

"Immediate Need" Fast-Track Application for Medicaid and Personal Care or CDPAP - Independent Assessor Starts Dec. 1, 2022

Medicaid has a fast-track procedure to apply for Medicaid in order to obtain home care services, which has been faster than enrolling in a managed long term care plan. Click here to learn about the reasons for MLTC enrollment delays. The 2015 New York law requires approval of Medicaid in only SEVEN DAYS and of Medicaid personal care or Consumer-Directed Personal Assistance in TWELVE DAYS if there is an "immediate need" for home care. This article describes this procedure and other strategies to minimize these delays.

KNOW YOUR RIGHTS - Fact sheet with Key Forms for Immediate Need in process of being updated.

ALERT RE CHANGES:

- April 2024 - Tip to include the NY Medicaid Choice Authorized Representative Designation Form if someone other than the consumer will be scheduling the NY Independent Assessor assessments. See below.
- **Starting Dec. 1, 2022 --The local DSS will accept applications for Immediate need but will refer them to be assessed through the new NY "Independent Assessor" (NYIA) procedures. DO NOT call NYIA directly to apply for Immediate Need. You must follow the procedures described below which explain what forms and other documents to submit to your local Medicaid office (LDSS).** See DOH directive GIS 22 MA/09 - Implementation of Assessments Conducted by the New York Independent Assessor (NYIA) Based on an Immediate Need for PCS/CDPAS (PDF) (11/16/2022) See more about NYIA in this article and NYS DOH Independent Assessor website.
- **Starting Nov. 8, 2021**, a nurse practitioner or physician's assistant or osteopath, not only physicians, may sign the M11q. see more here.
- **2021 NOTE for NYC applicants** - Now use a different Supplement A (DOH-5178A) with applications. See more here.

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Covid-19 NOTE - Local districts should still be processing these applications with these flexibilities:

- ♦ Physician may complete the physician's order by telehealth or telephone (use new Practitioner Statement of Need form (DOH-5779))
- ♦ Both of the above changes are in COVID-19 Guidance for the Authorization of Community Based Long-Term Services and Supports Covered by Medicaid - UPDATED 4.8.20

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Part 3 BACKGROUND on the IMMEDIATE NEED Law

Part 1 Immediate Need Fast Track Procedures

a. How to Apply for Medicaid (or How to apply for Personal Care if you already have Medicaid) -- if You have an Immediate Need for Personal Care or CDPAP Services

Submit the following package to the local Medicaid office in your county.

WHERE: In **New York City**, **E-FAX** the package to **the HRA-HCSP Central Medicaid Unit - 1-917-639-0665**;

- The unit is located at 785 Atlantic Avenue, 7th Fl. Brooklyn, NY 11238 but mail or hand delivery is discouraged.

WHAT TO SUBMIT:

1. NYC Use **HRA HCSP Transmittal Form HCSP -3052**
2. **Medicaid application** with all required documents.
 - ◆ This must include "Supplement A" (Form DOH-5178A -used statewide as of Jan. 2021 - see more about this 2021 change here)(alternate languages and formats of forms posted at this link). Supplement A must be signed by both spouses even if only one spouse is applying for Medicaid. See more about Medicaid eligibility here.
 - ◆ If you already have Medicaid, submit the approval notice and the CIN number.
 - ◆ If an application was already submitted and is pending, submit a copy of it along with all documentation, and proof of when and where it was filed.
3. **Physician's statement -AFTER Dec. 1, 2022, submit a new Practitioner Statement of Need form (DOH-5779) in lieu of the old Physician's Order form (DOH-4359 or HCSP-M11Q).** The Practitioner Statement of Need is shorter and can be completed by an MD, DO, NP or PA.

- ◆ The new Practitioner's Statement no longer requires that it be signed by a provider WHO IS ENROLLED WITH THE MEDICAID PROGRAM. See this article. This is because it is not being used as a medical order for home care services. That order will now be issued by the NYIA Independent Practitioner Panel after the Clinical Assessment. See here. It is not clear whether, if you use a Physician's order/ M11q instead of the new form, the doctor must have seen patient and signed the form within last 30 days.

