**WESTERN NEW YORK INDEPENDENT LIVING, INC.**

***Taking Control***

**Consumer Directed Personal Assistance Service**

**Consumer &Personal Assistant Policies**

**And**

**Benefit Plan Summary**

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1. **WELCOME**

The Board of Directors of Western New York Independent Living, Inc., on behalf of all of the Consumers enrolled in the Taking Control Program, would like to extend a gracious welcome to both new and current Personal Assistants (PA’s) and consumers. The policies and benefits contained in this summary have been developed to describe some of the expectations of the PAs providing services to the program's Consumers and to outline the policies, programs and benefits available to PAs through the Taking Control Program as well as the program rules impacting consumers enrolled in the Taking Control Program.

**DISCLAIMER**

**THE PERSONAL ASSISTANT PRACTICES, POLICIES AND BENEFITS CONTAINED HEREIN ARE NOT INTENDED TO ALTER THE AT-WILL STATUS OF THE PERSONAL ASSISTANTS EMPLOYED BY CONSUMERS OF THE TAKING CONTROL PROGRAM. THE CONTENTS ARE ALSO NOT TO BE CONSTRUED AS A BINDING CONTRACT OR A CONTRACT OF EMPLOYMENT FOR A DEFINITE PERIOD OF TIME. WESTERN NEW YORK INDEPENDENT LIVING, ON BEHALF OF ITS CONSUMERS, RESERVES THE RIGHT TO CHANGE OR MODIFY ANY PRACTICE, POLICY OR BENEFIT WITHOUT ADVANCE NOTICE.**

**II. ORGANIZATIONAL PHILOSOPHY**

Western New York Independent Living (WNYIL) was born out of the Independent Living Movement, which took root in the 1960's and 1970's. A social philosophy that emphasizes personal responsibility in life, the independent living concept also affirms that environmental hurdles and outdated public opinions are the things that have long inhibited much needed service provisions for individuals with disabilities.

It is WNYIL's philosophy that Independent Living is attained by exerting control over one's life based on acceptable options that minimize reliance on others in the decision- making process and in performing daily activities. Managing individual affairs, participating in community life*,* fulfilling a range of social roles, making choices that lead to self-determination and minimizing psychological and physical dependence on others, are all elements that contribute to reaching the goal of Independent Living.

In support of the Independent Living philosophy WNYIL developed its Consumer Directed Personal Assistance Service (Taking Control Program). This is a Consumer-driven personal assistance program for eligible individuals with disabilities. The Taking Control program is designed to foster independence and empower eligible individuals with disabilities by affording more control over their needs and acquiring necessary personal care to meet those needs with less reliance on a medical service model to obtain the daily assistance necessary to fully participate in their own communities.

The Taking Control program affords people with disabilities more independence, more control over their personal care services, and less dependence upon the traditional medical bureaucracy. This program enables Consumers to advertise, recruit, interview, hire, supervise, train and dismiss their own PA(s). WNYIL's role in the Consumer Directed Personal Assistance Service is limited to that of a fiscal intermediary between the third-party payer, the Consumers and the PAs tending to their needs. Through the Taking Control Program, self-directing persons assess their own needs, determine how and by whom these needs should be met, and monitor the quality of services received. Individual Consumers independently make all decisions and manage services directly. If an individual Consumer is unable to do so, he or she may use a certain family member or friend to manage needed services.

**III. INTRODUCTION**

This PA Policy and Benefit Plan summary has been prepared as a guide to the policies, benefits and general information about the Taking Control Program sponsored by WNYIL, on behalf of its Consumers. Each PA should read, understand, and comply with the provisions contained herein as this summary describes many of the responsibilities expected of each PA in the program and outlines the benefit programs offered to eligible PAs. This summary is intended to be gender neutral in orientation and any specific references to “his/her” are intended as “all”.

The contents of this summary do not constitute a contract of employment and nothing in this summary should be construed as a guarantee of continued employment. WNYIL’s Board of Directors, on behalf of the Consumers participating in the program, reserves the right to supplement, revise or rescind any of the policies and/or benefits outlined in this summary as it deems appropriate in its sole and absolute discretion, at any time and without any advance notice. WNYIL and the consumer are considered “joint employers”. Employment as a PA is considered "employment-at-will". This policy permits the termination of a PA by the employing Consumer or WNYIL for any reason at any time or the PA may resign for any reason at any time.

**IV. THE ROLE OF WNYIL AS FISCAL INTERMEDIARY**

Western New York Independent Living has a Consumer Directed Personal Assistance Service named Taking Control and it acts as a fiscal intermediary, providing support services to foster the relationship between individual Consumers and their PA(s). In doing this, the Taking Control Program performs a variety of administrative functions, some of which are set forth below:

* Process and issue payroll for each PA;
* Record and track time-off earned and used by each PA;
* Assure all required forms and files are correct and appropriately maintained. These include such papers as medical forms, W-4 and I-9 forms, benefit applications, the PA Agreement and releases;
* Review prior to hire and continue to monitor on a monthly basis all employees and vendors including program staff and PA’s against the OMIG and OIG Exclusion List;
* Form and coordinate Consumer Advisory Council;
* Maintain information and resources for its Consumers to interview and supervise PAs;
* Taking Control encourages its Consumers to provide equal employment opportunities to all prospective PAs regardless of age, color, cultural or ethnic group membership, disability, education level, family status, gender, income, national origin, race, religion, sexual orientation or preference, or any other characteristic protected by law;
* Maintain Consumer records including referrals, authorizations, reauthorizations, and signed consumer agreements as well as other pertinent information relative to the delivery of services to the Consumer;
* Monitor on a twice-monthly basis Medicaid / MCO eligibility, if applicable;
* Provide statistical and other pertinent information to the various regulatory, legal and programmatic entities as may be deemed necessary and appropriate;
* Monitor the ability of the Consumer to fulfill their program responsibilities;
* Taking Control does not provide reference / referral of PAs.

**V. THE ROLE OF THE CONSUMER OR DESIGNATED REPRESENTATIVE**

Consumers in the Taking Control program are eligible people who, through Self-Direction, assume a number of the responsibilities generally handled by traditional home health agencies. Through this program, the Self-Directing Consumer is the PA's direct employer and supervisor. The Self-Directing Consumer handles recruitment, selection, hiring, scheduling, supervising and termination of the PAs serving Consumer's needs.

To be accepted as a Consumer in the Taking Control program each Consumer must be able to direct his or her own services or must have a family member, friend, or other individual who is willing to assume the responsibilities.

A "Self-Directing" Consumer is an individual Consumer who is a person willing and able to make life choices, able to organize his/her lifestyle and environment by making these choices, and able to accept the result (consequences) of his/her actions and accept responsibility for those actions. In addition, the Consumer is responsible for many of the responsibilities as the PA's direct employer. Through the program, Consumers enter into an agreement assuring that they will do the following:

* Receive and complete training in the operation of the program and the services they receive;
* Recruit, screen, select, train, and supervise the PAs;
* Hire enough PAs for "back-up" or “relief” coverage to ensure coverage at all times;
* Ensure that the applicant completes all required forms;
* Schedule PAs to meet the Consumer's needs within the framework of the care plan and authorized hours established by the third-party payer;
* Ensure PAs meet with Taking Control's support staff to complete required paperwork and to be entered into the payroll system;
* Supervise the PA’s time keeping and/or review and sign time sheets that accurately reflect actual hours worked or report authorized leave when necessary;
* Abide by the Taking Control Program policies;
* Ensure all paperwork is completed and submitted as per these policies.

It is also possible for a Consumer who is not Self-Directing to assign these responsibilities to a Designated Representative. A “Designated Representative” means an adult to whom a self-directing Consumer has delegated authority to instruct, supervise and direct the consumer directed PA and to perform the Consumer’s responsibilities and who is willing and able to perform these responsibilities. With respect to a non-self-directing Consumer, a “Designated Representative” means the consumer’s parent, legal guardian or, subject to the third-party payer approval, a responsible adult surrogate who is willing and able to perform such responsibilities on the Consumer’s behalf. The Designated Representative may not be the consumer directed PA or a fiscal intermediary employee, representative or affiliated person.

