New York Independent Assessor (NYIA)

October 27, 2022 -- Corrected

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ABOUT NYLAG

The New York Legal Assistance Group (NYLAG) is a leading non-profit that provides free civil legal services, financial counseling, and engages in policy advocacy efforts to help people experiencing poverty.

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About the Evelyn Frank Legal Resources Program (EFLRP)

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- Focuses on fighting for seniors and people with disabilities, ensuring that they have access to health care and home care services they need to age safely in their home and communities
- Counseling client on Medicaid, Medicare and home care eligibility and services
- Educating the public through the website NYHealthAccess.org

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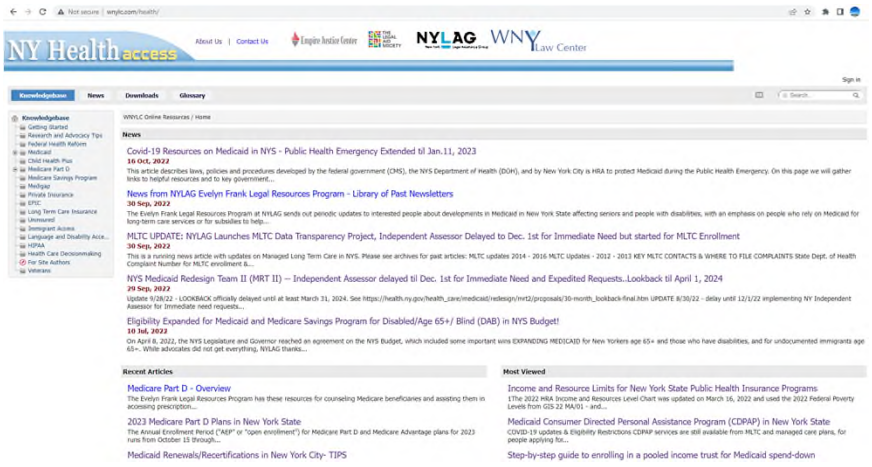
www.nyhealthaccess.org



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Presentation Roadmap

- What is the Independent Assessor?
- When does it start?
- Who does it affect?
- How does it work?
- NYIA Denials
- NYIA Approvals
- Advocate Concerns

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3 MRT II Changes Enacted in 2020 - Status

Medicaid Redesign Team II Change	When does it Start?
Independent Assessor for Personal Care services (PCS) & Consumer Directed Personal Assistance (CDPAP) "NYIA" will be Phased in	May 16, 2022 – MLTC enrollment, *standard* managed care and DSS requests December 1, 2022 – Immediate Need, *expedited* managed care requests Not yet scheduled – annual reassessments, requests for increases in hours, NH/hospital discharges
New minimum 3 ADLs required for eligibility for PCS & CDPAP (2 ADLS if dementia)(Slides at end)	DELAYED: 4/1/2024 at the earliest due to Maintenance of Effort requirements under Families First Coronavirus Response Act (FFCRA) and HCBS services under American Rescue Plan Act (ARPA) http://www.wnylc.com/health/news/85/
30-Month LOOKBACK for MLTC enrollment and all Requests for PCS and CDPAP (not covered in this slide deck)	

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Reference: Regulations & Guidance

- New NYS DOH NYIA website - https://www.health.ny.gov/health_care/medicaid/redesign/nyia/
- Document Repository tab on site has links to NYIA Policies
  1. Amended Personal Care & CDPAP regulations 18 NYCRR 505.14 & 505.28
  2. 22 OHIP/ADM-01 - 4/20/22 for local DSS Medicaid offices
  3. MLTC Policy 22.01 4/27/22 for MLTC plans https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/docs/2022-04-27_mltc_22-01.pdf
  4. MMC Guidance - 4/28/22 for mainstream plans (mostly people without Medicare or other primary insurance)
- Trainings tab has many PowerPoints DOH presented to plans and Local DSS
- NOT MUCH for consumers and NO FAQs as of 5/14/22 – only https://nymedicaidchoice.com/ask/do-i-qualify-managed-long-term-care

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Complaints to the DOH

Independent.assessor@health.ny.gov / (518) 474-5888

DOH MLTC Complaint Unit
1-866-712-7197 or mltctac@health.ny.gov

DOH MMC Complaint Unit
1–800–206–8125 or
managedcarecomplaint@health.ny.gov

Include Independent Assessor AND relevant TAC in your email

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WHAT, WHEN, WHO?