◇ Beginning Nov. 8, 2021, the form may be signed by a Nurse Practitioner, Physician Assistant, or Doctor of Osteopathy instead of a doctor. 21 OHIP ADM-04 - Regulatory Changes to PCS and CDPAP Effective November 8, 2021.

- ◆ Practitioner may complete the form by **telehealth or telephone**

4. **Attestation of Immediate Need - DOH- 5786 NEW FORM DECEMBER 1, 2022** issued with the new NYIA procedures, replacing OHIP-0103). Consumer must sign this form to attest that:

1. You have no informal caregivers available, able and willing to provide or continue to provide needed assistance;
2. You are not receiving *needed* help from a home care services agency;
3. You have no adaptive or specialized equipment or supplies in use to meet your needs; and
4. You have no third party insurance or Medicare benefits available to pay for *needed* help.

2019 LCM-02 - Immediate Need for Personal Care Services and Consumer Directed Personal Assistance Program (CDPAP) - FAQ clarifies that if Medicare or private pay providing some but not all needed assistance, then still qualifies for Immediate Need. FAQ also says the attestation form is "self-authenticating" - DSS cannot demand proof of need if attested to. Also if family cannot continue to provide the assistance, you can still apply. If the consumer writes in any notations on the form, she or he should initial them, and explain the particular facts in a COVER LETTER.

NOTE that Attestation Form specifically states may be submitted while applicant in the hospital or a skilled nursing facility.

5. **AUTHORIZED REPRESENTATIVE DESIGNATION FORM (NY Medicaid Choice)**

- If a family member, social worker, attorney or other advocate will schedule the nurse assessment by the NY Independent Assessor, providing this form to designate this representative will save time later.

6. **Spousal impoverishment budgeting** -- Use DOH **"Request for Assessment-Spousal Impoverishment" form** (DOH-5298 - 1/2023) for a married applicant to request spousal impoverishment budgeting. This budgeting should be approved pending MLTC enrollment. See 16 ADM-02 - Immediate Need for Personal Care Services and Consumer Directed Personal Assistance Services (p. 7 of PDF). Spousal impoverishment may only be used in Immediate Need cases or ***after*** one is already enrolled in an MLTC plan. One who applies for Medicaid in

order to enroll in MLTC, but who does NOT use Immediate Need procedures, must submit a Spousal Refusal form with the application, and later request spousal impoverishment budgeting after enrolled in the MLTC plan.

7. **Cover letter** that explains why there is an "immediate need" for services and can't wait to enroll in MLTC,

- status of the Medicaid application if previously approved or filed,
- how the applicant was managing previously and what precipitated the Immediate Need.
- whether there are other services in place and if there are informal supports available, or if they were available explains they are no longer available .
- Request spousal impoverishment budgeting (always useful to include what you think the budget should be with that budgeting). Use the FORM described in #6 above.
- Who to contact to schedule the assessments (see #5 above recommending you include the NY Medicaid Choice **AUTHORIZED REPRESENTATIVE DESIGNATION FORM**)

6. **HIPAA release** - OCA Form No. 960 - Authorization for Release of Health Information Pursuant to HIPAA

b. What Happens After I Submit the Application Package?

1. **Starting Dec. 1, 2022** - the local district **must refer the case to NYIA for the assessments**. Before, the local district's own nurse did the assessments. See GIS 22 MA/09 - Implementation of Assessments Conducted by the NY Independent Assessor (NYIA) Based on an Immediate Need for PCS/CDPAS (11/16/2022). The LDSS will submit all of the Immediate Need documents to NYIA through an online portal. Once NYIA confirms receipt, the LDSS initiates a 3-way call between the consumer/rep and NYIA to schedule the assessments. The GIS says the **consumer should NOT CALL NYIA directly** to schedule assessments if an Immediate Need application is filed.

- ◆ **In NYC**, the HRA Home Care Services Program Central Intake Unit handles all of the actions described above - they receive the Immediate Need application and transmit it to NYIA, and conduct the 3-way call to schedule the NYIA assessments.
- ◆ After the 3-way call, NYC cases get assigned to the local CASA and a worker is assigned to follow up with the consumer about the dates of the NYIA assessments and also to schedule a 3rd assessment by the CASA caseworker. This is like the old "social assessment" which assessed whether the consumer's home was appropriate for home care, sleeping accommodations for a live-in aide, etc.

