

# MLTC Advocacy Tips

Elder Law Forum – Afternoon  
Panel

May 16, 2024

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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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## NY INDEPENDENT ASSESSOR AND HOME CARE APPLICATIONS --TIPS



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### UPDATE: Filing Immediate Need Applications

- **Before** – Immediate Need applicant had to submit application package to DSS, which made 3-way call with NYIAP to schedule assessments.\* Could not contact NYIAP directly.
- **4/10/24** – State directive\*\* gives Applicant option to do NYIAP assessments on their own first, then submit Immediate Need package to DSS, informing DSS of when assessments conducted and providing Outcome Notice, if any.\*\* Or may still follow original procedure.

\*GIS 22 MA/09 *Implementation of Assessments Conducted by NYIA Based on Immediate Need*

\*\* [GIS 24 MA/02](#)

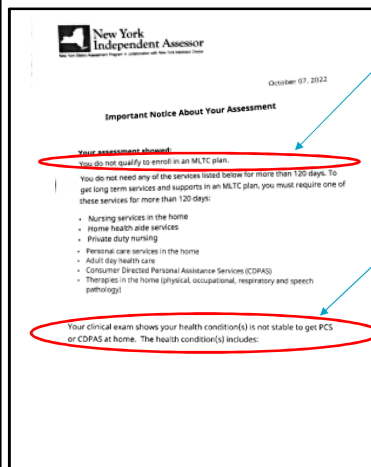


## TIPS for NYIA assessments

- **Ask for in-person rather than Telehealth assessment.**
- **Family member, care manager or rep should be present** (in person or on telehealth) and point out all needs, limits of informal help by family.
- **3-day rule** – UAS/CHA instructions require assessor to record the person's **actual** level of involvement in self-care and the type and amount of support **actually** received during the **last 3 days only**.\*
  - **Only a consumer who had help – paid or by family – during 1 or more of the 3 days before assessment -- is found to need ADL assistance!**
  - *Make sure family member or paid aide is with client and helps during at least one of the 3 days prior to the NYIA nurse assessment and report help provided.*
- **Verbal Cueing assistance** – mislabeled as “independent.” Point out the ADLs and IADLs for which client needs verbal cueing -- reminding to use walker, cueing on post-elimination hygiene after toileting, appropriate dressing, cueing to feed self.

UAS-NY Reference Manual, Aug. 2022 edition pp. 28-33 (on file NYLAG)

## “Bad” NYIA Outcome for MLTC Enrollment and “Bad” NYIA Outcome for PCS/CDPAS



“You do not qualify to enroll in an MLTC plan”

- You are not eligible for MLTC because don’t need long-term services > 120 days
- If condition was “stable,” may submit notice to DSS/HRA to request “Housekeeping” - max 8 hr/week\*

“Your health condition(s) is not stable to get PCS or CDPAS at home”

- NYIA cannot even suggest that you try for housekeeping at the LDSS because you won’t qualify without a stable medical condition

\*NYC - Fax NYIA notice to HRA Home Care Services Program Central Intake **718-230-0424** and **718-230-0841** (new fax no’s 4/2025)

## NYIA Update – as of May 8, 2025

- NYIA is still only assessing home care for:
  - NEW applicants seeking to enroll in MLTC, or
  - requesting NEW personal care or CDPAP from a managed care plan or LDSS
- NYIA is not yet conducting RE-assessments for ongoing Medicaid home care recipients.
  - These are still done by the plan (MLTC or mainstream managed care) or LDSS/HRA.
  - Includes both annual and as-needed reassessments.

## TIPS ON REQUESTING INCREASES IN HOURS and APPEALS & HEARINGS

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## IF requesting 24-hour care – explain how needs meets definitions in regulations

Regs define two types of 24-hour care for those who, because of medical condition, need assistance daily with toileting, walking, transferring, turning or positioning.

