or long term care in mainstream Medicaid Managed Care
- **Act as a Sentinel** to identify and report to DOH systemic issues or problems with Medicaid long term care

# Get Help From ICAN!

**Call**

844-614-8800

TTY Relay Service 711

**Email**

ican@cssny.org

# Contact numbers & Other Info

- **New York Medicaid Choice** (Enrollment Broker)
  - **To request a Conflict-Free Assessment** (after Medicaid approval) **1-855-222-8350**
  - **For information about MLTC** **1-888-401-6582**
  - **For more information about FIDA** **1-855-600-3432**
  - Website http://nymedicaidchoice.com/
    - http://www.nymedicaidchoice.com/program-materials - Scroll down to *Long Term Care plans*
    - **http://tinyurl.com/MLTCGuide** - Official guide to MLTC

- **NYS Dept. of Health MLTC/FIDA Complaint Hotline** **1-866-712-7197**
- **mltctac@health.ny.gov** (write "Complaint" in subject line)
- **NYS DOH Mainstream managed care complaint hotline** **1-800-206-8125**
  managedcarecomplaint@health.state.ny.us

- **Consumer Ombudsprogram – ICAN:** **1-844-614-8800** **http://icannys.org**

- **New Medicaid applications (seeking home care):** **929-221-0849**
- **Mail to:** HRA, Home Care Services Program 785 Atlantic Avenue, 7th Floor, Brooklyn NY 11238

- **Evelyn Frank Legal Resources Program:** **(212) 613-7310 or eflrp@nylag.org**

- **Related online articles on** http://nyhealthaccess.org**:**
  - **All About MLTC** - http://www.wnylc.com/health/entry/114/
  - **Tools for Choosing a Medicaid Managed Long Term Care Plan** http://wnylc.com/health/entry/169/
  - Appeals & Grievances - http://www.wnylc.com/health/entry/184/ with advocacy contacts
  - MLTC News updates: http://www.wnylc.com/health/news/41/