

COMMUNITY HEALTHCHOICES (CHC)

OPERATIONS MEMORANDUM #2023-05

SUBJECT: Level of Care Redetermination Process

TO: Independent Assessment Entity (IAE), CHC-Managed Care Organizations (MCO)

FROM: Bureau of Policy Development and Communications Management

DATE: July 11, 2023

PURPOSE

This Operations Memorandum outlines the procedures for the CHC-MCOs and IAE to follow when a level of care assessment and redetermination finds a CHC Home and Community-Based Services (HCBS) Participant to be Nursing Facility Ineligible (NFI).

Section V.E. of the CHC Agreement and Appendix B-6(g) of the CHC 1915(c) Waiver outlines the circumstances in which CHC-MCOs are required to complete a comprehensive needs assessment and reassessment of Nursing Facility Clinically Eligible (NFCE) Participants. The CHC-MCO must conduct a comprehensive needs reassessment of NFCE Participants no more than twelve (12) months following the most recent prior comprehensive needs assessment or comprehensive needs reassessment unless a trigger event occurs. The Department of Human Services (DHS) has designated a tool that the CHC-MCOs must use to send data resulting from comprehensive needs assessments and reassessments to the Pennsylvania Individualized Assessment (PIA) System within 365 days of the previous assessment or reassessment of the Participant. The CHC-MCO is permitted to gather additional information not included in the designated tool to supplement, but not supplant, the DHS-designated tool.

Section I-1.C. of the IAE Agreement requires that the IAE will review functional eligibility determination (FED) assessment and reassessment data collected by the CHC-MCOs for NFCE Participants and make a determination of level of care based on that data.

PROCEDURES

When a CHC-MCO completes a comprehensive needs assessment or reassessment for a CHC HCBS Participant, the CHC-MCO uploads the resulting data into PIA (DHS's designated tool). Within 10 business days of the data being received in PIA, Pennsylvania's IAE reviews the data the CHC-MCO uploaded and confirms whether the data indicates the Participant is NFCE or NFI.

Determining Level of Care

If the data in PIA indicates that the CHC Participant is now NFI, the following steps will be taken:

1. The IAE will send, within three business days, a Physician Certification (MA 570) Request Form via secure email to notify the CHC-MCO that their HCBS Participant has been determined NFI, to request an updated MA 570, and to request service coordinator contact information.
2. The CHC-MCO will request that the physician complete and return the MA 570 to the CHC-MCO within 30 calendar days of the date the form was sent to the physician.
NOTE: The CHC-MCO must not perform another needs assessment due to the IAE's request for a new MA 570.
3. When the CHC-MCO has obtained the completed MA 570, the CHC-MCO will return it with the request form to the IAE via secure email.
4. Upon receipt of the MA 570, the IAE will compare the MA 570 level of care to the level of care FED outcome. If the MA 570 indicates the Participant is NFCE, the IAE will continue to step 5. If the MA 570 indicates the Participant is NFI, go to step 8.
5. The IAE will request a Medical Director Review (MDR) from the Office of Long-Term Living (OLTL).
6. OLTL will send the results of the MDR to the IAE through PIA within 5 business days.
7. If the MDR confirms that the Participant remains NFCE, the IAE will share the result with the CHC-MCO using the same secure email address as in step 1, and the level of care determination process is complete.
8. On the same day the NFI determination is confirmed, either with the MDR or by agreement between the FED outcome and MA 570, the IAE will complete a *Home and Community-Based Services (HCBS) Eligibility/Ineligibility/Change*

Form (PA 1768), and send it to the Participant's County Assistance Office based on the county of record. The IAE will include the following on the PA 1768:

- In the 'Comments' section on page 1, include the comment "OLTL will send the functional ineligibility notice."
 - In the 'Assessment Information' section in Part II of page 2, check the box beside 'This is to verify that the individual listed no longer meets the level of care appropriate for HCBS.' In the 'Evaluation date' box, enter the date that NFI was confirmed with either the MDR or the MA 570.
9. Upon receipt of the PA 1768, the CAO processes eligibility to terminate HCBS with 15 days advance notice, determines eligibility for other MA, and sends the Participant and their representative(s) a notice of the MA eligibility decision. The CAO does not send a notice for functional ineligibility.
 10. On the same day the CAO processes eligibility, the CAO sends the Participant name, Medical Assistance Identification number (RID), residential address, waiver end date, county code, county name, representative name(s), and representative mailing address(es) to the IAE.
 11. The IAE will use the information received from the CAO to populate the functional ineligibility notices to the Participant and their representative(s).
 12. The day after the CAO processes eligibility, the 834 Eligibility file will show the CHC-MCO that the original HCBS span is ending after 15 days advance notice.

Appeal and Fair Hearing

The Participant has the right to appeal either OLTL's functional ineligibility notice or the CAO's MA eligibility notice, or both, and have a hearing through DHS' Bureau of Hearings and Appeals (BHA). If the Participant does not appeal the OLTL or CAO notice, HCBS will remain closed until the Participant's circumstances change.