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](https://www.health.ny.gov/health_care/medicaid/redesign/mltc_policy_15-09.htm)

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## Submitting a Request for More Hours

- Must request be in writing? NO – can be made by phone or in person to the plan nurse or care manager. If a request is made orally, confirm in writing!
- Submitting in writing is BETTER.
- 1. Avoids disputes later about what was actually requested E.g., Plan may interpret a general request for 24 hour care as live-in even if split shift is what was intended (and locks in Varshavsky increase to requested hours – below).
- 2. Starts clock for plan to decide request (14 calendar days/ 72 hours expedited)\*.
- 3. Request nurse to reassess if change in condition (for now – this is plan nurse NOT NYIAP nurse)
- 4. Request may be from doctor, family member, or consumer – must specify why needs assistance with each ADL and over what Span of Time day/night
- 5. Family should clarify in writing exactly what days/times available and willing to provide informal caregiving
- Submit requests via fax, email, or certified – keep fax confirmation or other proof date received by the plan

\*Plan may extend deadline for 14 days if needs

additional info and the extension is in enrollee’s interest. 42 C.F.R. 438.210(d)

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## If requesting less than 24 Hour Care

- Regulations less specific but **MLTC Policy 16.07** helpful. Plans can use specific “task based assessment” with **certain important restrictions**.
- **MLTC Policy 16.07\*** requires plans to consider --
  - **SPAN OF TIME** in which needs arise -- “All plans, including those that use task-based assessment tools, must evaluate and document when and to what extent the enrollee requires assistance with IADLs and ADLs and whether needed assistance can be scheduled or may occur at **unpredictable** times during the day or night...must ... meet any **unscheduled** or **recurring** daytime or nighttime needs.” (emphasis added)
  - *Unscheduled needs*: ambulation, toileting, transferring (AT&T)
  - *Scheduled needs*: turning/positioning, medication reminders, meals, bathing, dressing, preparing for bed and getting up in morning
- If client eligible for 24-hour care, but requesting less because family provides some informal care voluntarily to cover 24/7, plan may not use “task based assessment.” Plan must cover the full span of time family is not available. 18 NYCRR 505.14(b)(5)(v)(d)(known as ‘Mayer-3’); MLTC Policy 16.07

[https://www.health.ny.gov/health\\_care/medicaid/redesign/mrt90/mltc\\_policy/16-07.htm](https://www.health.ny.gov/health_care/medicaid/medicaid/redesign/mrt90/mltc_policy/16-07.htm)

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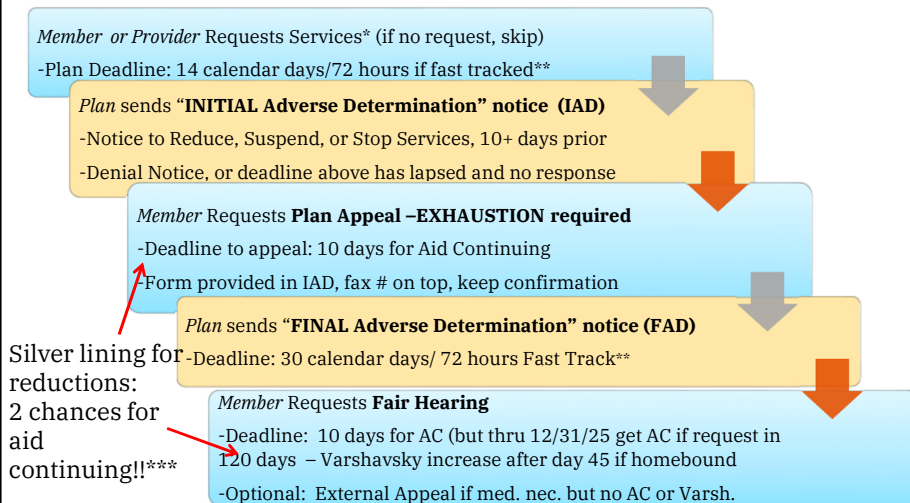
## Safety Monitoring

- “When an enrollee requires safety monitoring, supervision or cognitive prompting to assure the safe completion of one or more IADLs or ADLs, the task-based assessment tool **must reflect sufficient time for such safety monitoring, supervision or cognitive prompting for the performance of those particular IADLs or ADLs**. Safety monitoring, supervision and cognitive prompting are not, by themselves, independent or “stand-alone” IADLs, ADLs, or tasks.” MLTC Policy 16.07
- Supervision or cognitive prompting IS allowed to ensure consumer ambulates safely (does not wander or remembers to use walker), prepares meals safely (does not leave stove on), etc. Always tie the aide’s verbal or supervisory assistance to a specific ADL or IADL, instead of saying needs “safety monitoring” or “supervision.”
- No hours will be authorized for companionship or to alleviate anxiety.