**VI. THIRD-PARTY PAYERS**

In order to be enrolled in the Taking Control program, the Consumer must be approved for home care through a third-party payer. The third-party payer is the entity and/or the individual that WNYIL contracts with. A third-party payer may be a Managed Care Organization (MCO), a Managed Long-Term Care Organization (MLTC), the County Department of Social Services (DSS), an area Office for the Aging or Senior Services, a private insurance company or an individual. The third-party payer is responsible for the determination of the activities that the personal assistant will do and how many hours per week are approved for those activities for the consumer and the duration of the authorization for CDPAS services. If the Consumer is interested in receiving personal assistance services for the first time, he/she can contact the appropriate third-party payer and indicate interest in consumer directed home care. The Consumer will need to provide medical information and other information to the third-party payer.

After the third-party payer receives the necessary information from the doctor, a meeting with the caseworker and nurse assigned to the consumer will be scheduled at the Consumer's home. During this meeting, the number of needed hours of service will be determined. The third-party payer carefully considers the personal care needs to determine service hours. It is helpful to plan for this meeting by making a list of those tasks the consumer will need assistance with as well as how long it takes to complete those tasks. When the third-party payer determines the specific care plan, they will contact the Taking Control Program. The prospective Consumer will then be contacted by the Taking Control coordinator of the applicable county.

**VII. THE ROLE OF THE PERSONALASSISTANT**

As a participating PA in the Taking Control Program, each PA shall recognize the Consumer’s authority as the employer and complete tasks in a responsible, prompt and courteous manner in accordance with the Consumer's needs, wishes and directions. In addition, each PA is expected to:

* Maintain confidentiality and not discuss issues about the Consumer with anyone else;
* Authorize the Taking Control Program to collect and appropriately distribute employment-related information;
* Report to work on time and remain for the duration of the scheduled work period because the Consumer is relying on them;
* Perform tasks assigned during the entire work period;
* Respect the Consumer's home, possessions, lifestyle, privacy, and individual choices;
* Accurately report his or her time worked via the call-in-system or time sheets under the supervision of the Consumer;
* Provide two weeks advance written request for vacation and as much written notice as possible for other qualified paid-time-off if they are eligible;
* In the case of illness or emergencies, contact the Consumer as soon as possible, but at least one hour before work is scheduled to begin;
* Comply with the policies and practices of the Taking Control Program.

Each eligible PA candidate hired by a Consumer in the Taking Control Program must:

* Be at least 18 years of age and have a valid Social Security number or authorization to work in the United States, i.e. Green Card, Work Visa;
* Be interviewed and hired by the Consumer;
* Provide all necessary information for their respective personnel file, payroll, and insurance coverage;
* Have an annual physical assessment and PPD completed by a health care provider;
* Perform the functions required by the Consumer as outlined in the Consumer Care Plan;
* Be cleared through a criminal background check.

**VIII. PERSONAL ASSISTANT RESPONSIBILITIES**

As a participating PA in the Consumer Directed Personal Assistance Program, each PA shall provide personal assistance to the Consumer within the home and in the community as outlined in the Care Plan approved by the consumer’s third-party payer. Some, but not all, of the specific activities which PAs may be expected to assist the Consumer with are:

1. Bathing
2. Care of Catheter/Incontinence Supplies
3. Dressing
4. Eating
5. Exercises/stretching
6. Grocery Shopping
7. Housekeeping/Cleaning
8. Laundry
9. Maintaining a Safe Entrance / Exit
10. Maintaining Adaptive Equipment
11. Meal preparation
12. Medication
13. Recreation

15. Personal Grooming

1. Shopping for Personal items
2. Toileting
3. Transferring and Positioning
4. Transportation
5. Using/Positioning Adaptive Equipment
6. Other appropriate duties as agreed to between the Consumer and PA

**IX. NATURE OF EMPLOYMENT**

As fiscal intermediary for the program's Consumers, WNYIL serves as a joint employer with the consumer.

Employment as a PA for an individual Consumer is entered into voluntarily, and the PA is free to resign at will at any time, with or without cause (Employment-at-Will). Similarly, the Consumer/WNYIL may terminate the employment relationship, at will, at any time, with or without notice or cause, so long as there is no violation of applicable federal or state law.

The policies and benefits set forth in this summary are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between the Taking Control Program and any PA. The provisions of this summary have been developed at the discretion of WNYIL's Consumers and WNYIL's Board of Directors and, except for its policy of "employment-at-will" may be amended or cancelled at any time without prior notice, at WNYIL's sole discretion.

The provisions contained herein supersede all existing policies and practices and may not be amended or added to without the express written approval of WNYIL's Executive Director.

**X. EMPLOYMENT AS A JOINT EMPLOYEE**

Each PA participating in the Taking Control Program is considered a joint employee with WNYIL and the consumer they work for.

As a WNYIL/consumer joint employees , PAs receive all legally mandated benefits (such as Workers' Insurance and Social Security) which are obtained and offered as group benefits by the Taking Control Program on behalf of its collective Consumers. PAs also receive other benefits offered collectively through the program, which are described in detail in this summary.

All PAs participating in the Taking Control Program are "at will" employees. As described in this summary, the Consumer is responsible for selecting, training, managing and dismissal of PAs. Because of the unique nature of personal care services, a PA may be laid off or dismissed by a particular Consumer for reasons such as, but not limited to, incompatible schedules, personality conflicts or changing needs for personal care.

**XI. EQUAL EMPLOYMENT OPPORTUNITY**

The Taking Control Program encourages participating Consumers to provide equal employment opportunities to all prospective PAs based on merit, qualifications and abilities. It is the policy of WNYIL and the Taking Control Program that participating Consumers not discriminate in employment opportunities or practices on the basis of age, color, cultural or ethnic group membership, disability, education level, family status, gender, income, national origin, race, religion, sexual orientation including gender identity and transgender status, sexual preference, predisposed genetic characteristics, or any other characteristic protected by law.

**XII. THE HIRING PROCESS - SUPERVISORY AUTHORIZATION**

Applicants desiring to work as a PA must be referred by Consumer(s). Each individual applying as a PA candidate receives application forms which **must** be filled out completely, including a street address. PA candidates shall not be enrolled or considered to have started working for a Consumer through the program until all the application forms are correctly completed and photo identification and proof of employment eligibility are submitted.

Each newly enrolled or re-enrolling PA candidate applying to work with a participating Consumer **must** sign a release authorizing a criminal background check to be conducted prior to the commencement of work.

**XIII. MEDICAL EXAMINATIONS / PERSONAL ASSISTANT HEALTH ASSESSMENTS**

To help ensure that PAs are able to perform their duties safely, medical examinations (known as PA Health Assessments) including a PPD for TB testing are required by New York State regulations. The first PA Health Assessments and PPD results **must** be submitted before the PA starts working. PA Health Assessments and PPD’s **must** be updated each year.

If the PA has recently completed a medical report or PA Health Assessment for another purpose, the Taking Control Program will accept a copy of that report, provided the information on the completed form matches the information required on the PA Health Assessment form. The PA shall be required to be re-examined in order to complete any items that were not included on the previously completed medical examination. The Taking Control Program maintains a list of health care providers where PAs can obtain a health assessment, PPD and other Department of Health required immunizations at no cost to them.

Information regarding a PA's medical condition or history will be maintained in strict confidence in accordance with legal requirements. Access to this information shall be limited to those who have a legitimate need and right to know.

XIV. PERFORMANCE EVALUATIONS

Each Consumer and PA participating in the Taking Control program is strongly encouraged to discuss job duties, performance and goals on an informal, day-to-day basis. Additional formal performance evaluations may be conducted to provide both the Consumer and PA the opportunity to discuss job tasks, identify and correct weaknesses, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals in a constructive manner.

XV. PERSONNEL RECORDS

PAs participating in the Taking Control Program are responsible for notifying Taking Control's administrative offices about changes in the following: name, street address, (Post Office box numbers are not accepted), telephone number, marital status, number of dependents or any other information that might affect the PA's payroll status or employment records. Incomplete or outdated information could interrupt a PA's receipt of wages and/or benefits, cause inappropriate amounts of tax to be withheld, or even cause difficulty in notification of family members in cases of emergency.

Personnel records containing employment and medical records, including health assessment and injection records, are the property of WNYIL and access to the information is restricted. Only officials and representatives of WNYIL and the Taking Control Program who have legitimate reason to review information in a record are allowed to do so. Information from a PA's personnel record may also be made available to Consumers for whom the PA works and Consumers to whom the PA may have applied. With advance notice to Taking Control, a PA may review the material contained in his or her record in Taking Control’s offices and in the presence of the individual appointed by WNYIL or the Taking Control program to maintain the record.

