

**Office of Health Insurance Programs
Division of Health Plan Contracting and Oversight**

**Managed Long Term Care Policy 23.04: Clarification on Legal Guardians Serving as
CDPAS Personal Assistants**

Date of Issuance: October 30, 2023

Effective Date: Immediately

Applicable to: All Medicaid Managed Long Term Care (MLTC) plans.

This guidance is to clarify the ability of a legal guardian to serve as a consumer directed personal assistant for Consumer Directed Personal Assistance Services (CDPAS) and who may be assigned the role of the designated representative.

This guidance supersedes [GIS 16 MA/06](#) and [06 OMM/LCM-02](#). As outlined in statute at New York State Social Services Law (SSL) §365-f enacted in 2016 and regulations found at 18 NYCRR § 505.28, the CDPAS personal assistant cannot also be the designated representative or someone who is legally responsible for the member's care and support. As detailed in this guidance, a parent or legal guardian of an adult member, age 21 or older, is **not** expressly restricted from being a CDPAS personal assistant.

A member in receipt of CDPAS may require a designated representative to carry out the responsibilities of the member per CDPAS regulations found at 18 NYCRR § 505.28(h). The designated representative must be approved by the managed care plan and may be an adult member's parent, legal guardian or a responsible adult surrogate who is willing and able to perform the CDPAS responsibilities.

Legal Guardian

To clarify, a court-appointed (legal) guardian, including a parent-guardian of an adult aged 21 or older, may serve as an adult member's CDPAS personal assistant provided they are not also the member's designated representative.

A Representative Payee (legal guardian) authorized by the Social Security Administration (SSA) to receive a member's Social Security or Supplemental Security Income (SSI) benefits has very limited and discrete authority bestowed by the SSA such that one's status as a Representative Payee does **not** equate to being legally responsible for an individual's care and support equal to the responsibility of a parent for a child under the age of 21.

Similarly, an agent under a Power of Attorney or a court-appointed legal guardian does **not** have the same personal support responsibility and legal obligations as that of a parent of a child under the age of 21. An agent under a Power of Attorney or a court-appointed guardian is issued enumerated and limited fiduciary duties or powers. In CDPAS law and regulation when the term "legally responsible for the consumer's care and support" is used it is a reference to the legal obligation of a parent to a minor child to provide personal and financial support to that child - it is not a reference to the obligations of an agent under a Power of Attorney or court-appointed legal guardian.

The express purpose of the 2016 statutory revisions to SSL §365-f was to permit parents of adult children aged 21 or older to be able to be employed and work as their adult children's CDPAS personal assistants. The law was intended solely to expand the pool of who can be a CDPAS personal assistant to include parents of adult children. It was not intended to narrow the pool of who can be a CDPAS personal assistant.

The revision to the definition of personal assistant in regulations found at 18 NYCRR § 505.28 was solely intended to align with SSL §365-f and not to narrow the ability of parents of adult children to be their personal assistants.

When verifying if a legal guardian may provide CDPAS services, the managed care plan may not allow said legal guardian to be the member's primary point of contact, or otherwise oversee any decisions related to the member's care under CDPAS. These responsibilities remain solely that of the designated representative.

Designated Representative

When authorizing a designated representative, the managed care plan must approve a person who can make themselves available and be present for any scheduled assessment or visit by the independent assessor, examining medical professional, or managed care plan staff and to ensure that the applicable responsibilities, as outlined in CDPAS regulations found at 18 NYCRR § 505.28(h), are carried out without delay.

If a designated representative is unable or unwilling to fulfill their responsibilities under CDPAS, the managed care plan must immediately request a new designated representative or discontinue CDPAS and adjust the plan of care accordingly.

The designated representative may not be the CDPAS personal assistant or a fiscal intermediary employee, representative or affiliated person.

Please direct any questions related to this guidance or general questions related to CDPAS to consumerdirected@health.ny.gov.