2. **NYIA will conduct 2 assessments** - a Community Health Assessment (CHA) by a nurse and a Clinical Assessment (CA) by a "practitioner" (doctor, nurse practitioner or physician assistant) who then issues a Physician's Order (PO) for services,

if those assessments find the consumer's medical condition is stable.

- ◆ **Denials by NYIA** - If the medical condition is determined to be unstable for PCS/CDPAP, NYIA sends the consumer notice with Fair Hearing Rights. 22-ADM-01 p. 7. the LDSS may not authorize services if NYIA makes that finding unless reversed in a Fair Hearing.

3. **The LDSS should be tracking the outcome of the NYIA assessments**, which it locates in a portal, and under 22-ADM-01, "the LDSS must review the NYIA CHA and PO and determine that PCS and/or CDPAS are appropriate, medically necessary and can reasonably maintain the individual's health and safety in their home." The LDSS then must **develop a plan of care**.

- ◆ In NYC, a CASA nurse reviews the NYIA assessments and develops the plan of care. S/he may contact the consumer or their family for more information and may do a home visit.

4. If the DSS' **plan of care is for more than 12 hour/s day (24-hour care)**, the LDSS must refer the case back to NYIA for an Independent Medical Review. See 22-ADM-01. Regardless of the outcome of that review, the LDSS proceeds to authorize the care. If referring for the IMR will cause delays, the LDSS has discretion to authorize a **"temporary" plan of care** that is more than 12 hours. 18 NYCRR 505.14(b)(4)(vi). However, HRA informed advocates that as of 11/30/22 there is no mechanism for HRA to do this, and the current system is not set up to allow for it.

5. **Denial Notice** - If the DSS determines the consumer is not eligible for PCS or CDPAP, it issues notice with fair hearing rights. 22-ADM-01 p. 11. *NYLAG comment*: If NYIA has determined the consumer's condition is medically stable, presumably the DSS should not be permitted to deny services on the basis that the condition is NOT stable.

6. **DEADLINES** - Under the Immediate Need law and regulations, and 2016 LCM-02 - Immediate Need for Personal Care Services and Consumer Directed Personal Assistance Program (CDPAP), the local district is required to process the Medicaid application and the assessment of need for home care concurrently.

1. Within **FOUR days** of receiving the application -- the local Medicaid office must determine if the application is complete;
2. Within **SEVEN CALENDAR days** of receiving a complete application -- the local Medicaid office must reach a determination as to eligibility for Medicaid;
3. Within **TWELVE CALENDAR days** of receiving a complete application, the local Medicaid office must:

- ◇ determine whether she is eligible for personal care or CDPAP services,
 - ◇ authorize services and notify the applicant of the amount authorized.
- THIS DEADLINE remains the same even with NYIA conducting the assessments.

NYLAG COMMENT: Even before Dec. 1st, HRA and other LDSS have not met these

strict deadlines for authorizing Immediate Need, and it is likely that this will cause further delays.

7. The Medicaid office must assign the case to a contracted Medicaid agency or CDPAP fiscal intermediary and arrange for services to be provided "as expeditiously as possible."
8. After the home care services are provided for 120 days, the individual will receive a notice from New York Medicaid Choice, a state contractor that serves as the enrollment broker for all managed care programs. The notice will explain that she needs to select and enroll in an Managed Long Term Care (MLTC) plan within 60 days, and if she does not select one, she will be auto-assigned to one.
9. Once enrolled in the MLTC plan, the consumer has Transition Rights. The new MLTC plan must continue the same services and hours for 90 days. See here. After the Transition Period is over, beware that the rules are changing, allowing MLTC plans to more easily reduce hours than before. See here.