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What is the New York Independent Assessor (NYIA)?

- **Replaces CFEEC, requires more Medicaid recipients under assessment, *and* adds more steps!!**
- **Many (but not all) Medicaid recipients seeking Personal Care and Consumer Directed Personal Care Services must undergo a multi-step independent assessment and be found eligible in order to enroll in MLTC or access these services through a Managed Care Plan (MMC) or the DSS.**
- **The NYS Department of Health has contracted with Maximus Health Services, Inc. (Maximus a/ka/ NY Medicaid Choice) to implement the New York Independent Assessor (NYIA) and conduct the assessments.**

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Independent Assessor being phased in:

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A. Started May 16, 2022:

1. **For enrollment into MLTC/MAP**
2. **For *NEW* requests for PCS/CDPAP to DSS for 18+**
3. **Mainstream managed care – *Standard* NEW* requests for PCS/CDPAP for age 18+ and voluntary transfers to MLTC**

B. Starts December 1, 2022:

1. **Immediate need applications to DSS/HRA and *expedited new* requests to mainstream managed care.***

C. Not YET – but at an undetermined future date:

1. **Annual *reassessments* (no longer 6-month) – for MLTC, mainstream managed care & DSS/HRA**
2. **Every request to plan or LDSS for an *increase* or on *discharge from NH, hospital*.**
3. **Voluntary transfer from MLTC plan to MLTC plan**

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

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NYS Medicaid Recipients Required to use the NYIA Assessments Procedure for CBLTC *(as of October 2022)*

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Medicaid Population (MMC=Mainstream managed care)	Eligibility for Plan Enrollment	Prior Authorization for PCS/CDPAP	Reassessment / Requests for increase in hours / change in condition
MLTC	Yes, 5/16/22	NA	TBD
MMC Standard Request (18+)	NA	Yes, 5/16/2022	TBD
MMC Expedited Request (18+)	NA	Starting 12/1/2022	TBD
DSS (18+) exempt from MMC or MLTC*	NA	Yes, 5/16/2022	TBD
DSS Immediate Need Request (18+)	NA	Starting 12/1/2022	TBD
MMC or DSS Under 18 Years Old	No	No	No

* Apply to DSS for PCS/CDPAP if in home hospice, in OPWDD, TBI or NHTDW waivers

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Which Medicaid Recipients Need to Undergo a NYIA Assessment?

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1. New MLTC Enrollees – Eligibility assessments to enroll in MLTC or Medicaid Advantage Plus (MAP)
2. New Requests for PCA/CDPAP @ Local DSS/HRA
   - Immediate Need (starting 12/1/22)
   - People exempt or excluded from MLTC or mainstream MMC including:
     - Enrolled In HOME HOSPICE, or OPWDD, TBI or NHTD waivers, spend down
     - Adults with Medicaid but not Medicare, and people ages 18-21
3. Mainstream managed care (MMC) plans enrollees requesting PCS/CDPAP for the FIRST TIME

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Which Medicaid Recipients DO NOT need a NYIA Assessment?

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- Any Medicaid recipient ALREADY receiving PCS/CDPAP services from the DSS, MMC, or MLTC plan. *This will be phased in at a later date.*
- Mainstream Managed Care enrollees under age 18
- New DSS requests for PCA/CDPAP services for those under age 18
- PACE Enrollees

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HOW DOES NYIA WORK?