**XVI. PERSONAL ASSISTANT'S SEPARATION FROM THE PROGRAM**

The termination of the employment relationship between a Consumer and a PA is an inevitable part of the personal assistance relationship. Many of the reasons for such separation of the relationship are routine. Below are examples of some of the most common circumstances under which relationships between Consumers and PAs are severed:

* RESIGNATION Voluntary separation of the relationship initiated by a PA.
* DISCHARGE Involuntary separation of the relationship initiated by the Consumer.
* RELEASE Involuntary employment termination initiated by the Consumer for non-disciplinary reasons, such as change in authorization of approved hours.

Since participation in this program is based on mutual consent, both the PA and Consumer have the right to terminate the employment relationship at will, with or without cause, at any time. A PA's eligibility or entitlement to certain benefits may be affected by either the classification and/or manner in which the relationship is severed. In the cases of Resignation with proper notice and Release, all accrued, vested benefits that are due and payable at time of termination will be paid. In addition, the Taking Control program's staff shall notify the terminated PA if any benefit may be continued after separation, at the sole discretion and expense of the PA. The PA will be notified in writing of the terms, conditions, and limitations of such continuation of benefits.

1. RESIGNATION

Resignation is a voluntary act initiated by the PA to terminate employment. Any PA wishing to resign from assisting a specific Consumer is expected to provide both the individual Consumer and the Taking Control program with at least two week’s advance notice.

Failure to provide the required notice upon resignation from any individual Consumer will result in the PA's ineligibility for placement and/or removal from the availability placement list maintained by the Taking Control program. It will also result in a forfeiture of all unused vacation and sick time.

1. DISCHARGE

The term "discharge" refers to the termination of the relationship by the Consumer as a result of some form of misconduct by the PA. A PA discharged for misconduct will be paid out any already accrued vacation time.. Some of the reasons for discharge include, but are not limited to:

* Disclosure or making available to unauthorized persons any confidential or proprietary information;
* Excessive absenteeism or any absence without notice;
* Rude, abusive, obscene language or conduct, fighting, threatening violence, or disorderly conduct;
* Tampering, altering or falsifying time records or falsification of records;
* Insubordination, refusal to follow instructions/perform assigned work or other disrespectful conduct;
* Failure to adhere to policies regarding harassment, alcohol and drug use, smoking or safety,
* Acts of dishonesty or theft;
* Negligence, abuse of any type, other behavior which endangers health or safety;
* Harassing, interfering with or refusing to cooperate with others (other PAs, WNYIL’s Support Staff and Directors);
* Having possession of or using alcohol, intoxicants or illegal substances on the job, or arriving on the job unable to perform assigned responsibilities in a normal fashion due to intoxication.

Some Consumers receive additional services, which may require additional reporting and investigation of untoward events and incidents. Under certain circumstances, a PA may be suspended or deemed ineligible to participate in the program. WNYIL and the Taking Control program reserve the right, on behalf of its collective consumers, to suspend the participation of any PA from the program without pay while the PA is under investigation for any reason. A suspension of the participation of a PA from the program shall affect all of the Consumers that the PA is providing services to. Therefore, a suspension shall require each Consumer be notified of the suspension. If there is confirmation of the alleged misconduct, the PA's participation in the Taking Control program may be permanently severed. A PA discharged for cause forfeits all unused sick time and shall be removed from the availability list. They also may be deemed ineligible for future participation in the Taking Control program.

1. RELEASE

"Release" refers to severance of the relationship by the Consumer as a result of an elimination of a position due to reorganization or budget cuts, a reduction in the approved number of hours authorized by the third-party payer, or other factors that would cause loss of employment other than a discharge for cause.

**XVII. PERSONALASSISTANT BENEFITS PLAN**

PAs participating in the Taking Control program are provided a wide range of benefits. A number of the programs (i.e. Social Security, Workers' Compensation, New York State Disability, and Unemployment Insurance) cover all PAs in the manner prescribed by law. Details of the individual benefits provided to participating eligible PAs may be found in this summary.

The following insurance benefit programs are provided to eligible PAs working for Consumers participating in the Consumer Directed Personal Assistance Services Program:

 NYS Disability Insurance Social Security/Medicare

Health Insurance Unemployment Insurance

Workers’ Compensation Insurance 403B Savings Plan

Dental Insurance Vision Insurance

Some benefit programs described more fully herein require direct contributions from the participating PA, i.e. 403B Retirement Plan, Health Insurance, Dental Insurance, Vision Insurance. WNYIL's Taking Control Program reserves the right, on behalf of its collective Consumers, to change or modify the benefits offered and/or require participating eligible PAs to contribute to any benefit program at any time. The benefit package available to PAs employed by a participating Consumer represents a substantial additional value beyond the PA wages.

1. DISABILITY INSURANCE

If a PA becomes ill or is injured during non-work hours and is unable to perform the required services for the Consumer, the PA may receive payments through Disability Insurance coverage. After 30 days of employment, PAs are covered for off-the-job illnesses which last more than seven calendar days. Taking Control pays a portion of the premium for the NYS Disability Income Insurance Plan for all eligible PAs. This insurance program pays an average weekly wage up to a maximum amount established by the NYS Department of Insurance for a maximum period of 26 weeks in a 52 week period.

Pregnancy of a PA may be classified as a disabling condition which prevents the PA from performing the essential functions of the position. A PA who is unable to perform her essential job functions because of pregnancy may be eligible to receive payments through Disability Insurance coverage.

Should a PA experience an illness or disability that is expected to continue beyond the seven calendar-day waiting period for benefits, the PA must immediately notify the Consumer and the staff of the Taking Control program. This notification will allow the Taking Control program's support staff to send the PA the proper disability claim forms. These forms are required to be completed by the PA and treating physician prior to receiving benefits. The forms are then returned to the Taking Control Program's administrative offices to allow for the completion of the employment information and the submission of the forms to the appropriate agency and/or insurance carrier for processing.

A PA returning from disability leave must submit to Taking Control a signed release form from the treating physician authorizing the PA's return to work. PAs cannot return to work for a participating Consumer unless the PA meets the same eligibility requirements as for initial hire.

1. MEDICAL / DENTAL INSURANCE

**Medical Insurance**

PAs hired for the Taking Control Program are defined as Variable Hour Employees by WNYIL under the Affordable Care Act. Each PA will be subject to an Initial Measurement Period. This period will begin on the date of hire and extend for the following 11 months. In order to be eligible for health insurance, a PA must average 120 hours per month during the 11-month period. During the 30 days following the end of the Initial Measurement Period WNYIL staff will conduct an eligibility review. If the PA is found to be eligible for health insurance and they wish to enroll, an application will need to be completed and submitted and the health insurance will become effective the first of the month following the 30-day review period. This will begin the Stability Period. During the Stability Period, health insurance will continue as long as the PA maintains their employment through WNYIL. If employment ends during the 11-month Stability Period, health insurance will terminate as well. The Agency’s Standard Measurement Period will run each year from March 1st through January 31st. The variable employee must maintain working the 30 hours a week average during each Standard Measurement period to maintain their health insurance for the following Stability Period. Administrative Period is February 1st through February 28th/29th. PAs enrolled in the Agency’s medical insurance will be responsible for a per month premium cost share. The PA’s cost share will be automatically deducted from each paycheck. WNYIL will pay the remainder of the monthly premium.

PAs are only eligible to begin or change health insurance coverage at two specific times:

* When eligibility requirements are met: Application must be submitted to HR during the 30-day Administrative Period.
* During Open Enrollment: Eligible PAs may elect to change health insurance coverage during the open enrollment period.

**Dental Insurance**

Dental Insurance is offered to PAs working twenty (20) hours or more per week for 12 consecutive weeks. The PA is responsible for the entire cost of the premium. The Taking Control Program makes no contribution to the cost of this insurance. Questions regarding dental insurance coverage should be directed to the Human Resource Department.

**Vision Insurance**

Vision Insurance is offered to PAs working twenty (20) hours or more per week for 12 consecutive weeks. The PA is responsible for the entire cost of the premium. The Taking Control Program makes no contribution to the cost of this insurance. Questions regarding vision insurance coverage should be directed to the Human Resource Department.

1. RETIREMENT/403(B)

The 403(B) plan is a popular way of saving for retirement. The plan allows a PA to place part of his or her gross wages in the plan without paying income taxes until the money is withdrawn from the plan. PAs can set aside up to 12% of their gross wages. PAs are fully "vested" in their contributions to the plan.

