Applying for Medicaid Personal Care or CDPAP Services in New York City - 2021-2022 Changes

May 16, 2022 Update - The new NY Independent Assessor (NYIA) starts being phased in. See info about that huge change in this article. Starting May 16, 2022 the M11q is no longer required for people applying to HRA for Medicaid home care who are NOT seeking MLTC because they are exempt or excluded from MLTC. See more about these groups here. However, the M11q remains in effect for those applying for Immediate Need services - until July 1, 2022, when the Independent Assessor will take over doing the physician's orders.

Nov. 8, 2021 Update - Starting Nov. 8, 2021, a nurse practitioner or physician's assistant or osteopath, not only physicians, may sign the M11q. see more here.

Jan. 2021 UPDATE: As of Jan. 1, 2021, people age 65+, disabled or blind applying for Medicaid in NYC MUST include "Supplement A" with their applications --using a NEW version of the form - **DOH-5178A** (English) - the same form that has been used outside of NYC. DO NOT USE Form **DOH-4495A,** which has been used in NYC until now. See more here.

Applying for Medicaid in NYC for Those who need Home Care

Where and how to apply for Medicaid personal care services and Consumer Directed Personal Assistance program (CDPAP) services has drastically changed with the implementation of mandatory Managed Long Term Care in New York State under a federal waiver that was approved September 4, 2012. The majority of individuals seeking Medicaid home care are now required to enroll in private managed care plans in order to receive those services. The process of applying for Medicaid and home care services is different depending upon what type of service, whether the applicant has Medicare, where the applicant lives, and new in July 2016, whether the individual has an "immediate need" for the personal care or CDPAP services. See this article for applying for personal care services outside of NYC.

The procedures changed in Sept. 2012 and then again in July 2016 - and the office in #2 moved in January 2017: .

1. Most adult Dual Eligibles in NYC (age 21+ having Medicare and Medicaid) are required to enroll in Managed Long Term Care plans in order to receive Medicaid personal care or CDPAP. But they first apply to HRA for Medicaid.

Since **September 2012**, in NYC, and other parts of the state where MLTC became mandatory over the next three years, *most* adult dual eligibles (click here for exceptions) apply at HRA for Medicaid, but "the front door is closed" for obtaining home care through HRA. See NYC Medicaid Alert dated Sept. 6, 2012 and HCSP Central Medicaid Unit letter,

1. Other than those few exceptions, **Adult Dual Eligibles who need Medicaid Home Care in NYC apply for Medicaid here:**

HRA--Home Care Services Program Central Medicaid Unit address effective Jan. 14, 2013

COVID ALERT - During the pandemic, **E-FAX applications to 917-639-0732**

OUTSIDE of the PANDEMIC - Mail applications to:

HRA--Home Care Services Program Central Medicaid Unit

785 Atlantic Avenue, 7th Floor

Brooklyn, NY 11238

T: 929-221-0849

Do NOT apply at a CASA office or at another Medicaid office - when seeking home care, must apply at the address above. Some **MLTC plan**s will file a Medicaid application for a prospective member..

3. **What to submit -**

    1. Generally applicants submit only the **Medicaid application** (with **Supplement A** (**DOH-5178A)**(English) **and all supporting documents, including verification of all financial resources for** home care or other community-based long term care services). See this Troubleshooting guide for tips to avoid delays in applications for people who will have a Spend-Down.

        1. Since Jan. 2021, a new Supplement A is used in NYC - (**DOH-5178A)**(English). This is required even for applicants who are not seeking community-based long term care services such as MLTC or "immediate need" or the Assisted Living Program.
        2. This is the same form that has been used outside of NYC. DO NOT USE Form **DOH-4495A,** which has been used in NYC until 2021.
        3. The **SPOUSE** of a married applicant MUST sign the new Supplement A. This is required even if the spouse is not applying, or even if using spousal refusal. This is why NYC is switching to the new form - it has

a space for the spouse to sign.

4. NOTE that as long as the COVID **Public Health Emergency** exists, applicants must complete Supplement A, listing all assets and their amounts, but are not required to verify the amounts with documentation. See information here.
5. **WHY THIS CHANGE:** See NYC Medicaid Alert Dec.22, 2020 Asset Verification System Expanded to all DAB/SSI Related Submissions. Since 2017, the State has required local Medicaid programs to implement an electronic Asset Verification System (AVS) that verifies accounts held in banking institutions or real property owned by the applicant. See 17ADM-02 - Asset Verification System with attachments here. NYC HRA has implemented this gradually - first in Nursing Homes in 2018 and then in hospital applications in 2019. NYC is now implementing it in community applications.

