

## **COMMUNITY HEALTHCHOICES (CHC)**

### **OPERATIONS MEMORANDUM # 2023-04**

---

**SUBJECT:** Issuing the Notice of Functional Ineligibility at Nursing Facility (NF) Application

**TO:** Independent Assessment Entity (IAE)

**FROM:** Bureau of Policy Development and Communications Management

**DATE:** May 19, 2023

---

#### **PURPOSE**

This Operations Memorandum outlines the procedures for the IAE to follow when issuing a functional ineligibility notice when a level of care assessment finds an applicant for payment of NF services to be Nursing Facility Ineligible (NFI).

Section I-1.A. of the IAE Agreement requires that the IAE complete an initial Functional Eligibility Determination (FED) assessment for individuals seeking nursing facility care and make a determination of level of care.

Section I-1.C. of the IAE Agreement requires that the IAE send a Written Notice of Decision informing an applicant for payment of NF services that they are functionally ineligible for NF care and have the right to request an appeal.

#### **PROCEDURES**

When the IAE receives a Medical Evaluation (MA 51) and a request to conduct a FED assessment on an applicant for payment of NF services, the IAE will follow normal procedures to conduct the FED assessment. If the FED outcome is NFI and the MA 51 prescribes anything other than NFCE, the applicant's level of care is considered NFI, and the IAE will issue a functional ineligibility notice.

If however, the FED outcome and the MA 51 result disagree (i.e. the FED outcome is NFI and the MA 51 prescribes NFCE; or the FED outcome is NFCE and the MA 51 prescribes anything other than NFCE) the IAE will request a Medical Director

Review (MDR) from the Office of Long-Term Living. OLTL sends the results of the MDR to the IAE through PIA within five business days. If the MDR result is NFI, it means the applicant's level of care is NFI, and the IAE will issue a functional ineligibility notice.

### **Issuing the Functional Ineligibility Notice**

When the applicant's level of care is NFI, the IAE will take the following steps to issue the functional ineligibility notice:

1. Within five business days of the IAE confirming an NFI level of care, the IAE will complete and mail the functional ineligibility notice to the applicant and send a copy of the notice to the nursing facility and each of the applicant's representative(s) identified during the FED process. The effective date of the notice will be the date the NFI level of care notice was mailed.
2. On the same day the notice is mailed, the IAE will complete the MA 51 and email it to the County Assistance Office (CAO) in the county in which the applicant resides. The IAE will enter the following information in the section marked as "For Department Use":
  - In box 21, check the box for "No".
  - In box 22, enter the comment "OLTL will send the functional ineligibility notice."
  - Sign and date.

The CAO uses this information to determine eligibility for other Medical Assistance if the applicant applied with the CAO.

### **Appeal and Fair Hearing**

The applicant has the right to appeal the functional ineligibility notice within 30 calendar days from the notice mail date and have a hearing through DHS' Bureau of Hearings and Appeals (BHA). If the applicant returns the appeal, and it is postmarked *after* 30 calendar days of the date specified on the notice, the appeal is invalid, and no further action is necessary. But, if the applicant returns the appeal and it is postmarked within 30 calendar days of the date specified on the notice, the appeal is valid and the following steps will be taken:

1. 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. At the same time, the IAE will enter the appeal information into BHA's system.
2. By Monday of each week, the IAE will track all appeals on a spreadsheet stored in DocuShare. OLTL checks the DocuShare spreadsheet regularly to identify appeals.

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.
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 the MA 51, FED and/or MDR, must appear, along with OLTL staff who made the NFI decision during the MDR, 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 in the timeframe indicated by BHA. Action could include completing a new level of care assessment or establishing NFCE eligibility.
8. The IAE will send a copy of BHA's decision to the CAO in the county in which the applicant resides. The IAE will include the following in the email:
  - In the subject line, enter "BHA decision on NF applicant."
  - In the body of the email, include the applicant's name and date of birth, along with a message that the applicant "appealed OLTL's decision of NFI at NF application. The attached BHA adjudication contains BHA's decision on the appeal."
  - In the body of the email, include any other information relevant to the situation, such as the outcome of any new level of care assessment required to comply with BHA's decision.
  - Attach a copy of BHA's decision to the email.

The IAE must respond timely to any follow-up questions the CAO has about the appeal.

### **NEXT STEPS**

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