Timely Appeal of Functional Ineligibility

If the Participant's appeal of the functional ineligibility notice sent by the IAE is postmarked within 10 calendar days of the date specified on the notice, it is considered a timely appeal for the purposes of continuing benefits, and the following steps will be taken:

1. On the same day that the IAE receives the timely appeal, the IAE will begin tracking the appeal on a spreadsheet stored in DocuShare. OLTL will check the DocuShare spreadsheet regularly to identify appeals.
2. The day the appeal is received, the IAE will complete a PA 1768 and send it to the Participant's local CAO. The IAE will include the following information on the PA 1768 in the 'Comments' section on page 1:
 - include the comment "Timely appeal received, open HCBS with no gap."

3. Within three calendar days from the day the appeal was received, the IAE will complete a BHA hearings and appeals packet and send it to BHA to schedule the hearing.
4. The CAO acts to have HCBS eligibility reinstated back to the effective date of the appealed notice, pending a decision by BHA.
NOTE: The CHC-MCO must monitor the 834 Eligibility file for possible CHC HCBS reinstatement. The CHC-MCO must continue to provide HCBS and other services the Participant is eligible for, pending the decision by BHA.
5. When the IAE receives the hearing date from BHA, the IAE will gather any relevant evidence and exhibits in preparation for the hearing and send copies of the same, along with a Functional Eligibility Determination (FED) Matrix, to the appellant and BHA.
6. The IAE will update the tracking spreadsheet in DocuShare with the BHA hearing date, and any changes to the date.
7. IAE staff who confirmed the NFI decision based on data received through PIA, as well as OLTL staff who made the NFI decision during the MDR must appear at the BHA hearing as witnesses to the level of care decision.
8. After the hearing, BHA informs all parties involved in the hearing of BHA's decision. The IAE will update the tracking spreadsheet in DocuShare with the decision.
9. The IAE will ensure that the appropriate parties are aware of any action needed to comply with BHA's decision, which could include completing a new level of care assessment, ending HCBS coverage, re-establishing NFCE eligibility, or another action. If BHA's decision involves a final determination of NFCE or NFI, the IAE will send a copy of BHA's decision and a completed PA 1768 to the appellant's local CAO with the following information included in the 'Comments' section on page 1:
 - If BHA decides that the appellant remains NFCE, include the comment "BHA determined the individual remains NFCE."
 - If BHA decides that the appellant is NFI, include the comment "BHA determined the individual is NFI."
10. The CAO takes action to have the eligibility system updated based on the decision:
 - If BHA decides that the appellant remains NFCE, the HCBS which was reinstated pending the appeal will continue.
 - If BHA decides that the appellant is NFI, the CAO closes the HCBS which was reinstated due to a timely appeal, and the 834 Eligibility file will show that CHC HCBS eligibility has ended. The CAO determines eligibility for other MA.

Untimely Appeal of Functional Ineligibility

If the Participant's appeal of the functional ineligibility notice sent by the IAE is postmarked after 10 calendar days of the date specified on the notice, benefits will not be continued pending a decision by BHA, but the following steps will be taken:

1. On the same day that the IAE receives the appeal, the IAE will begin tracking the appeal on a spreadsheet stored in DocuShare. OLTL will check the DocuShare spreadsheet regularly to identify appeals and enter them in BHA's system.
2. Within three calendar days from the day the appeal was received, the IAE will complete the BHA hearings and appeals packet and send it to BHA to schedule the hearing.
3. When the IAE receives the hearing date from BHA, the IAE will gather any relevant evidence and exhibits in preparation for the hearing and send copies of the same, along with a Functional Eligibility Determination (FED) Matrix, to the appellant and BHA.
4. The IAE will update the tracking spreadsheet in DocuShare with the BHA hearing date, and any changes to the date.
5. IAE staff who confirmed the NFI decision based on data received through PIA, as well as OLTL staff who made the NFI decision during the MDR must appear at the BHA hearing as witnesses to the level of care decision.
6. After the hearing, BHA informs all parties involved in the hearing of BHA's decision. The IAE will update the tracking spreadsheet in DocuShare with the decision.
7. The IAE will ensure that the appropriate parties are made aware of any action needed to comply with BHA's decision, which could include completing a new level of care assessment, re-establishing NFCE eligibility, or another action.
8. If BHA decides that the Participant is NFCE, the IAE will send a copy of BHA's decision and a completed PA 1768 to the appellant's local CAO based on the county of record. The IAE will include the following on the PA 1768:
 - In the 'Comments' section on page 1, include the comment "BHA has determined the appellant is NFCE."
 - The 'Service Begin Date' on page 2 of the PA 1768 will be the date BHA says the NFCE decision is effective.
9. The CAO reopens CHC HCBS back to the NFCE date. The 834 Eligibility file will show that the Participant is eligible for CHC HCBS.
10. If BHA decides that the Participant is NFI, the IAE will send a copy of BHA's decision to the CAO. However, a PA 1768 will not be sent, and the last notice issued for HCBS and MA remains in effect.

NEXT STEPS

1. Review this information with appropriate staff.
2. CHC-MCOs should contact the Bureau of Coordinated and Integrated Services if you have questions.
3. The IAE should contact the Bureau of Coordinated and Integrated Services if you have questions.