2. **In JULY 2016 a NEW PROCEDURE started for applicants who have an IMMEDIATE NEED for personal care or CDPAP services.** In addition to the Medicaid application with supporting documents, they may also submit an **M11q** (NYC Form physician's order for home care), a **new form for Attestation of Immediate Need.** Read about this new process and find the links to download the forms in this article. - and see different FAX number to file application. The same procedures will continue until July 1, 2022, when an M11q will NO LONGER be required for Immediate Need requests. HRA will then refer applicants for Immediate need to the NY INdependent Assessor for a nurse assessment and Clinical Assessment by a medical practitioner. See more here.

4. What happens next -

1. If Medicaid application was submitted without request for Immediate Need services, once Medicaid is accepted, client will be referred to choose and enroll in an MLTC plan on her own or be referred to one through New York Medicaid Choice.
2. If Immediate Need Procedure was followed, the Medicaid application must be accepted within seven days, and HRA must authorize personal care or CDPAP in 12 days. After 120 days of receiving these immediate need services, the individual will receive a letter from New York Medicaid Choice to select a managed long term care plan in 60 days or client will be automatically assigned to one. That MLTC plan must continue the same services authorized by HRA for a 90-day Transition period. See this article for consumer rights after transition period ends.

2. People who are Exempt or Excluded from Managed Long Term Care - Who they are and Where they Apply for Medicaid and Home Care (NOTE OFFICE MOVED JANUARY 16, 2018!):

A. Those in the Following Categories are Exempt or Excluded from enrolling in MLTC:

1. Applicants **under age 21** who are not in a "mainstream" Medicaid managed care plan. If they are in such a plan, they must seek services through the plan. Those **age 18-21** may opt for MLTC instead of mainstream Medicaid managed care if their disability is such that they would otherwise qualify for nursing home placement.
2. Adult applicants *who **do not have Medicare*** who are not in a "mainstream" Medicaid managed care plan. If they are in such a plan, they must seek services through the plan.
3. Anyone actually receiving **hospice** services is not eligible for MLTC and may apply to the HRA Home Care Services program for personal care/home attendant/CDPAP services to supplement hospice care. *Write "HOSPICE PATIENT" on top of the M11q!*
4. **Traumatic Brain Injury** (**TBI) Waiver** p or **Nursing Home Transition & Diversion Waiver** (NHTDW) participants or applicants. *Write TBI or NHTDW on top of the M11q!*
5. People seeking **HOUSEKEEPING (personal care Level I)** services, limited to 8 hours/ per week. 18 NYCRR 505.14(a). These are for assistance with IADLs (instrumental activities of daily living, or help with shopping, cooking, housecleaning, laundry) as opposed to ADLs (activities of daily living, or help with personal needs such as bathing, dressing, toileting, mobility transfer)
6. People in the **OPWDD (Office of Persons with Developmental Disabilities) Waive**r are EXCLUDED from MLTC and must get services through HRA.

2. **Where and How to Apply for Medicaid and Home care - people exempt or excluded from MLTC - NEW ADDRESS JANUARY 16, 2018**

1. Submit Medicaid application with "Supplement A" **DOH-5178A** (English) (new Supp A form starting Jan. 1, 2021) and all supporting documents **to the following address** If they already have Medicaid, include a copy of the notice of acceptance or the CIN number.

NYC HRA Home Care Services Program
Central Intake
132 W. 125th St.,5th Fl.
New York, NY 10027
Phone: 212-665-1893
Fax: **212-666-1747 BEST TO FAX DURING COVID PANDEMIC**
NOTE - after May 16, 2022 - An M11q is NO LONGER required for these applications, because HRA will refer the case to the NY Independent Assessor for the nursing asessment (called a "Community Health Assessment or CHA) and a medical assessment (called a Clinical Assessment). See more here.

What is the M11q? And Tips about Preparing the M11q Form

The M11q is the official HRA Form for applying for personal care - though it is being phased out with the NY Independent Assessor, which is being phased in starting May 16, 2022. See more here. . Until July 2016, an adult dual eligible applying for Medicaid who expects to enroll in n an MLTC plan would not have submitted this form to HRA. However, with the new procedures for people in Immediate Need of personal care or CDPAP services, the form is again required.

The form is posted on the NYC HRA website at M-11q Medical Request for Home Care (Dec. 2014). Click here to download a fill-in-able version.