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DSS or MMC: NYIA Process

Step 1
- Consumer, caregiver, LDSS or plan calls NYIA to request initial assessment. Must have Medicaid.
- 855-222-8350, M-F 8:30am-8:00pm, Sat 10:00am-6:00pm

Step 2
- NYIA will schedule CHA and CA within 14 days
- CHA and CA can occur M-F 8:30am-5:00pm, Sa-Su 10:00am-6:00pm

Step 3
CHA appointment
- NYIA nurse completes UAS-NY (in person or telehealth)

Step 4
CA appointment
- IPP examines consumer (in-person or telehealth), reviews CHA, determines if self-directing and stable medical condition, and completes the PO form

Step 5
Outcome Notice sent by NYIA. If denied PCS/CDPAP → Fair Hearing Rights.
If approved → Consumer referred to LDSS or MMC plan, which use CHA & PO to decide plan of care. If approve 12 or less hours/day – go to Step 7. If > 12 hours/day, go to Step 6.

Step 6
- Independent Review Panel (IRP) If DSS/plan's proposed plan of care > 12 hrs/day, they must refer for IRP review. Within 6 days, panel makes recommendation to Plan/LDSS of whether plan of care maintains health and safety at home.

Step 7
- Plan/DSS use CHA & PO, and IRP if required, to finalize plan of care and send consumer notice with appeal rights.

Jargon
- NYIA – NY Independent Assessor
- CHA – Community Health Assessment
- CA – Clinical Appointment
- IPP – Independent Practitioner Panel
- PO – Practitioner's Order

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MLTC enrollment: NYIA Process

Steps 1-4
- Same as prior slide for DSS/MMC (CHA and CA requested, scheduled and conducted)

Step 5
- If NYIA denies MLTC enrollment → NYIA Outcome notice has Fair Hearing Rights
- If NYIA approves MLTC enrollment → NYIA Outcome Notice tells consumer to call NYIA for plan options, and consumer calls a plan to enroll using the same procedure.
- IA & Outcome Notice good for ONE YEAR, while CFEEC expired after 75 days.

Step 6
- Prospective MLTC Plan Gives Plan of Care, based on CHA and CA --
- If plan says needs 12 or less hours → enroll (same as now) → go to Step 8
- If plan says needs > 12 hours, go to Step 7 but may enroll in the meantime.

Step 7
- Independent Review Panel (IRP) If MLTC plan's proposed plan of care > 12 hrs/day, they must refer for IRP review, but consumer may enroll & plan may submit enrollment before IRP referral or while IRP is pending. Within 6 days, panel makes recommendation of whether plan of care maintains health and safety at home.
  Go to Step 8

Step 8
- Plan uses CHA & PO, and IRP if required, to finalize plan of care.

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Clinical Assessment by the IPP

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Clinical Assessment (CA) by Independent Practitioner Panel (IPP)- exam by NY Medicaid Choice PHYSICIAN, physician's ass't. or nurse practitioner who prepares a Practitioner's Order (PO).

- By design the IPP is not the consumer's provider.
  - But reg says IPP may review other medical records or consult with the individual's providers 505.14(b)(2)(ii)(e).
  - But how to submit records, especially if telehealth?
    - **TIP:** Submit treating physician letter or try using the old forms M11q/DOH-4359. Warning: Guidance says these forms are being *discontinued* (once NYIA is phased in) but we think applicant still has right to submit info, and plan/LDSS should still accept these forms for INFORMATION, not as MD "order."

WHERE are these 2 assessments done? *Expect pressure to use telehealth!*

- IA (nurse) – Reg says done where consumer located - home, NH or hospital (or may use telehealth) 505.14(b)(2)(i)(c).
- IPP - Reg, ADM and MLTC policy don't say where medical exam is. MMC policy p. 3 says may be in person or telehealth. But must consumer travel?

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DSS & Plans Develop Plan of Care

HRA/DSS or Plan uses the IA and CA to develop plan of care – and authorize services if 12 hrs/day or less.

Variance – DSS or Plan may dispute the IA if they have "material disagreement" affecting plan of care. Then IA may make requested change or has 10 days to do a *new assessment*.

a. **More delay – MLTC must request variance "with due expediency," and has 10 business days to provide info on request from NYIA to support dispute.***

b. **Consumer may refuse reassessment without penalty – then DSS or plan must use original IA.***

c. **Plans get penalized if request too many variances.**

Will plan/LDSS nurse still assess client? Gray area. DOH acknowledges that the UAS/CHA has gaps – doesn't assess night-time needs or informal caregiver availability. So they still need to assess but won't be paid for it!