The Taking Control Program does not make any contribution to a PA’s 403(B) plan.

1. SOCIAL SECURITY AND MEDICARE

The Taking Control program, on behalf of its collective Consumers, pays the employer's share of FICA or Social Security and Medicare payroll taxes for each PA.

1. UNEMPLOYMENT INSURANCE

Each participating PA is provided Unemployment Insurance coverage by the Taking Control program, on behalf of its Consumers, at no cost to the PA. This insurance provides income protection should an eligible PA become unemployed.

PAs can become eligible for unemployment insurance if they:

* Are dismissed through no fault of their own, and
* Have worked at least 20 weeks of the year, and
* Are ready, willing and able to work immediately.

The PA must apply at his or her local New York State Unemployment Insurance office or online at the NYS Department of Labor website.

If the PA qualifies for unemployment, he or she will be eligible for a weekly wage up to a maximum amount established by the Unemployment Insurance Division of the New York State Department of Labor. To permit released PAs to return to work as quickly as possible, the program encourages every PA receiving unemployment benefits to be placed on the availability list maintained by the Taking Control program.

When a PA collects unemployment insurance, they will lose all accrued time. Consequently, when a PA returns to the Taking Control program, the proper waiting times for benefits need to be accrued again unless the break in employment is less than 13 weeks. If the break was less than 13 weeks then health insurance coverage can be reinstated the first of the month following rehire.

1. WORKERS' COMPENSATION INSURANCE

The Taking Control Program provides, on behalf of its Consumers, Workers' Compensation Insurance at no cost to participating PAs. This program covers any injury or illness sustained in the course of employment that requires medical, surgical, or hospital treatment and pays 2/3 of the PA’s average weekly wage up to the maximum amount determined by the NYS Insurance Department.

A PA who sustains work-related injuries or illnesses should inform his/her Consumer and the Taking Control Program's Human Resources office immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible PA to qualify for coverage as quickly as possible. The PA and HR Department will complete the required forms within 24 hours of the incident. The HR department will then submit the forms to the appropriate insurance carrier or agent. The PA will need to report the location of the accident, the accident's time and date, the name and address of the treating doctor and/or hospital, the probable length of time that the incapacity will last, and the name and address of any witnesses.

PAs are covered from the first day of participation in the program for job-related injuries. Neither WNYIL nor the Taking Control program nor the applicable Workers’ Compensation insurance carrier will be liable for the payment of Workers' Compensation benefits for injuries that occur during a PA's voluntary participation in any off-duty recreational, social, advocacy-related or off-duty activities sponsored by either WNYIL or the Taking Control program.

1. HEALTH BENEFITS CONTINUATION (COBRA)

The Federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives PAs the opportunity to continue health insurance coverage under the group health plan when a "qualifying event" would normally result in the loss of eligibility. Some common "qualifying events" are resignation, termination of employment, or a reduction in a PA's hours, or leave of absence.

Under COBRA, the PA pays the full cost (100%) of coverage at WNYIL group rates.

1. JURY DUTY

If you are selected for jury duty on day(s) that you have been regularly scheduled to provide personal assistant services to a consumer enrolled into the Taking Control program, you will be able to take advantage of the following:

Full time PA’s

1. FT PA’s who miss work time for jury duty on the day(s) when they have been historically scheduled to provide personal assistant services may receive a jury fee from WNYIL of either $40.00 or their regular wage for hours scheduled for the day (whichever is lower) for the first three days that they have jury duty. Personal Assistants cannot receive both their wage and the jury fees.

Part time PA’s

1. For part time PA’s who do not miss any work due to jury duty, New York State will pay the $40.00 jury fee.
2. For part time PA’s who serve as a juror for part of the day and work part of the day, WNYIL is obligated to pay the PA for the time worked.
3. If the PA’s wage for the hours missed that same day due to jury duty is equivalent or greater than the jury fee, WNYIL will pay the $40.00 jury fee.
4. If the PA’s wage for the time missed from work is less than the $40.00 jury fee WNYIL will be obligated to pay the wage and New York State will make up the difference between the wage and the $40.00 jury fee.

If PA shift is split between actual time worked and time served on jury duty the following will happen:

1. Wnyil will be resp to pay 4 hours of actual work performed for the consumer
2. If the hours lost to jury duty meets or exceeds $40 of lost wages, WNYIL will reimburse $40.00
3. If the wage lost to jury duty is less than $40 WNYIL will pay the wage for the actual hours lost and NYS will be responsible to make up the difference up to the $40.00 jury fee.

Evening or Night Workers

1. For a PA who has performed a full day of jury service, WNYIL and/or the Consumer may not require an employee to then work a full evening or night shift.
2. Evening or night workers who miss a full day of work due to jury service and who choose to not work their overnight or evening shift will be paid the jury fee of $40 or their regular wage for hours scheduled for the day (whichever is lower) for the first three days that they have jury duty.
3. If the PA chooses to work a scheduled evening or night shift after performing a full day of jury service, NYS will be responsible for paying the jury fee.

If time serving jury duty exceeds three days, WNYIL is no longer responsible to pay jury duty fees. The jury fees beginning day four will be the responsibility of New York State and will be paid by New York State.

To be eligible for payment from WNYIL, PA’s serving jury duty must provide their individual Consumer and the WNYIL Human Resources office with a copy of the jury duty summons as well as confirmation of the day(s)/time(s) that they actually served on jury duty. Once this documentation has been received by WNYIL, payment for jury duty will be made on the next payroll date scheduled after its receipt.

1. PERSONALASSISTANT'S PAID TIME OFF

Sick time and vacation time apply only to full-time PAs.

1. **Sick Time**

A full time PA must work three months to earn one sick day. Another sick day will be earned for each three-month period thereafter. Consequently, a full-time PA will earn three sick days during the first year of full time service and four sick days for every 12 months of full time service that follows.

Sick time is paid according to the number of hours a PA would normally have worked on that day. WNYIL will compute the hours accrued by using the average daily hours worked during each accrual period. A PA will earn 20% of their average weekly hours worked during each accrual period. If a PA does not use one or all sick days, they may collect the money that would have been paid for sick days. A time sheet needs to be submitted before the last two weeks of the anniversary year. (An anniversary year starts on the first day of full time employment and extends for the following 12 months.) The time sheet should reflect the number of sick days being requested..

Consumers should be notified as soon as the PA is aware that they are unable to go to work due to illness. **REMEMBER:** A Consumer may be dependent upon the PA for basic daily activities and will need to find a replacement.

1. **Vacation Time**

One week of vacation will be earned by full-time PAs after a complete year of consecutive, full-time service. The vacation time must be used between the date that it was earned and the following 12 months. Vacation time will be paid according to the average number of weekly hours the PA works.

Permission must be requested for vacation from the Consumer at least two weeks in advance of the desired vacation time.

If a PA does not use his/her vacation within the year, he/she can collect the monetary value of one week (maximum of 40 hours). The PA needs to complete a timesheet showing one week of vacation time before the last two weeks of the year. The average weekly hours that the PA works will be used to compute the vacation pay.

It is the responsibility of each PA to keep track of their vacation and sick time.

1. **Bereavement Time**

In the event of the death of a close family member (grandparents, parents, siblings, spouse or children, or other close family member) a PA will be paid for one bereavement day. Please note that any PA needing to take a bereavement day must obtain permission from the Consumer before taking the day. It is up to the Consumer to determine if the relationship is close enough to be considered valid and to give permission. Failure to notify the Consumer and gain permission will result in loss of pay for that day.

The PA cannot work and take bereavement pay. The pay will be calculated as the number of hours the PA was scheduled to work that day.

1. FAMILY MEDICAL LEAVE ACT (FMLA)

FMLA entitles eligible employees of WNYIL to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

A PA is eligible for FMLA if he or she has been employed by the Agency for at least 12 months and has worked at least 1,250 hours during the 12 month period immediately preceding the leave. Additional information on FMLA can be obtained by contacting the Human Resource Department at WNYIL.

1. NY STATE PAID FAMILY LEAVE (PFL)

Under New York law, certain employees are eligible to take leave for qualifying circumstances and receive a portion of their pay as an insurance benefit. The Agency maintains this insurance for all employees, funded by a mandatory deduction from employee’s paychecks.

The Agency’s policy on New York Paid Family Leave (PFL) advises employees on the Agency’s implementation of these legal requirements. If does not extend additional benefits beyond what the law provides. Any additional leave benefits afforded to employees by the Agency are addressed separately.