C. Who can Use Immediate Need, beside NEW applicants for Medicaid?

Besides new Medicaid applicants and those with Medicaid applications pending, described above, any adult who has Medicare who needs Medicaid home care can use these procedures, including individuals who:

1. Already have Medicaid but not coverage of community-based long term care (they "attested" as to the amount of their assets and did not submit "Supplement A" with the application Supplement A (DOH-5178A)(alternate languages and formats of forms posted at this link). Note that Supplement A has been required with all Medicaid applications since March 2022. See here.
2. Anyone applying for Medicaid should receive this Fact Sheet (page 2 of this link) explaining their right to apply under the new procedures and request Immediate Need Personal Care or CDPAP services. This is required by the ADM. **Note:** the Fact Sheet includes a web address to download the Medicaid application forms at the NYS Dept. of Health website, but not the M11Q or any other form to be used as a physician's order.
3. Have Medicaid coverage with eligibility for coverage of community-based long term care (they verified assets) but are not in an MLTC and have no home care.
4. Have a Medicaid case at NY State of Health (NYSoH or the "Marketplace" or "Exchange") under the Affordable Care Act, who are not in a managed care plan. Their Medicaid must be transferred from NYSoH to the Local Medicaid office through procedures described in pages 5-6 of the ADM - the transfer can only be initiated with an email to hxfacility@health.ny.gov.

PART 2 -- Law, Regulations, State & NYC HRA Directives Implementing Immediate Need

LAW

1. 2015 - NY Soc. Serv. L. Â§366-a(12) amended to require the State Medicaid agency to set up procedures for Medicaid applications to be processed and approved in SEVEN CALENDAR DAYS if there is an "immediate need" for personal care services or consumer-directed personal assistance services (CDPAP). It took a year for the State to set up these procedures, after soliciting comments from the public.
2. 2020 amendments to the Social Service Law establish an Independent Assessor -- with a nurse from Maximus to conduct the nurse assessments and a doctor, nurse practitioner or physician assistant from Maximus to conduct a Clinical Exam and prepare medical orders, which will replace the M11q. This huge change is being phased in starting May 16, 2022, but will begin for Immediate Need applications on July 1, 2022. See more here. See DOH directives 22-OHIP/ADM-01 (April 2022) and GIS 22 MA/09 - Implementation of Assessments Conducted by the New York Independent Assessor (NYIA) Based on an Immediate Need for PCS/CDPAS (PDF) (11/16/2022)

REGULATIONS

1. **Regulations require "no later than twelve calendar days after receipt** of a complete Medicaid application from such an applicant, the social services district must..." refer the individual for assessments, and promptly notify the recipient of the amount and duration of personal care services to be authorized and issue an authorization for, and arrange for the provision of, such personal care services, which must be provided as expeditiously as possible. 18 NYCRR 505.14(b)(6) and (7) (PCS) and 505.28(k) an (l) (CDPAP), published in NYS Register 5/25/2016.- further amended in 2021 to implement 2020 changes. See more here and here.
2. Regulations were amended Nov. 2021 to implement the NYIA changes, but did not alter the deadlines for authorizing services.

AGENCY DIRECTIVES

1. **2022 - NY Independent Assessor** - DOH directives 22-OHIP/ADM-01 (April 2022) and GIS 22 MA/09 - Implementation of Assessments Conducted by the New York Independent Assessor (NYIA) Based on an Immediate Need for PCS/CDPAS (PDF) (11/16/2022)
2. **16 ADM-02 - Immediate Need for Personal Care Services and Consumer Directed Personal Assistance Services (PDF) (Attachment)** Local Medicaid offices must process and approve a Medicaid application in SEVEN DAYS, and authorize personal care or CDPAP services in TWELVE DAYS, if there is an immediate need for these services. These procedures are explained below.

- ◆ **Attestation of Immediate Need Form Eff. 12/1/2022 - use new attestation form DOH- 5786 that replaces OHIP-0103.** [GIS 22 MA/09 \(11/2022\)](#)
- 3. [2016 LCM-02 - FAQ -- Immediate Need for Personal Care Services and Consumer Directed Personal Assistance Program \(CDPAP\)](#)
- 4. [2019 LCM-02 - FAQ's on Immediate Need for Personal Care Services and Consumer Directed Personal Assistance Program \(CDPAP\)](#)
- **NYS DOH WEBSITE INFO:** https://www.health.ny.gov/health_care/medicaid/ - Click on FAQs then scroll down to [If I have an immediate need for Personal Care Services or Consumer Directed Personal Assistance Services, can I get my eligibility for these services processed more quickly?](#) (7th FAQ)

NYC HRA ALERTS AND FORMS on IMMEDIATE NEED

- [2016-10-19 MICSA ALERT re Immediate Need for PCS and CDPAP.pdf](#)
- NYC HRA [Transmittal Form](#) (Sept. 23, 2016) - Use when submitting applications.