*MMC Policy p. 8, MLTC Policy p. 7-8, ADM p. 12

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Independent Review Panel (IRP)

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If DSS or Plan say needs > 12 hours/day for the 1st time → Must refer to IRP – recommends whether proposed plan of care is "reasonable and appropriate" to maintain health & safety in the home.

a. **IRP may *recommend* changes in plan of care but NOT specific amount of hours. 505.14(b)(2)(v)(f)**
   - **If proposed 24/7 live-in not safe, can IRP recommend 2x12?**

b. **Grandfathered if already has > 12 hrs/day - IRP not required if consumer already receiving > 12 hours/day, including if request increase from live-in to split-shift***

c. **Plan/DSS make final decision and issue notice.** **Does not have to take IRP recommendation.** 505.14(b)(2)(iii)(f)

d. **ALERT: Saying "unsafe" can be pretext for forcing into nursing home – violate *Olmstead* and ADA. A "public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities." 28 CFR §35.130(h)**

* **MLTC Policy p. 10, ADM p. 10, MMC policy p. 6 – clarifies 18 NYCRR 505.14(b)(4)(xi)(b)**

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Outcome Notice Content

New York Independent Assessor

<Date; A-15>

<Barcode> <Letter Code>
<Name>
<In Care Of>
<Address>
<City>, <State>, <Zip>

SAMPLE

Import...otice About Your Assessment

Dear <Member Name; B-3> <CIN; B-16>

We are writing about your assessment and clinical exam with the New York Independent Assessor. Your assessment result was completed on <**Response Date; A-16**>.

- The notice will contain a section entitled Your assessment showed, which is where it informs the consumer of the outcome
- There are multiple possible outcomes, depending upon the consumer's situation (MLTC/Mainstream/Immediate Need) and NYIA's findings
  - "You are eligible for CBLTSS"
  - "You may be eligible for CBLTSS"
  - "You may qualify to receive LTSS through a MLTC plan"
  - "...however your health condition is not stable enough to get...care at home"
- These notices will be very confusing for consumers, so it's important to get a copy of the notice to properly advise them!

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NYIA DENIALS

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NYMC "Outcome Notice" – if NOT ELIGIBLE

- NYIA Outcome Notice of denial of PCS/CDPAP/MLTC – can request Fair Hearing.
- For MLTC, this is not a change. NY Medicaid Choice always sent denial notice to consumer.
- But for DSS/HRA and managed care plans, this is a big change. Denial notice used to come from DSS/HRA or managed care plan. Is this delegation of duty legal?

https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-01-26_ldss.pdf slides 33-35 and https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-01-26_mmco.pdf

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More on NYIA Denials

- Personal care/CDPAP – denied if not "medically stable." 18 NYCRR 505.14(a)(3)
  - not expected to exhibit sudden deterioration or improvement;
  - does not require frequent medical or nursing judgment to determine changes in the plan of care;
  - physically disabled or frail elderly individual does not need skilled professional care in the home but does require routine supportive assistance to prevent a health or safety crisis from developing.
  - TIP: If client has SKILLED needs (trach, oxygen, tube feeding) can an informal caregiver do tasks OR can the consumer use CDPAP?
- For MLTC enrollment– even if not "medically stable" for PCS/CDPAP, could still be eligible for Private Duty Nursing or Adult Day Health Care services from MLTC plan -- so should not be denied enrollment.
  - For MLTC, must need Community-Based long term services & supports (CBLTSS) for 120 days (but not required for MMC)
- The 3 ADL criteria (2 if dementia) are NOT in effect yet!