If, through changes in the applicable laws or regulations or through judicial interpretation, the requirements of New York’s PFL Benefits Program conflict with any aspect of this policy, the Agency will enforce the policy in a manner consistent with its legal obligations and rights.

Employee Eligibility

To be eligible for PFL leave, an employee must have worked for the Agency for at least 26 consecutive weeks. Employees whose regular schedule is less than 20 hours per week do not become eligible until they have worked for the Agency on 175 days.

Qualifying Reasons for PFL Leave

Eligible employees may take leave and received PFL benefits in these circumstances:

1. NEW CHILD: To bond with the employee’s child during the first 12 months after the child’s birth, or the first 12 months after the placement of the child for adoption or foster care with the employee.
2. FAMILY MEMBER SERIOUS HEALTH CONDITION: To care, including physical or psychological care, for a child, parent, step-parent, parent-in-law, grandchild, grandparent, spouse, or domestic partner with a serious health condition; or
3. MILITARY ACTIVE SERVICE DEPLOYMENT: When, due to a qualifying exigency as defined by the federal Family and Medical Leave Act, the employee’s spouse, domestic partner, child, or parent is on active dty, or has been notified of an impending call or order to active duty, in the United States Armed Forces.

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves:

* Inpatient care in a hospital, hospice, or residential care facility, or
* Continuing treatment or continuing supervision by a health care provider.

Only one employee at a time may receive PFL to bond with the same child or care for the same family member.

Employee Requests for PFL Leave

When the need for PFL leave is foreseeable, employees must give the Agency at least thirty (30) days’ notice before taking the leave or the leave may be delayed. Shorter notice is allowed only to the extent necessary under the circumstances. If an employee cannot give thirty (30) days of notice because the need for PFL leave was not foreseeable, the employee must give notice of the need for leave as soon as practicable once the need for leave is known.

Employees should give notice to their manager or Human Resources following the Agency’s usual procedures for requesting leave. Human Resources will provide the employee with Request for Paid Family Leave forms to be submitted to the insurance company. As set forth in the forms, the employee must submit appropriate certification based on the type of leave requested. The insurer determines whether an employee qualifies for PFL leave based on the information provided.

Employees must continue to follow the Agency’s regular call in procedures when taking time off as Paid Family Leave.

PFL Benefits

New York’s Paid Family Leave Benefits are being phased in according to this chart (subject to modifications by the State):

|  |  |  |
| --- | --- | --- |
| Year | Maximum PFL Leave | Paid Family Leave Benefit |
| 2018 | 8 weeks | 50% of employee’s average weekly wages\* |
| 2019 | 10 weeks | 55% of employee’s average weekly wages\* |
| 2020 | 10 weeks | 60% of employee’s average weekly wages\* |
| 2021 | 12 weeks | 67% of employee’s average weekly wages\* |

\*The PFL benefit an employee will receive is capped based on the NY State average weekly wage (which changes annually). As a result, some employees will receive benefits lower than the amount specified above.

The maximum amount of leave is based on the period of 52-consecutive weeks dating back from each day for which PFL benefits are claimed. In other words, if an employee has already taken the maximum number of weeks in the past 52 consecutive weeks, he/she will not be eligible for additional PFL until one year after the first day for which they received PFL benefits in that 52-week period.

An employee who is eligible for both NY State disability insurance benefits and family leave during the same consecutive 52 consecutive calendar week period may not receive more than 26 total weeks of disability and family leave benefits during that period of time.

Other Forms of Paid Leave

Employees may use other forms of Agency-provided paid leave (sick, vacation) to receive full pay for any portion of their PFL for which other available leave qualifies under corresponding Agency policies. When an employee elects this option, the Agency will receive the employee’s PFL benefits for any days of leave that the Agency pays the employee.

While on PFL, employees will not continue to accrue vacation or sick leave.

Health Insurance Continuation

The Agency will maintain an employee’s health benefits during PFL on the same terms as if the employee had been continuously employed during the entire leave period.

If the employee normally pays any of the health insurance costs, they must continue making those payments during the leave to maintain coverage. The employee must make payment arrangements with the Agency before the leave begins, or as soon as possible after the leave begins if the leave results from an emergency.

Unless alternative arrangements have been made, the employee’s coverage will be continued during PFL leave, and the employee must submit payment to the Agency on each payday to cover the portion of the employee’s health insurance premium that would have been payable on that day had the employee been working. If the employee fails to submit timely payment, the Agency may, but is not required to, terminate the employee’s health insurance coverage. If the Agency elects to continue the employee’s coverage, the employee continues to be responsible for their health insurance premium on each payday. The Agency may make deductions from the employee’s pay upon return to work to recover the portion of the premiums that the employee should have paid during leave.

The Agency may cancel the health insurance coverage of an employee who is over 30 days late in paying their portion of the premium during PFL.

If PFL expires and the employee does not return to work (normally for at least 30 calendar days), and has no valid excuse as defined by law, the Agency may recover any benefit payments it has made on the employee’s behalf during the leave.

PFL Waiver

Certain employees may be eligible to elect not to participate in the NY Paid Family Leave Benefits Program.

An employee may file a waiver of PFL benefits if:

1. Their regular employment schedule is 20 hours or more per week, but the employee will not work 26 consecutive weeks; or
2. Their regular employment schedule is less than 20 hours per week and the employee will not work 175 days

The Waiver is completely voluntary for qualifying employees and may be revoked at any time by the employee. In addition, an employee’s waiver will be revoked within eight weeks of any change in the regular work schedule of the employee that requires the employee to work for 26 consecutive weeks or 175 days.

If an employee’s waiver is revoked (either voluntarily by the employee or automatically by a change in the employee’s work schedule), the Agency may take retroactive deductions for the time the employee was covered by the waiver, and this period of time counts toward the employee’s eligibility for PFL.

PFL Waiver forms can be obtained from the Human Resource Department.

Coordination of Family Medical Leave Act (FMLA) Leave

Employees who qualify for both PFL and FMLA leave at the same time will be designated for both forms of leave simultaneously.

If an employee who qualifies for PFL during a period of FMLA leave does not apply for PFL, the leave may still count against the employee’s maximum PFL leave eligibility during the applicable 52-week period.

Partial day absences covered by the FMLA, but not PFL, may be aggregated to count as a day of PFL in increments equal to the number of hours in the employee’s usual work day. For example, if an employee who normally works 8 hour days takes intermittent leave of two hours each day on eight different work days to care for a family member with a serious health condition, the employee may be charged with 2 days of PFL leave.

Contacts and Additional Information

Request for PFL forms and form submissions should be directed to the Human Resource Department.

Our PFL insurance carrier is Amtrust Wesco.

If your PFL claim is denied, the insurance carrier will provide you with information about how to request arbitration. A neutral arbitrator will decide claim-related disputes.

No Retaliation

No one may discriminate or retaliate against an employee for using PFL.

If you feel your employment has been terminated, your pay or benefits reduced, or you have otherwise been disciplined because you requested or took PFL, you can use the Formal Request for Reinstatement Regarding Paid Family Leave (Form PFL-DC-119), which can be found in the forms section of ny.gov/PaidFamilyLeave to submit a complaint. Submit one copy to the Human Resource Department and another copy to: Paid Family Leave, P.O. Box 9030, Endicott, NY 13761-9030.

If the Agency does not reinstate you within 30 days, you may file a Paid Family Leave discrimination complaint with the New York State Workers’ Compensation Board (WCB) using the Paid Family Leave Complaint (Form PFL-DC-120), which is also available on the Paid Family Leave website. Once your complaint is received, the WCB will schedule a preliminary hearing in front of a Workers’ Compensation Law Judge.

**XVIII. WORK CONDITIONS AND HOURS**

Since PA services are designed to meet the needs of each individual Consumer, conditions and hours will vary as per the needs and desires of the Consumer. PAs participating in the Taking Control program may not work in excess of forty (40) hours per week. The work week is Sunday to Saturday.

**XIX. AVAILABILITY FOR EXTRA WORK**

PAs may work for more than one Consumer as long as the scheduled shifts do not overlap and the foregoing work schedule policy is observed and the total hours worked for all consumers does not exceed 40 hours in any one work week. Those PAs that wish to work for more than one Consumer may request being placed on the availability list maintained by the Taking Control program. Availability lists are distributed to Consumers by request only. Neither WNYIL, nor Taking Control program shall provide any reference or referral services to any consumer or PA.