PART 3 -- BACKGROUND: Causes of Delays for new Medicaid Applicants to Enroll in Managed Long Term Care Plans - Before the New Law

1. **Normally Medicaid office has 45 days to process an application** -- and sometimes 90 days. See [this article](#) on these deadlines and [this article](#) for information about how and where to file these applications in New York City, and this [fact sheet](#) with tips for applications.. It can often take longer. Before the July 2016 directive, the "front door" was closed at the local Medicaid program to request Medicaid personal care services from the local Medicaid agency. Anyone who had Medicare had to apply for Medicaid at the local Medicaid agency, but then had to enroll in a Managed Long Term Care plan to get home care.

◆ July 2016 - NEW 7-DAY APPROVAL TIME FOR MEDICAID!

2. **Next, most adults who have Medicare must request a "conflict free" eligibility assessment** from New York Medicaid Choice, a company under contract with the NYS Dept. of Health. This company determines if they are eligible for long term care. It can take 2 weeks to set up that assessment. If they are found eligible --
3. **Next they must contact different managed long term care plans and request they schedule an assessment in the home**, at which time the individual can enroll. However, the plan must submit the signed enrollment forms by the 18th of the month in order for enrollment to start on the 1st of the following month. IF they miss that deadline, it delays enrollment in an MLTC plan a whole month. See contact lists for MLTC plans [here](#) (look only at Long-Term Care Plans at that link)

4. **Further delays can be caused if the individual has a "spend-down"** -- then the plan must often request the local Medicaid program to change the Medicaid eligibility codes in the computer system - a process called a "conversion." These procedures and forms are explained in [this fact sheet](#).

MORE BACKGROUND: State Law Historically Authorized Temporary Services *Pending* the Medicaid Application -- Litigation Challenged Amendments to the Law

A lawsuit filed in 2007 and still pending -- *Konstantinov v. Daines* -- asserts that Medicaid services must be authorized while a Medicaid application is still pending, before it is accepted, if there is an immediate need for services. The lawsuit focuses on Medicaid personal care services, and was brought before the transition to Managed Long Term Care. Since the lawsuit was filed, the legislature has amended the state law upon which the lawsuit is based repeatedly, most recently in April 2015. The state contends that the 2015 amendments to state law eliminate the authority for providing any Medicaid applicant with services before their application is approved. However, the 2015 amendments now require new procedures to approve Medicaid applications in ***just seven days***. As of December 21, 2015, these procedures are still not established. In 2015, the State had reminded local Medicaid offices of procedures in a directive, **GIS 15 MA/011 - Reminder of Expedited Authorization Process for Medicaid Recipients with Immediate Need for Personal Care Services** -- [PDF](#). These only helped people who already had Medicaid. Before 2016, however, there was no way to speed up the processing of the Medicaid application faster than 45 days.

Brief history of lawsuit

A 2010 court Order directed the NY State Dept. of Health to establish a procedure for certain needy Medicaid applicants and recipients to obtain immediate temporary personal care services while their Medicaid application was pending. *Konstantinov v. Daines*, 2010 WL 7746303 (N.Y. Sup. 2010, Hon. Joan Madden). The State was further ordered to provide Medicaid applicants with notice of the availability of these services. The lawsuit was brought by Aytan Bellin, Esq., a private elder law attorney practicing in Westchester and New York City.