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Fair Hearing Rights

- Request a Fair Hearing
  - https://otda.ny.gov/hearings/request/
  - Fax 518-473-6735
  - Telephone 1-800-342-3334
- May Request EXPEDITED hearing!
- Request Evidence Packet from NYIA
  - NYIAfairhearings@maximus.com
  - Fax: 917-228-8899
- FAX Power of Attorney or Health Care Proxy to NYIA - 917-228-9212 or 917-228-8623

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ADVOCATE CONCERNS

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NYIA Capacity

Does NY Medicaid Choice have enough:

1. **Nurses and MDs, Nurse practitioners, PA's to do the CHA and IPP within 14 days of request?**
   - **Huge nursing shortage aggravated by COVID.**
   - **CFEEC's already delayed for MLTC**
   - **By 12/1/22 will start Immediate Need & Expedited assessments for MLTC/ mainstream to be done in 6 days**
   - **Once fully phased in -about 300,000/year!**
2. **Call Center capacity – Calls for CFEECs go into voicemail, calls not returned. How will NYMC handle massive increase to schedule the 2-3 new assessments?**

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Delays in accessing PCS/CDPAP!

- **Even if NYIA can do CHA & IPP assessments in 14 days –**
  - **HRA/DSS must determine hours within 7 days of receiving back all of the assessments, then**
  - **Referral for IRP Medical Review will take at least 6-10 more days**
  - **Add 10 days if DSS/Plan disputes "material fact" in IA.**
- **Whole process will take minimum 30 days likely much longer. But law and regulations set shorter time limits:**
  - **Immediate Need– DSS must approve Medicaid AND home care 12 Days after application filed (starts December 1, 2022)**
  - **Plans have 14 days to process a standard request, extendable up to 14 more days. Only 72 hours for expedited requests. See next slide. Impossible to meet these time limits!**
- **DSS/Plan *may* (not *must*) authorize "temporary" care > 12 hours/ day pending the High Need IRP Review* if can't meet deadlines**

* 505.14(b)(3)(ii), 505.28(g)(2) **505.14(b)(4)(vi), 505.28(e)(4)
https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-02-16_mmco.pdf **slide** 51

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How will MLTC/ mainstream plan comply with federal deadlines to decide requests?

Type of Request	Maximum time for Plan to Decide
Expedited*	72 hours after receipt of request, though plan may extend up to 14 calendar days if needs more info.
Standard	14 calendar days from receipt of request, though plan may extend up to 14 calendar days if needs more info.

MMC guidance p. 5 says times run from date of request *only if a current CA & IPP are on file* **– under fiction that only physician's order can start the clock. We think this violates federal reg that says time runs from receipt of the request for service. 42 CFR 438.210(d).**

***Expedited if delay would seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function. 42 CFR 438.210(d)**

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Lack of guidance & public information

- **LDSS/plans must operationalize huge systems changes for referrals to and from NYIA in new portal, issue internal procedures, train staff – guidance was only issued April 20 – 28, 2022 (slide 13)**
- **No public facing FAQs on the NY Medicaid Choice website**

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Can you request the new NYIA assessments while Medicaid application is pending?

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- Unclear.
- Since 2014, a CFEEC could be scheduled and conducted while Medicaid application pending.
- New reg should allow this – it says only that Medicaid eligibility must be established before services are *authorized*. 18 NYCRR §505.14(b)(4)(i). Remember NYIA assessment is good for one year.
- But MLTC Policy 22-01 says, "The NYIA will only conduct the initial assessment process for individuals with active Medicaid." The ADM is inconsistent, saying in one place Medicaid can be processed concurrently with assessments, and in another Medicaid must be active to schedule the assessments (pp. 5-6).

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Appeal & Fair Hearing Rights

