

# Center for Disability Rights, Inc.

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## NYS RELEASES REGS 15 YEARS AFTER HOME CARE PROGRAM BEGAN Victory for Disability Rights Advocates

**(Rochester, NY):** Disability rights advocates applaud the state for formally releasing regulations for the Consumer Directed Personal Assistance Program (CDPAP), a home care program that has been in existence since 1995. CDPAP has been operating under the auspices of the traditional personal care program; however, CDPAP differs dramatically from traditional personal care in that it empowers consumers to manage their services.

“For years, we have advocated for the release of these regulations,” said Bruce Darling, President and CEO of the Center for Disability Rights. “This clearly shows the state’s recognition of and support for the consumer directed program,” continued Darling.

The regulations clarify several key points that have been under scrutiny within the program: First, adult children can now be paid to provide attendant services, a policy change which is aligned with federal rules. “This is a huge victory. This will help to foster the expansion of the Program, which will ultimately save the state money as it is the least costly form of home care,” said Darling. Second, the nurse is not the only one who determines whether an individual is able to be self-directing; but rather an evaluation is made in conjunction with a social assessment and physician’s order. Third, social service districts are responsible for annually notifying individuals receiving long term care in other programs about the availability of the consumer directed program and affording them the opportunity to apply.

The formal release of the regulations is particularly noteworthy in Monroe County where the County has continuously misrepresented the Program in the media and violated several components of the Program.

- In the *D&C* on August 19, 2010, County spokesman Noah Lebowitz said, “even if CDR was victimized by the attendants, ‘it clearly shows they failed to properly screen and manage their employees. We hold them responsible for the action of those employees. They refuse to take responsibility for that.’”

**FACT:** According to the regulations, NYCRR Title 18 §505.28(g)(1), attendants are employees of the consumer and the consumer screens, manages, trains and disciplines the attendant; *not CDR*.

- In the *D&C* on August 24, 2010 County spokesman Noah Lebowitz said, “‘If CDR feels it was stigmatized by people being made aware of its activities, then it shouldn’t have allowed the lapses in care under its watch in the first place.’”

**FACT:** According to the regulations, NYCRR Title 18 §505.28(g)(7), consumers are responsible for arranging back-up attendant care; *not CDR*.

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- In the *D&C* on September 1, 2010 County spokesman Noah Lebowitz said, "The county does not find it an acceptable excuse that CDR refuses to take responsibility for the actions of aides under its watch."

**FACT:** According to the regulations, NYCRR Title 18 §505.28(g), attendants are employed by the consumer and it is the responsibility of the consumer to supervise the attendants; *not CDR.*

In addition to the regulations, the state recently released guidelines, GIS 11 OLTC/004, which clarified that individuals are not prohibited from brief out-of-state travel and can continue to receive services from their attendant according to their approved service plan. "This is particularly important for the group of dedicated disability rights advocates who go to Washington every year to fight for their rights to live in the community and out of institutions," said Diane Coleman, Director of Advocacy with the Center for Disability Rights. "Monroe County claimed – incorrectly – that consumers in CDPAP could not travel out of state and continue to receive services. Here, the state is formally saying 'yes they can.'"

"This is vindication for CDR, proving that CDR has always acted within the framework of the Consumer Directed Personal Assistance Program law and rules, despite misinterpretation by Monroe County," said Chris Hilderbrant, Chief Operating Officer at the Center for Disability Rights. "But unfortunately it is too late for the hundreds of Monroe County consumers who were forced to leave CDR and enroll with a for-profit organization, as designated by the County; directly depriving them of the choice to select their provider."

The Consumer Directed Personal Assistance Regulations are issued under NYCRR Title 18 (Social Services), Section 505.28:

<http://w3.health.state.ny.us/dbspace/NYCRR18.nsf/56cf2e25d626f9f785256538006c3ed7/f55b46ce1e1d8f5c852578760066bc39?OpenDocument&Highlight=0,505.28>

*The Center for Disability Rights, Inc. (CDR) is a non-profit service and advocacy organization devoted to the full integration, independence and civil rights of people of all ages with all types of disabilities. With services in 11 counties in New York State and offices in Rochester, Corning, Geneva and Albany, CDR represents the concerns of thousands of people with disabilities.*