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## Service Requests & Appeals Process



\*See Fact Sheet "Requesting Services from a Managed Care Plan"

<http://www.wnyc.com/health/afile/202/723/1/>

\*\*Plan may extend 14 days if need more info & in member's interest

\*\*\*[https://www.health.ny.gov/health\\_care/managed\\_care/plans/appeals/docs/2018-04-20\\_alj\\_info.pdf](https://www.health.ny.gov/health_care/managed_care/plans/appeals/docs/2018-04-20_alj_info.pdf) Slide 54

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## After Plan Appeal and FAD:

### Request Fair Hearing

- Request a fair hearing when:
  - Client has a Final Adverse Determination (FAD) denying the Plan Appeal, OR
  - (1) you requested a Plan Appeal, (2) the processing time has lapsed and Plan didn't issue FAD.\* This qualifies as "deemed exhaustion."
  - Client has a reduction without notice or wrong notice, (1) you can prove it's a reduction, and (2) plan refuses to provide aid continuing
- Note in hearing request that client is *homebound*, and ask for aid continuing if it's a reduction
- Medicaid Advantage Plus (MAP) – fair hearing is automatically requested – no need to request it. (These are "integrated" combo Medicare Advantage/MLTC plans)

\*30 calendar days/ 72 hours Fast Track\*

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## Indicate Homebound Status in FH Request

- Homebound appellants have special protection due to *Varshavsky v. Perales*
  - **Homebound definition for *Varshavsky*** - because of mental or physical disabilities, cannot travel to a fair hearing without substantial hardship or medical detriment.
  - Need doctor's letter unless has 24-hour care.
- *Varshavsky* injunction says that if ALJ can't render a fully favorable decision for a *homebound* appellant after the 1<sup>st</sup> Phone hearing, OTDA can't issue a decision. Instead, case is referred for a second hearing in client's home
- Because of backlog scheduling hearings, if the 2<sup>nd</sup> home hearing is not held and decided **45 days after the hearing request**, OTDA must order plan to Increase hours to the amount requested to the plan and in the hearing. This is called *Varshavsky aid continuing* or a *Varshavsky increase*.
  - This is one reason important to specify 24-hour split shift in request for increase to plan, not just "24-hour care."
- The *Varshavsky* "increase" continues until the second hearing is held and decided, which may be months or even years. See below re hearing backlog.

See more on *Varshavsky* <http://health.wnyc.com/health/entry/228/>

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## Watch out for Medicaid Advantage Plus (MAP) members!!! No Varshavsky rights.

After a Medicaid Advantage Plus (MAP) member loses the Plan Appeal, the plan must automatically forward case for a hearing.

OTDA policy denies MAP members *Varshavsky* benefits.

- MAP plans are fully capitated—cover all Medicare/ Medicaid benefits in one insurance product. The Medicare part is thru an "aligned" Dual-SNP (Special Needs Plan) operated by same company.
- Beware of marketing! Lure of an over-the-counter card drives member to switch Medicare plans. When they drop the "aligned" Dual-SNP they LOSE HOME CARE!!
- 60,000 people now receive home care through MAP plans vs 308,000 in regular MLTC (and 10,000 in PACE)

Check here to see which type of plan client is in -

[https://www.health.ny.gov/health\\_care/managed\\_care/mltc/mltcplans.htm](https://www.health.ny.gov/health_care/managed_care/mltc/mltcplans.htm) or <https://www.nymedicaidchoice.com/program-materials> (scroll down to Health Plan Lists then to Long Term Care Plans by region)



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## External Appeals

- After losing the plan appeal, the Final Adverse Determination explains the right to request an External Appeal before the NYS Dept. of Financial Services, instead of or in addition to requesting a Fair Hearing. Fair Hearing decision controls if do both.
- Which cases are eligible?
  - Denials from health plan based on the following 3 reasons: medical necessity, experimental/investigational services, out-of-network services
  - Recommended for denials of increases in hours, DME, e-meds
  - Not recommended for reductions, discontinuances (no aid to continue here); notice & procedural arguments best handled in fair hearings
- Option for Standard or Expedited Review – decision rendered in
  - Standard: 30 days
  - Expedited: 72 hours-- requires MD signature on a form – VERY FAST!! – consider in urgent cases where care needed before Varshavsky relief kicks in at 45 days
- All forms and portal to file papers at - [https://www.dfs.ny.gov/complaints/file\\_external\\_appeal](https://www.dfs.ny.gov/complaints/file_external_appeal)
- NY Public Health Law Part 49.