**XX. PAYDAYS**

PAs are paid bi-weekly on Fridays. Each paycheck will include earnings for work performed through the end of the previous payroll period.

PAs may have their paycheck deposited directly into their bank account if they provide advance written authorization to the Taking Control payroll department. A PA can also choose a paper check option and can choose to have the check be mailed or picked up at the WNYIL office. Photo identification is required when a check is picked up. Only the PA whose name appears on the check may pick up the check.

Lost, destroyed or stolen checks must be reported to Taking Control’s payroll department immediately so that the missing check can be cancelled and a replacement check be issued. The PA will be required to sign a check replacement form. Falsely reporting a lost, destroyed or stolen check shall result in disciplinary action up to and including loss of eligibility to participate as a PA through the Taking Control program and/or criminal charges.

The law requires that the Taking Control Program’s payroll department make certain deductions from every PA's compensation. Among these deductions are applicable federal, state, and local income taxes. The payroll department must also deduct Social Security taxes from each PA's earnings up to a specified limit that is called the Social Security "wage base." The Taking Control program, on behalf of its Consumers, contributes the Consumer’s portion of the Social Security taxes due to be paid for the employment of each PA by a Consumer.

The following items will be withheld from paychecks for all regular PAs, as applicable:

* Federal withholding tax
* FICA
* PA's portion of Social Security and Medicare tax
* State Income tax
* Court Ordered wage attachments/garnishments i.e. student loans, child support, etc.

Questions concerning deductions made from an individual paycheck or how the deductions were calculated should be referred to the Taking Control payroll department.

All PAs’ requests for wage/employment verifications must be made through the Human Resource Department. Assistants should allow one week after making the request for completion.

**XXI. PAYROLL**

The Taking Control program uses an hourly rate to pay Personal Care Assistants. Each PA is responsible for keeping track of the hours they have worked during a two-week period. Each Consumer is responsible for verifying the PA’s hours.

Each PA will be given a list of pay periods and pay dates. If a PA starts to work in the middle of a pay period, the partial pay period will be reflected in the first paycheck.

Third-party payers are the responsible entity who determines how many hours of care each Consumer will receive.

**PAYMENT CAN ONLY BE MADE FOR THE HOURS ALLOCATED BY THE THIRD-PARTY PAYER. THE CONSUMER ASSUMES RESPONSIBILITY FOR PAYMENT OF ANY HOURS IN EXCESS OF THE HOURS ALLOCATED.**

**XXII. EMERGENCY "CLOSINGS"**

At times emergencies such as severe weather, fires, power failures, or earthquakes, may disrupt a community’s operations. PAs are advised to speak to the individual Consumer about the emergency back-up plan and specific expectations the Consumer may have in the event of such an emergency.

A Consumer can request that their PA(s) be provided a Taking Control Program Identification Card (ID).  An ID may facilitate travel in circumstances where there is a travel ban.  Consumer(s) and/or Assistant(s) should check with their local authorities to determine whether an ID would enable travel by the Assistant in such circumstances since travel documentation requirements may vary from one area to another.  ID’s should be returned to the Agency when a PA’s employment terminates.

**XXIII. FRAUDULENT CLAIMS**

As a fiscal intermediary responsible for processing payroll and billing Medicaid, WNYIL is committed to complying with all applicable laws and regulations. The submission of false information and claims to the federal or state governments may constitute fraud that is actionable by enforcement agencies. The Office of the Inspector General of the U.S. Department of Health and Human Services and the State of New York Office of the Medicaid Inspector General conduct a large number of Medicaid audits and investigations to evaluate improper or fraudulent payments which result in a substantial drain on both state and federal funds. As such, WNYIL supports the efforts of both federal and state authorities in identifying incidents of fraud and abuse and is continuously developing the necessary procedures to prevent, detect, report and correct incidents of fraud and abuse in accordance with contractual, regulatory and statutory requirements.

The policies and procedures set forth herein supersede all existing policies, procedures and practices and may not be amended or added to without the express written approval of WNYIL's Executive Director. The policies and procedures set forth herein are subject to change at the sole discretion of the Executive Director without advance notice.

The policies and procedures set forth in this notice are for informational purposes only and are not intended to create a contract. The policies and procedures set forth herein shall not constitute contractual obligations of any kind to any individual or entity receiving the notice, nor shall they be construed to constitute a contract of employment between WNYIL and any individual or entity receiving this notice.

**XXIV. FALSE CLAIMS REGULATIONS AND POLICY**

This False Claims Policy sets forth the guidelines to be followed by all Consumers, PAs and officers, directors, employees, volunteers, agents and representatives of WNYIL (and other parties as applicable) regarding the Deficit Reduction Act (DRA) of 2005 (42 U.S.C. § 1320(a) *et seq.),* the Federal False Claims Act (31 U.S.C. § 3729, *et seq.),* the Federal Program Fraud Civil Remedies Act of 1986, the New York State False Claims Act (State Finance Law § 187 *et seq.)* and the New York Social Services Law (§145 *et seq.)* in detecting and preventing fraud, waste and abuse.

**"Fraud"**

Is defined as an intentional (willful or purposeful) deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

**"Abuse"**

is defined as practices that are inconsistent with sound fiscal, business or medical practices, and that result in an unnecessary cost to government programs, or in seeking reimbursement for goods or services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes practices that result in unnecessary cost to government programs.

The Federal False Claims Act (the "FCA") and the New York State False Claims Act (the NYSFCA) are statutes that impose liability on any person who:

* Knowingly presents or causes to be presented a false or fraudulent claim to the government;
* Knowingly uses a false record or statement to obtain payment on a false claim paid by the government;
* Engages in a conspiracy to defraud the government by the improper submission of a false claim for payment.

The term **"knowingly"** is defined to mean that with respect to information, a person has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term "**claim**" includes any request or demand for money or property if the United States Government provides any portion of the money requested or demanded.

The FCA and NYSFCA apply to Medicaid reimbursement and prohibit, among other things:

* Billing for services not rendered
* Billing for undocumented services
* Making improper entries on cost reports
* Billing for medically unnecessary services
* Assigning incorrect codes to secure higher reimbursement
* Characterizing non-covered services or costs in a way that secures reimbursement
* Failing to seek payment from beneficiaries who may have other primary payment sources
* Participating in kickbacks
* Loaning a Medicaid Identification card to another person
* Loaning a Taking Control call–in identification number to another person
* Forging or altering a prescription or fiscal order
* Using multiple Medicaid ID cards
* Intentionally receiving duplicative, excessive, contraindicated, or conflicting health care services or supplies

Damages and penalties of violating the FCA include:

* Civil penalties of not less than $10,781.40 and not more than $21,562.80 per violation

**AND**

* Three times the amount of damages, which the government sustains because of the violation, and the costs of any civil action brought to recover such penalties or damages

Damages and penalties of violating the NYSFCA include:

* Civil penalties of not less than $6,000 and not more than $12,000 per violation

**AND**

* Two to Three times the amount of damages which the government sustains because of the violation, and the attorneys fee incurred to recover such penalties or damages.

The FCA and NYSFCA also provide for actions by private persons *(qui tam* lawsuits), and private persons may bring a civil action in the name of the government for a violation of the FCA and/or the NYSFCA. The government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing or settling the action. If the government chooses not to intervene, the person who initiated the lawsuit (the "Whistleblower") has the right to conduct the action. In the event that the action is successful, the Whistleblower may be awarded a portion of the funds recovered. The Whistleblower may also receive an amount for reasonable expenses plus reasonable attorneys' fees and costs.

However, if the civil action is frivolous, clearly vexatious, or brought primarily for harassment, the Whistleblower may have to pay the defendant its attorneys' fees and costs. The amount received by the Whistleblower will be decreased if he/she planned or initiated the violation, and no share will be awarded if the Whistleblower is found guilty of a crime associated with the violation.

The FCA, NYSFCA, New York Social Services Law (§145 *et seq.),* New York Labor Law (§ 740 *et seq.)* and other statutes provide protection for officers, directors, employees, volunteers, agents, representatives, Consumers and PAs (and other parties as applicable) from retaliation. If an officer, director, employee, volunteer, agent, representative, or PA (or other party as applicable) is discharged, demoted, suspended, threatened, harassed or discriminated against because of lawful acts conducted in furtherance of an action under the FCA or NYSFCA, that officer, director, employee, volunteer, agent, representative, or PA (or other party as applicable) may bring an action in court seeking reinstatement, two times the amount of back pay plus interest, and other enumerated costs, damages, and reasonable attorneys' fees.