WHO CAN SIGN M11q - Starting Nov. 8, 2021, a nurse practitioner or physician's assistant or osteopath, not only physicians, may sign the M11q. See 21 OHIP ADM-04 - *Regulatory Changes to PCS and CDPAP Effective November 8, 2021.* The medical provider who signs it must be enrolled with the NY State Medicaid program in order for Medicaid to pay for services that they prescribed, ordered or referred. See this article.

Q-Tips -Helping a doctor to complete the M-11q can be tricky, because the form uses many terms that are not universally understood by doctors. In addition, there are some details that are very important to assessing the need for home care, but which are not solicited on the form. To help you understand how to complete a successful M-11q, we have written a memo called Q-Tips. This version has been revised for the April 2010 M11q. The old version of the Q-Tips memo is also available in Spanish - we hope to update it for the 2010 M11q. Keep in mind that the M-11q is a medical document - non-doctors can assist in its completion, but in the end, a doctor must certify that the contents are true.

Home care advocates have found that the most effective M-11q forms are those that have detailed comments about the applicant's impairments and needs for assistance with activities of daily living. However, the M-11q form does not have much space for comments, and now the April 2010 form removes sections that formerly elicited some detailed comments by the physician. However, the M-11q form explicitly asks the physician to "attach an additional sheet(s) explaining the patient's condition in greater detail." We recommend that the M-11q form always be supplemented by this additional sheet of paper, with handwritten or typed comments spelling out the applicant's need for assistance with Activities of Daily Living in more detail. Here is an unofficial template.

30-Day Rule and "Stale" M-11q's

State regulation 505.14(b)(3) requires that the physician complete the physician's order (M11q) within 30 days of the medical examination of the client, and that the completed M11q be filed with the local district (CASA) within 30 days of the medical examination. The NYC HRA Home Care Services Program issued a Memo to all CASAs, dated May 26, 1995, that clarifies that as long as a signed M11q is submitted to the CASA within 30 days after the medical examination, it does not become "stale-dated" because it is in the CASA for more than 30 days without being acted upon. Moreover, this Memo clarifies that an M11q continues to be valid for one year after the medical examination.

30-Day Time Limit for HRA/CASA to Process M-11q

This time limit was agreed to in the 1978 settlement in Miller v. Bernstein (see par. 7). This is, obviously, not always complied with.

What are the regulations referred to in the Physician's Certification?

These are rules that have been in effect since at least the early 1990's that provide sanctions and penalties for physicians who commit fraud, abuse, or who knew or had reason to know that services they prescribed were unnecessary, improper, or exceed the patient's medical condition.

- **Part 515 - Provider Sanctions -** general section about sanctions against providers for "unacceptable practices," which include "Furnishing or ordering medical care, services or supplies that are substantially in excess of the client's needs." Sec. 515.2 (11).
- **Part 516 - Monetary Penalties** against providers for unacceptable practices
- **Part 517 - Provider Audits -** requires providers who bill Medicaid fee-for-service to retain records for six years
- **Part 518 - Overpayments -** Providers may be required to repay the State for inappropriate, improper, unnecessary or excessive care furnished directly or that the physician prescribed. "Medical care, services or supplies ordered or prescribed will be considered excessive or not medically necessary unless the medical basis and specific need for them are fully and properly documented in the client's medical record."

A federal audit found that some physicians who signed M11q forms had no record of ever seeing the individuals described in the M11q's as patients. Signing an M11q for a patient who the doctor never saw would, of course, be a violation of the rules and subject to sanctions. However, the new certification goes further and warns doctors against prescribing services that are "unnecessary, improper or exceed the patient's documented medical condition." As long as a physician retains records of their treatment of the patient for the requisite six years, these records reflect the patient's medical condition as described in the M11q, and the physician uses his or her reasonable professional judgment in recommending the amount of personal care services as medically necessary, s/he could not be subject to any sanctions.

Advocates can tell physicians that the warning was meant to weed out fraud - not good faith assessments of necessary services.

Gag Rule on Recommendation of Hours

Since 1992, state regulations have provided that in the physician's order (M11q in NYC), the "medical professional must not recommend the number of hours of personal care services that the patient should be authorized to receive." 18 NYCRR 505.14(b)(3)(i)(3). The rule was unsuccessfully challenged in court, so remains on the books.[1] However, later

developments in the personal care assessment process give authority for the treating physician to recommend, if not the number of hours, the "span of time" during which the need for personal care services arises.