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## Long-delayed Fair Hearings → new Pre-Hearing Disposition (PHD) Process

- NYS has > 10,000 hearings pending past 90-day deadline in federal regulations – most of all states. State reached agreement with CMS to address backlog, which goes through 12/31/25.
- DOH requiring plans\* to authorize home care in amount requested in the hearing through a PHD. This is for hearings that are:
  - Over 1 year old
  - Have Just one issue
  - Appellant has aid continuing or [Varshavsky interim relief](http://health.wnyc.com/health/entry/228/) (including home hearings)(<http://health.wnyc.com/health/entry/228/>)
  - Involve discontinuances, reductions, or inadequacy (ie not approval of medical equipment or a new service)
- Plan must issue a new Service Authorization to member.
- OTDA issues PHD - hearing is resolved fully in appellant's favor (sample PHD <http://health.wnyc.com/health/download/884/>).
- If plan wants to reduce hours in the future, must comply with DOH MLTC Policy 16.06\*\* only if improvement in condition or other change

\* [MLTC Policy 25.01](#) and a [February 4, 2025 Letter to Managed Care Plans](#).

\*\*[MLTC Policy 16.06](#): Guidance on Notices Proposing to Reduce or Discontinue Personal Care Services or Consumer Directed Personal Assistance Services. See article on PHDs at <http://health.wnyc.com/health/entry/254/>.

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## COMPLAINT NUMBERS

### Complaints to NYS Dept. of Health (DOH)

- State Complaint Number for MLTC Problems – 1-866-712-7197 or [mltctac@health.ny.gov](mailto:mltctac@health.ny.gov)
- Complaints about Independent Assessor NYIAP  
E-mail [Independent.assessor@health.ny.gov](mailto:Independent.assessor@health.ny.gov)
- Mainstream managed care plan complaints  
[managedcarecomplaint@health.ny.gov](mailto:managedcarecomplaint@health.ny.gov)
- CDPAP PPL complaints – see next slide

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## PPL/CDPAP problems – where to call

- **PPL 1-833-247-5346\***  
Payment issues [CDPAP.payroll@pplfirst.com](mailto:CDPAP.payroll@pplfirst.com)  
PPL TIMESHEETS [NYCDPAP\\_TS@pplfirst.com](mailto:NYCDPAP_TS@pplfirst.com)  
PPL HR: 1-833-746-8283 or [NYPPLHR@pplfirst.com](mailto:NYPPLHR@pplfirst.com)
- **NYS DOH CDPAP Transition hotline** at **833-947-8666**  
weekdays 9am to 5pm or email [StatewideFI@health.ny.gov](mailto:StatewideFI@health.ny.gov)
- **Personal Assistants not paid correctly** ALSO contact:
  - **NYS Department of Labor** at 888-469-7365. See <https://dol.ny.gov/unpaidwithheld-wages-and-wage-supplements>
  - In NYC, Long island & Westchester -- PA's with payment problems should also complete this [survey](http://legalaid.nyc/PA-Survey..) <http://legalaid.nyc/PA-Survey..> (Legal Aid Society lawsuit)
  - **Upstate PAs** Emina Poricanin at [emina@poricaninlaw.com](mailto:emina@poricaninlaw.com)
- **Consumers** report problems to **NYLAG Engesser hotline** at **212-946-0359** or [CDPAPlawsuit@nylag.org](mailto:CDPAPlawsuit@nylag.org). Limited staffing capacity. Common concerns reported to Department of Health, and triaging emergency situations.

\*PPL language lines other than English at

<https://pplfirst.com/programs/new-york/ny-consumer-directed-personal-assistance-program-cdpap/>

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More information at [nylag.org](http://nylag.org)



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