The Federal Program Fraud Civil Remedies Act of 1986 (the "Act") also establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services).

The term **"knows or has reason to know"** is defined in the Act as a person who has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

With regard to this Act, the term **“claim”** includes any request or demand for property or money, e.g. grants, loans, insurance or benefits, when the United States Government provides or will reimburse any portion of the money.

The Act allows for civil monetary sanctions to be imposed in administrative hearings, including penalties of $5,000 per claim and an assessment, in lieu of damages, of not more than twice the amount of the original claim.

**XXV. POLICIES AND PROCEDURES FOR DETECTING FRAUD, WASTE AND ABUSE**

WNYIL’s Taking Control program, on behalf of its Consumers, has adopted the following policies and procedures for detecting fraud, waste and abuse. In addition, neither the Taking Control program, nor its Consumers, shall knowingly employ, contract or associate with any person or entity, or knowingly receive certifications and/or orders from any provider or recipient who has been excluded from the Medicaid/Medicare programs as a result of fraud.

All Consumers, PAs and officers, directors, employees, volunteers, agents and representatives (and other parties as applicable) associated with WNYIL's Taking Control Program must conduct themselves in an ethical and legal manner, including the maintenance of accurate records related to their business and insurance activities. It is strictly forbidden to solicit gifts, services or any other form of remuneration from Medicaid/Medicare recipients or Medicaid/Medicare referral sources. PAs may accept gratuities and gifts of a nominal value from the people we serve and their family members. If there is any doubt or concern about whether specific gratuities and gifts are ethical or otherwise appropriate, you should contact WNYIL’s Corporate Compliance Officer.

Similarly, all Consumers, PAs and officers, directors, employees, volunteers, agents and representatives (and other parties as applicable) associated with WNYIL's Taking Control Program are required to comply with policies and procedures set forth herein regarding Medicaid/Medicare and state reporting regulations.

All Consumers, PAs and officers, directors, employees, volunteers, agents and representatives (and other parties as applicable) associated with WNYIL's Taking Control program are responsible for reporting potential or suspected incidents of fraud, abuse or other wrongdoing directly to a supervisor or Director or by using one of the reporting methods described herein.

The WNYIL Corporate Compliance Officer (CCO), in consultation with WNYIL’s Executive Director and legal counsel as needed, shall be responsible for receiving and acting upon all information suggesting the existence of possible fraud, abuse or wrongdoing, and for directing all investigations arising from this information.

Any officer, director, employee, volunteer, agent or representative (and other parties as applicable) associated with WNYIL's Taking Control program who has a suspicion or receives a report of fraud should immediately contact the CCO before any action is taken. No Consumer, PA or officer, director, employee, volunteer, agent or representative should directly confront any individual with an allegation of fraud or otherwise discuss the issue with anyone suspected of engaging in fraudulent or abusive practices without prior approval from the CCO.

Contact can be made with the Corporate Compliance Officer can be made in the following manners:

* Calling 1-866-576-8042 to discuss all information suggesting the existence of possible fraud, abuse or wrongdoing
* Written notice may be mailed to ;

Corporate Compliance Officer

WNY Independent Living, Inc.

3108 Main Street

Buffalo, NY 14214

* Written notice may be placed in any of the locked Corporate Compliance boxes located throughout any of the Taking Control offices.

It is the responsibility of the CCO to direct or conduct fraud and abuse investigations. In conducting an investigation of wrongdoing, facts should be gathered as promptly as possible. The CCO is responsible for detecting potential incidents of fraud and abuse and determining when incidents should be reported to an appropriate law enforcement agency. The CCO is responsible for ensuring the design and development of methods for identifying fraud and abuse and responding appropriately and immediately to all detected program violations.

If incidents of fraud and abuse are identified, systematic changes and corrective actions and initiatives will be put into place as appropriate to prevent further offenses.

The CCO shall continuously develop and maintain methods for detecting and preventing incidents of fraud and abuse including, but not limited to, a claims assurance program that monitors the accuracy of claims and a process that identifies employees, Consumers, PAs, contractors, vendors and providers that are debarred or excluded from participating in federal programs.

The CCO shall take appropriate disciplinary and enforcement action (i.e. corrective action plans, employment termination or contract termination) against Consumers, PAs and employees, volunteers, agents or representatives of WNYIL participating in the Taking Control Program who are found to have committed fraud and abuse violations.

In the case where the allegation is a criminal violation of law, the CCO shall confer with WNYIL's Executive Director and legal counsel, as needed, to determine whether there is sufficient evidence to support referral to a duly authorized law enforcement agency. In addition, WNYIL shall fully cooperate with the appropriate Federal and State agencies that conduct health care fraud and abuse investigations.

To the extent practical or allowed by law, the CCO shall maintain the confidentiality or anonymity of any individual reporting questionable activity when such confidentiality or anonymity is requested. In addition, retaliation or retribution for reporting issues "in good faith" is strictly prohibited.

As part of an annual compliance training program, all officers, directors, employees, volunteers, agents and representatives (and other parties as applicable) associated with WNYIL's Taking Control program shall receive additional educational information and literature relating to the provisions of the Act, the FCA, the NYSFCA and other State and administrative remedies for false claims and statements and New York State laws pertaining to civil or criminal penalties and *qui tam* provisions.

**XXVI. PERSONAL USE OF CONSUMER’S TELEPHONE**

PAs may be required to reimburse their Consumer for Personal use of the telephone, should **additional** charges result. Personal calls should be limited to five minutes or less and should be infrequent. PAs should also strictly limit the use of their cell phones while in the Consumer home and while attending to the needs of the individual Consumer.

**XXVII. SMOKING**

The policy either allowing or prohibiting smoking while attending to the needs of an individual Consumer shall be left to the discretion of the individual Consumer.

**XXVIII. DRUG FREE WORKPLACE POLICY**

PAs with drug and alcohol problems not only jeopardize their own physical and emotional well-being, they also risk the health and safety of the Consumers to whom they are providing care. Therefore, it is essential that a policy be maintained by WNYIL, on behalf of its collective Consumers, that each Consumer's home be deemed a drug free workplace. The term "drug" includes alcoholic beverages, unauthorized prescription drugs, illegal inhalants and illegal drugs. The term "workplace" is defined as the Consumer's property or any Consumer-sponsored activity, or any other site for the performance of work for the consumer. Engaging in activities prohibited by this policy shall be grounds for immediate dismissal and may result in the loss of future eligibility to participate in the Taking Control program.

All PAs are hereby notified that WNYIL and its Consumers shall fully comply with the Federal Drug-Free Workplace Act of 1988 as amended. Prohibited activities under this policy include the unauthorized use of drugs in the workplace, including distribution, possession, or use of a drug or controlled substance as defined in schedules I through V of the Controlled Substances Act, 21 U.S.C. Sec. 812.21 C.F.R. Sec 1308, and state and local law, including but not limited to marijuana, opiates (e.g. heroin, morphine), cocaine, phencyclidine (PCP), and amphetamines. The use of prescription drugs, when taken as directed by a duly licensed physician, shall not be a violation of this policy. However, any unauthorized use of prescription drugs, not prescribed to the PA by a duly licensed physician, shall be grounds for the immediate removal of the offending PA from the program and future ineligibility to participate in the program.

All PAs **must** comply with this policy. PAs may be required to undergo drug testing if a Consumer suspects that the PA is unable to perform their job duties due to the use of drugs or alcohol. In addition, the addiction to or misuse of prescribed drugs may also subject a PA to medical testing. Refusal by any PA to consent to such testing shall be grounds for the immediate removal of the offending PA from the program and future ineligibility to participate in the program. Any PA testing positive for illegal drugs or the misuse of prescribed drugs may be required to participate in a drug abuse assistance or rehabilitation program as a condition of future eligibility to participate in the program.

The inclusion of this drug free workplace policy does not affect the employment status of the PA being an "at-will" employee of the Consumer, meaning that the employment relationship may be terminated by either the PA or the Consumer at any time for any reason without prior notice.

**XIX. FIREARMS POLICY:**

No one shall be allowed to exhibit or carry firearms, ammunition, explosives or bear any other weapons on the consumer’s property or while conducting business for the consumer.