- Local districts may not use "a task-based assessment when the applicant or recipient of personal care services has been determined by the social services district or the State to be in need of 24 hour personal care, including continuous (split-shift or multi-shift) care, 24 hour sleep-in care or the equivalent provided by formal or informal caregivers. The determination of the need for such 24 hour personal care, including continuous (splitshift or multi-shift) care, shall be made without regard to the availability of formal or informal caregivers to assist in the provision of such care." 18 NYCRR 505.14(b)(5)(v)(d), as amended effective Nov. 1, 2001. [2]

    - **COMMENT:** Since the physician's order (M11q) is a key part of the assessment process, the district cannot determine the need for 24-hour personal care without the treating physician's assessment.
- While this regulation does not expressly state that the treating physician must be consulted as to whether 24-hour care is needed, other parts of the regulations state:

    - The physician "must complete the physician's order form accurately describing the patient's medical condition and regimens, including any medication regimens, and the patient's need for assistance with personal care services tasks..." 18 NYCRR 505.14(b)(3)(i)(a)(2).

        - **COMMENT:** Accurate description of the "patient's need for assistance" with tasks such as ambulation, transfer and toileting would necessarily include discussion of the frequency of such needs over a 24-hour span.
    - "A physician must sign the physician's order form and certify that the patient can be cared for at home." 18 NYCRR 505.14(b)(3)(i)(b).

        - **COMMENT:** A physician could believe it professionally necessary to qualify this certification by certifying that the patient can be cared for at home provided that 24-hour or x hours of care are provided.
    - In the Statewide settlement in Rodriguez v. Novello, Stipulation and Order of Settlement, dated December 19, 2002, the State agreed to modify procedures for task-based assessment. The directive that implements the settlement, called GIS 03 MA/003, dated 1/24/03, clarifies that "The assessment process should evaluate and document when and to what degree the patient requires assistance with personal care services tasks and whether needed assistance with tasks can be scheduled or may occur at unpredictable times during the day or night." In addition, the GIS provides that ". . .a care plan must be developed that meets the patient's scheduled and unscheduled day and nighttime personal care needs." It also provides that personal care services include "...the appropriate monitoring of the patient while providing assistance with the performance of a Level II personal care services task, such as

transferring, toileting, or walking, to assure the task is being safely completed."

- ◊ **COMMENT:** Since the treating physician must, in the M11q, describe the "patient's need for assistance with personal care services tasks," discussion of whether these needs occur "at unpredictable times during the day or night" is a necessary part of the physician's description. Likewise, the physician should discuss whether and during what span of time the patient needs monitoring (also called "cueing," "prompting," or "contact guarding") to assure safe completion of tasks of transferring, toileting, or walking.

- ♦ Part of the settlement in Rodriguez applies only to New York City, since it involved claims against the NYC Medicaid program. The City agreed to modify the City's nurse's assessment form[3] so that if the nurse identifies a need for assistance with any of the three key activities of ambulating, transferring or toileting, the nurse must "indicate the span of time over which the assistance of a home attendant is required" or explain why assistance is not needed over a span of time.

  - ◊ **COMMENT:** Since state regulations require that the nurse's assessment must include "a review and interpretation of the physician's order," 18 NYCRR 505.14(b)(3)(iii)(b)(1), the physician's opinion of the "span of time" during which needs with ambulating, transferring or toileting, would have to be considered.

- ♦ An informal poll of advocates, including Selfhelp staff, have never heard of an M11q being rejected because the physician stated the number of hours that are needed, despite the 1992 regulation. We believe that if it was rejected, the case developments described above that require consideration of the "span of time" in which needs arise supersedes the regulation and justifies the physician's recommendation.

Footnotes

1) Kuppersmith v. Perales, 688 N.Y.S.2d 96 (1999), affirming 668 N.Y.S.2d 381 (App. Div. 1st Dept. 1998).

2) This regulation was amended pursuant to the Stipulation in Mayer v. Wing, and is known as the "Mayer-Three" exception to Task-Based Assessment. See GIS Message 01 MA/044. Mayer v. Wing, 922 F. Supp. 902 (S.D.N.Y. 1996), modified in part, unpublished Orders (May 20 and 21, 1996); Stipulation & Order of Discontinuance (Nov. 1, 1997)(Agreement to amend this regulation is in 11/1/97 Stipulation).

3) Nurse's assessment is required under 18 NYCRR 505.14(b)(3)(iii).

4) "Services shall not be diminished or discontinued solely because of the change in the patient's source of payment or the patient's inability to pay for care." 10 NYCRR 763.5(f)

This article was authored by the Evelyn Frank Legal Resources Program of New York Legal Assistance Group.

Article ID: 176
Last updated: 02 Jun, 2022
Revision: 38
Medicaid -> Home Care -> Applying for Medicaid Personal Care or CDPAP Services in New York City - 2021-2022 Changes
http://health.wnylc.com/health/entry/176/