

## *Recommendations*

1. I think you will need to differentiate your program from the other CDPAP programs and I think you should connect to an Independent Living Center or other Consumer Based Program. Work with them to develop a cadre of Consumers to sanction and develop the procedures you will need to use when managing your program.

2. You will need to develop a clear line of separation between your program and Consumers. The NYS Sample CDPAP – MOU gives you a list of responsibilities that each group must manage. When you look at this list, you should see more than just a list of responsibilities; you should also see it as your primary line of liability protection. Unlike conventional Home Care, which obtains its liability protection by controlling what goes on in the home, your protection comes from not interfering with the relationship between the Consumer and their Personal Assistant. Remember, even the appearance of crossing the line could place your agency at risk.

From what I have seen over the past few years, you may wish to avoid

- Having in office meetings with PCA's to orient them and to complete enrollment documents.
- Offering PCA training
- Controlling the Medical Examination scheduling process.
- Using staff nurses to complete the semi-annual assessments.
- Having a quality assurance department, that uses nurses to evaluate the services provided to a Consumer.

In each case these are the exclusive responsibilities of the Consumer.

- If a Consumer needs help completing the PCA enrollment documents, work with an Independent Living Center or other Consumer Based Program (you may need to reimburse them for the service), but keep it out of the office
- Consumers should be authorized to contact the clinics and schedule their PCA's medical examinations.

- Use independent contractor Nurses or work with a local Nursing Agency to manage nursing assessments.
- Quality is a Consumer issue. If they are not getting the quality of service they require, there are two remedies, either the Consumer gets rid of the PCA and they begin to manage their services more effectively or the agency gets rid of the Consumer. By the way this is the reason I still don't like the idea of paying family members, how does the Consumer fire their relative?
- Be careful how you set up your worker recruitment and retention programs. You don't want to be seen as the only source or screen through which the workers must pass if they want to work for a Consumer.

3. Your primary concern is financial. And I think you should encourage the use of electronic time sheets and direct deposits whenever possible. I think you should even offer the Consumer inducements to participate in both by determining how much is saved with these programs and by converting these savings into Training Time that the Consumer can use as they choose. But remember regardless of the system you use, the Consumer must still be included in the time sheet and payroll distribution processes.

4. In regards to the Overtime. Yes you will have to pay overtime and there is no real way you can avoid it. But I think the primary problem is the issue of Joint-Employment. If the agency is considered a Joint employer you may have to pay overtime and travel time whenever (fortunately it does not happen too often) a PCA is independently hired by two or more Consumers associated with your agency. Several years ago, I spoke with Sue Flanagan about this issue and it was her opinion that you may wish to investigate the Federal Form 2678 Employer Appointment of Agent. Also to you may wish to consider some means of enabling Consumers to control the pay rates for their workers, within some parameters as a condition of their controlling their use of overtime and with some Consumer inducement added to their Training Time.

I hope this will give you some food for thought.

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