**XX. EXPECTATIONS, CONDUCT AND DISCIPLINE**

All PAs participating in the Taking Control program are responsible for cooperating with the individual Consumer, the Board of Directors, the Executive Director and the staff of the Taking Control Program in the furtherance of the WNYIL philosophy and the intent of the personnel policies, procedures and benefits set forth in this manual.

**XXI. SAFETY**

* Your Safety

It is Taking Control’s policy to encourage the safest work environment possible. It is the responsibility of all PA’s to report any safety hazards or unsafe work environments. You should bring the situation to the attention of your consumer employer. If your consumer employer fails to address the situation, then you should contact the Taking Control Coordinator.

* Workplace Safety Checklist

The first day working at a Consumer’s home it is your responsibility to complete the Worksite Safety Checklist. PA’s are only responsible to assess the rooms they will be working in. This completed checklist must be returned to our office within three days. At no time should you put yourself at risk of harm or injury.

* Training

Safety training topics are posted monthly on the Agency’s website ([www.wnyil.org](http://www.wnyil.org)). All PA’s are required to review at least one training topic per month.

Douglas J Usiak, Chief Executive Officer 

**FINDING THE RIGHT PERSONAL ASSISTANT**

One of the most appealing aspects of consumer directed services is the ability of the individual receiving services to choose and hire their own PAs. Because it is the responsibility of the consumer to staff their own case this can also be one of the most stressful. It is important to carefully consider every applicant and choose only ones you feel comfortable with. Remember this program is designed to give you the control to hire who you want.

RECRUITING AND ADVERTISING

* Advertisements can be placed in local newspapers, internet sites, sent to local schools or community centers, or posted on bulletin boards at local hospitals, colleges or supermarkets. The newspaper will charge you a fee for each line in the advertisement. You will want your ad to be short and to the point so it is clear what the job is like, below are a few examples:
* Personal Care Assistant to work 3 p.m.‑11 p.m., Mon‑Fri. Call...
* Part‑time PA needed, prefer male. $11.00/hour. Call...
* PA needed to assist person with disability. Call…

It is not a good idea to include your address or your full name in the ad. For security reasons, we therefore recommend that you just put your first name and phone number in the ad.

When you send ads to be posted on bulletin boards, you can do a longer ad. Again, do not leave yourself unprotected by adding personal information. Word of mouth is also an excellent way to recruit potential assistants. Remember, in this program you can hire anyone you like other than your spouse. This means you can hire your neighbor, cousin, nephew or even grandchild. Family members and friends are a very good source for backup coverage.

TELEPHONE SCREENING

If your newspaper ad, posted notice, or word-of-mouth campaign has been successful, you will soon begin getting phone calls from applicants. When you talk to an applicant, you should begin to screen the applicant over the phone before you send an application, and certainly before you schedule a meeting to do an interview. You will probably not want to interview all the applicants. The telephone screening will assist you in deciding whom you would like to meet in person to interview.

Tell the applicant the hours you will need someone to work. Outline what tasks must be performed. If lifting is required, specifically state the amount you expect the person to be able to lift. (i.e. 40 pounds\*)

\* Please note here that providing assistance while transferring could be/is considered lifting so know your body weight.

During the screening process, it will be worth your while to be completely honest about the tasks you expect your assistant to perform with/for you. For instance, as you describe to an assistant that you would like assistance with showering, you may want to highlight the fact that you need someone to scrub your feet/between your toes etc. To an experienced assistant, this will be useful information. To someone who is brand-new this may be information crucial to the decision on whether or not to take the job you propose.

The long and the short of it is that if someone is squeamish about doing what you need them to do -- or just plain unable to do it -- you can save yourself and the prospective employee time and effort by finding this out as quickly as is possible. Also, by developing this brutally honest approach, you can ensure that you will never be faced with an assistant (already in your home) who says to you:

"You never told me..." X -- or "I'm not doing **that!**"

Some questions that may help you when screening applicants over the phone are:

1. Have you ever been a Personal Assistant or have you done similar work?

2. If so, where did you work? What were some of the job tasks? How long did you work there?

3. What time during the week are you available to work?

4. How do you feel about assisting me with my personal needs (i.e. bathing, toileting, shaving)?

5. How do you feel about housekeeping chores?

6. Are there any household chores you are not willing to do?

7. Can you cook?

8. What dishes do you like to cook?

9. Are you 18 years of age or older?

10. Do you have transportation you can utilize that will get you to the jobs?

11. Are you able to perform all the duties of the job as I have outlined them?

12. It may be a good idea to let them know that they will be subject to a criminal background check and a health assessment/PPD prior to being hired.

These are just a few suggestions for screening applicants over the phone. If you listen carefully to what the person says, you may get a sense of the person's attitude. Only select people who sound extremely good to you for a formal interview.

Once you have completed screening over the phone and decided that you want to do a formal interview, you can schedule the individual for a face‑to‑face (in‑person) interview.

THE INTERVIEW

If you would like, WNYIL will provide you with a place to interview applicant(s). It is not a requirement, but you may feel safer. We suggest that you at least find a neutral space. If you live in an apartment building, you might meet an applicant in the apartment's community room. **Should you wish to interview applicants at WNYIL, you need to call ahead to schedule a time.** When an applicant formally meets with you face‑to‑face, you should introduce yourself and try to make the applicant feel comfortable.

The following are some suggestions that may help when you interview:

Explain *everything* the job includes. It is important for you to be very specific. You may want to develop a job description or a detailed written list of tasks to share with the applicant. Use this part of the interview to assess whether she/he is serious about listening to you.

Explain your expectations. It is important for the applicant to know that the tasks you listed are required and must be completed in a timely fashion.

While personality is separate from skill, you will have a more pleasant relationship if the person you hire has the same attitude about work as you do.

Ask the applicant if they are comfortable with the list of tasks. Make sure they understand all the responsibilities listed.

Make sure you review the application form carefully. Be sure it is filled out completely

If you notice that the applicant has had a lot of jobs in a short period of time, or if they ask that you not contact past employers, it could mean that the applicant is not reliable. Therefore, you should ask the applicant why they changed jobs so often or why they are requesting you not contact their past employers.

Ask the applicant why they would like the job. You may get some insight into his/her motivation.

When you review the application look at the personal reference section and ask the applicant if these references are friends. If the applicant has given family members for personal references, ask the applicant for names of personal friends.

Ask the applicant if they have any limitations that would prohibit them from performing some of the tasks. At this point, if you do have pets in your home, you should disclose this to the applicant, due to allergic reactions and fear that some applicants may have towards animals.

Ask candidates to fill out an application and a release of information form for references. These forms are available upon request from the Assistant Coordinator at our office.

It is suggested that you check at least three of their references. These may be written references or telephone references.

TELEPHONE REFERENCE CHECKS:

If you do not have time to wait for a written response, you can do a reference check by phone. These are some questions you could use when you are calling for references:

1. Was the employee reliable and dependable?

2. Did the employee need a lot of direction (supervision) to do their tasks or could they independently do their routine tasks?

3. Did the employee have a good attitude toward people that they worked with?

4. How well did the employee interact with their supervisor? Were they able to take constructive criticism?

5. Were there any other problems that you had with the employee?

6. Would you recommend the candidate for this position?

7. If given the opportunity, would you rehire this person?

Now you are ready to select your assistant. Use your own best judgment. Look over the questions you asked the applicants and how they responded. Look over your references carefully and trust your own feelings on how comfortable you felt with the applicants.

If you have difficulty in making a decision, you could schedule to interview them again.

By the end of your formal interview, you should have a better sense of whether or not you are interested in hiring the applicant. Take your time and make sure you interview more than just one applicant. You may like the first applicant, but as you interview additional candidates, you may find someone else that you like even more.

Make sure that you follow up with references. Use the form supplied by WNYIL to obtain references. The references can help you to decide whether or not an applicant is a good worker. The references may also help you to decide if the applicant is a good fit for what you require and their attitude on the job, etc.

**WHAT QUESTIONS CANNOT BE ASKED DURING AN INTERVIEW?**

You may not ask applicants about their age or their birth date, race, national origin, sexual orientation, native language, health, back problems, disability, fitness, marital status, whether they have children, are pregnant or are planning to get married or have children soon.

*You and WNYIL can be held liable for violating the applicant’s right to privacy under New York State Labor laws. Once you have been trained, it is your responsibility to know what you cannot ask during an interview. This User's Guide is given to you as a reference guide to assist you with your hiring process.WNYIL accepts no liability for choices you make relative to hiring PAs.*