- Plan/LDSS *may not* authorize > 12 hours wo/ high-need IRP unless ordered by a Fair Hearing or court. 18 NYCRR 505.14(b)(4)(vi).
  - MMC Policy adds also if ordered by External Appeal of NYS Dept. Financial Services (Article 49 Title II of NYS Insurance Law), but MLTC Policy doesn't mention it. See http://www.wnylc.com/health/entry/184/#external%20appeals.
- In FH, may ALJ order 24-hour care if consumer requested 24-hour care, but plan/LDSS approved 8 hrs, so didn't refer for high-need IRP? Reg above implies the answer is YES, since plan must comply with FH decision even if no IRP. DOH rep said YES at a meeting, but we asked them to clarify in policy (otherwise ALJs might remand for lack of the IRP, causing more delay).
- EVIDENCE PACKET – DSS & MMC guidance say DSS/MMC plan give notice and responsible for compiling Evidence Packet, including all NYIA assessments. PowerPt says UAS disputed by plan/LDSS is REPLACED by new one, so appears will not be part of packet.* Unclear if consumer can request it. MLTC Policy says nothing about notice and Evidence Pkt.
- Will NYIA be a party to a hearing? MMC & DSS guidance says appellant or plan/DSS may call NYIA as a witness, but does not say how. (MMC policy p. 10, ADM p.11). MLTC policy is silent.

https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-02-16_mmco.pdf slide 21

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Complaints to the DOH

Independent.assessor@health.ny.gov / (518) 474-5888

DOH MLTC Complaint Unit
1-866-712-7197 or mltctac@health.ny.gov

DOH MMC Complaint Unit
1–800–206–8125 or
managedcarecomplaint@health.ny.gov

Include Independent Assessor AND relevant TAC in your email

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How to Stay Up to Date

- **Sign up for NYLAG EFLRP e-lerts with updates here http://eepurl.com/deQxtr - select TOPIC: Medicaid, long-term care**
- **Look for updates at www.NYHealthAccess.org http://www.wnylc.com/health/news/85/**
- **Visit DOH's NYIA website: https://www.health.ny.gov/health_care/medicaid/redesign/nyia/**

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NYLAG's Past Advocacy

Advocacy:

- 12/15/21 Letter to DOH from NYLAG & Medicaid Matters NY, with 1/6/22 update http://www.wnylc.com/health/download/801/
- 2/2/22 Letter - http://www.wnylc.com/health/download/807/
- 3/25/22 Letter - http://www.wnylc.com/health/download/812/
- 5/3/22 NYLAG questions about the new policies http://www.wnylc.com/health/download/814/

- **NYLAG & NYSBA COMMENTS on proposed regs** http://www.wnylc.com/health/download/771/ (3/13/21)
- **See prior NYLAG comments from when regulations were proposed** http://www.wnylc.com/health/news/85/#comments

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Alphabet Soup! Acronym Reference!

NYIA - New York Independent Assessor – replaces CFEEC (Conflict-Free Evaluation and Enrollment Center) – Has 3 functions:

1. **CHA or IA Community Health Assessment or Independent Assessment (Maximus Nurse assessment using the UAS-NY)**
2. **IPP Independent Practitioner Panel –Maximus doctor, nurse practitioner, or physician assistant who will now schedule:**
   - **CA Clinical Appointment – Examination by the IPP, which then prepares --**
   - **PO Practitioner's Order – Replaces the M-11q or DOH-4359 Physician's Order. Will be signed by IPP.**
3. **IRP Independent Review Panel –New review required if plan or LDSS proposes hours more than 12 per day on average,** *for the first time*

Acronyms used here that are NOT changing --

- **PCS – Personal care services**
- **CDPAP – Consumer Directed Personal Assistance Program**
- **DSS – Local county Dept. of Social Services (HRA in NYC) --Medicaid agency that handles all applications for Medicaid and requests for PCS/CDPAP**
  (1) for people excluded or exempt from MLTC or mainstream managed care or
  (2) applying based on Immediate Need for home care
- **TBI and NHTDW – Traumatic Brain Injury & Nursing Home Transition & Diversion Waiver**
- **MMC - Mainstream Medicaid Managed Care – mandatory plans for those without Medicare or other primary insurance, and who have no spenddown. Mostly under age 65, but also includes elderly or disabled SSI recipients who don't have Medicare, often because of immigration status. Members of these plans must request PCS or CDPAP from the plan and all other Medicaid services.**

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THANK YOU

More information at nylag.org and nyhealthaccess.org

Please donate to support us!

https://www.nylag.org/donate-now/

At prompt please designate Evelyn Frank program!

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