The Court order was upheld on appeal in 2012. 101 A.D.3d 520, 522 (1st Dept. 2012). In 2013 the State moved to vacate it because of new legislation enacted -- SSL Â§ 364-(i)(7), which the State contended limited the impact of the decades-old law upon which the Court's 2010 decision was based. That law -- NY Social Services Law Sec. 133, in its current form states:

"Upon application for public assistance or care under this chapter, the local social services district shall notify the applicant in writing of the availability of a monetary grant to meet emergency needs assistance or care and shall, at such time, determine whether such person is in immediate need. If it shall appear that a person is in immediate need,

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emergency needs assistance or care shall be granted pending completion of an investigation. The written notification required by this section shall inform such person of a right to an expedited hearing when emergency needs assistance or care is denied. A public assistance applicant who has been denied emergency needs assistance or care must be given reason for such denial in a written determination which sets forth the basis for such denial."

By order dated March 12, 2014, Justice Madden denied the Department's motion to vacate her July 2010 Order, and ordered the State to propose regulations to implement the Order. *Konstantinov v. Daines*, 2014 N.Y. Misc. LEXIS 1137; 2014 NY Slip Op 30657(U),

2014 Proposed Regulations

To comply with the Court Order, the State published proposed regulations to by which Medicaid applicants and recipients may obtain "immediate temporary personal care services," The regulations were published in the July 16, 2014 State Register p. 20. NYLAG, Empire Justice Center, the Legal Aid Society and other consumer advocates filed comment in support of the regulations, but recommending that the procedure be adapted in light of the sweeping changes in the delivery of Medicaid personal care services. When the 2010 court order was issued, these services were authorized by local county Medicaid programs, such as HRA in New York City. Now, managed long term care plans are charged with authorizing and delivering these services. The proposed regulations would use the old system to provide the temporary services, with the local Medicaid offices conducting the assessment process.

- Empire Justice Center comments on regulations.
- NYLAG comments on regulations
- Comments also filed by the Coalition to Protect the Rights of New York Dual Eligibles and The Legal Aid Society.

In February 2015, after reviewing the comments, the State issued revised proposed regulations, specifically citing NYLAG's comments. to the 2014 proposed regulations. Again, NYLAG and other organizations filed comments.

2015 Amendment to State Law and Regulations to Expedite Medicaid Applications in 7 Days -- and Authorize Home Care for those with Immediate Need in 12 Days

In April 2015, State law was amended in to require the State Dept. of Health to establish procedures to process a Medicaid application in SEVEN DAYS of the filing of a complete Medicaid application, for any applicant with an immediate need for personal care or consumer-directed personal assistance services. N.Y. Social Services Law Â§366-a(12).

The State Department of Health went back to court contending that this and another change in section 133 of the Social Services Law meant that the State no longer needed to publish regulations establishing an expedited procedure for authorizing personal care services for new applicants for Medicaid.

In July 2015, the State Supreme Court Justice hearing the *Konstantinov* case rejected the State's argument with respect to Medicaid **recipients** -- those whose applications were already accepted. For Medicaid **applicants**, whose applications were still pending, the Court "stayed" or postponed the requirement for the State to issue regulations. As to Medicaid recipients -- these persons already on Medicaid -- in immediate need, Justice Madden ordered that the regulatory procedure begun July 2014 continue. That means that DOH was required to issue final regulations concerning Medicaid recipients on July 16, 2015, which is one year after the Notice of Proposed Rulemaking was published, or must issue a second revised notice of proposed rulemaking on July 16, 2015 with the final Rules to be issued by October 14, 2015.

On July 1, 2016 new regulations become effective that will require that Medicaid applications be processed and approved in SEVEN CALENDAR DAYS if there is an "immediate need" for personal care services or consumer-directed personal assistance services (CDPAP). The regulations implement a new law enacted April 1, 2015. NY Soc. Serv. L. Â§366-a(12).

- Regulations add new sections 18 NYCRR 505.14(b)(7) and (8) (PCS) 505.28(k) and (l) (CDPAP), published in NYS Register 5/25/2016
- The July 2016 regulations were the last in a series of proposed regulations. NYLAG and other organizations submitted comments on many of the draft proposed regulations, such as those published on October 28, 2015 (page 3). NYLAG, Empire Justice Center, the NYS Bar Association Elder Law Section, and other organizations again filed comments. Click [here for NYLAG comments](#) (12/9/2015) Click [here for Empire Justice Center comments](#). Click [here for NYLAG comments](#) (April 1, 2016)

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<http://health.wnyc.com/health/entry/203/>