NYLAG
New York Legal Assistance Group

KNOW YOUR RIGHTS: YOU HAVE THE RIGHT TO "CONTINUITY OF CARE" IF YOU WERE REQUIRED TO ENROLL IN AN MLTC PLAN AFTER RECEIVING SERVICES FROM ANOTHER PLAN OR PROGRAM

--MLTC TRANSITION RIGHTS –

Updated 8/1/2022

If you received Medicaid personal care or Consumer-Directed Personal Assistance (CDPAP) services, and then you were required to enroll in a Managed Long Term Care plan, or you were required to switch plans, your new Plan must continue to authorize the same amount and type of home care services you received in your previous plan, or that you received from your local Medicaid agency. This is known as your right to **"continuity of care"** or "**transition**" rights.

But this is only required for a limited amount of time. The new Plan is permitted to review your case and even attempt to cut your hours after the transition period. It is likely you can successfully challenge any attempts to reduce services, but it is necessary for you to be prepared for this process so that you can protect your services.

This fact sheet explains:

A. What are Continuity of Care or Transition Rights and how long do they last?

B. When do you have Transition Rights?

C. What are your rights after the Transition Period ends?

D. How can you advocate for yourself?

E. Where can you get help advocating for yourself?

A. WHAT ARE CONTINUITY OF CARE RIGHTS?

Transition or continuity of care rights mean that your Managed Long Term Care ["MLTC"] plan must give you the same type and amount of Medicaid services that you received before you enrolled in your current plan. Transition rights are required in all types of Medicaid managed care plans.[1] This article focuses on MLTC, Medicaid Advantage Plus (MAP) and PACE plans.

[1] 42 C.F.R. § 438.62 and NY Public Health Law § 4403, subd. 6(f). See more here.

How Long is the "Continuity of Care Period" or "Transition Period?"
Your MLTC plan must continue the same services with the same hours for 90 days, with one exception: the Transition Period is 120 days if you switched to a different plan because your old MLTC plan closed.[2]

B. WHEN DO YOU HAVE TRANSITION RIGHTS?

Transition rights are granted when one of **FOUR** events has occurred, because the law requires you to join a specific type of managed care plan, as follows:

1. **You received personal care or CDPAP from your local Medicaid office, such as through the Immediate Need program, for more than 120 days.[3]** After 120 days of receiving services from the local Medicaid office, you will likely receive a notice from NY Medicaid Choice telling you to select an MLTC plan. The notice will give you a choice of plans. If you don't pick a plan, you will be assigned to an MLTC plan (the most common type of plan; less common types are Medicaid Advantage Plus (MAP) or PACE plans). The MLTC plan must continue the same home care hours for a **90-day Transition Period**.[4] See contacts at the end of this fact sheet for advice on choosing a plan, and/or to see if you do not have to enroll in an MLTC plan because you qualify for an exemption.
2. **You received Medicaid home care from a Medicaid managed care plan designed for people *without* Medicare, and you have Medicare.** If you do not have Medicare you may have been enrolled in a mainstream Medicaid managed care health plan, which provides all Medicaid services including personal care, CDPAP, and private duty nursing. If you received home care from your Medicaid health plan, and then you enroll in Medicare, you are required to enroll in an MLTC or MAP plan. The MLTC or MAP plan must continue the same plan of care for a **90-Day Transition Period.[5]**

---

[2] When mandatory MLTC started in 2012, the transition period was only 60 days, but it was extended to 90 days in 2013. See MLTC Policy 13.10: Communication with Recipients Seeking Enrollment and Continuity of Care and CMS Special Terms & Conditions 1115 Waiver (Web) (PDF) (Oct. 2021) (Article V(4)(g) at pp. 32-33).

[3] Fact Sheet on Immediate Need at http://www.wnylc.com/health/download/637/ and article at http://www.wnylc.com/health/entry/203/. Be sure not to enroll in an MLTC plan until you receive the notice from NY Medicaid Choice telling you that you must enroll. Otherwise you may not have transition rights.

[4] Transition rights when transitioning from "fee for service" to managed care and when involuntarily disenrolled from a plan are required by 42 C.F.R. § 438.62 and the CMS Special Terms & Conditions. See CMS Special Terms & Conditions (Aug 2020) (Section V(4)(g) at pp. 32-33).

[5] See MLTC Policy 15.02: *Transition of Medicaid Managed Care to MLTC.* During the pandemic, however, many consumers stayed in their Medicaid managed care plans,

3. **If your MLTC plan closes or stops providing service in the county that you live in**, you must transfer to a new plan. The new plan must continue the same services and hours for a **Transition Period of 120 days,** not 90 days.[6]

4. **If you are *involuntarily* disenrolled from one MLTC or MAP plan, and assigned to another plan**, the new plan must continue the same plan of care for 90 days. Involuntary disenrollments were banned for most of the pandemic. However, as of fall 2021 NYS is again allowing such disenrollments to resume on four grounds.[7]

   In all cases of involuntary disenrollment the plan must send you a 30-day notice of the planned disenrollment, followed by a 10-day notice from NY Medicaid Choice, which states your right to request a Fair hearing.

   Here are **FOUR** grounds for involuntary disenrollment being allowed starting late 2021, and others may resume in 2022.[8]

   a. **You are a Medicaid Advantage Plus (MAP) plan member, and you enroll in a new Medicare Part D drug plan or Medicare Advantage plan -** MAP plans are plans that cover all Medicare, Medicaid, home care, and pharmacy benefits in one insurance plan. Since April 2021, some Medicaid recipients are "default enrolled" in these plans when they first became enrolled in Medicare. See this article. If you are a MAP member and you change Medicare coverage, such as by selecting a new Part D drug plan, you will be disenrolled from your MAP plan. See more about MAP plans here.

   b. **You move to a different county in NYS that is out of the MLTC plan's service area.** Most MLTC plans only serve certain

---

which continue to provide their home care. Eventually they will be required to enroll in an MLTC plan. Even during the pandemic, some members of Medicaid managed care plans who are new to Medicare have been transitioned to Medicaid Advantage Plus (MAP) or MLTC plans under "Default Enrollment," unless they opted out. S*ee this article.*

[6] See MLTC Policy 17.02: *MLTC Plan Transition Process – MLTC Market Alteration*. See Fact sheet on plan closings at http://www.wnylc.com/health/download/757/.

[7] See GIS 21 MA/17 - *Managed Long Term Care's Involuntary Disenrollment Resumption* (August 18, 2021) and GIS 21 MA/24 and undated Memo to Health Plan Administrators. See more at http://www.wnylc.com/health/entry/232/#Involuntary%20disenrollment.

[8] See updates on MLTC involuntary disenrollments at http://www.wnylc.com/health/entry/232/#Involuntary%20disenrollment. All grounds for disenrollment are in the Model MLTC Contract at pages 22-23 of the PDF, except the 5th ground (e) on page 4 is not listed –which raises questions about its validity.

counties. If you move to a county that is not served by your plan, and notify your local Medicaid office (HRA in NYC) of the change of address, you will be disenrolled from your old MLTC plan.[9]

c. **You or your family member's behavior** impairs plan's ability to provide services. See GIS 21 MA/24 (plan must submit names of home care agencies used and results of service attempts). After disenrolled, member is reassigned to new MLTC plan if disenrolled.

d. **You were absent from the service area for more than 30 days** (90 days for Wellcare Fidelis Dual Plus MAP only).[10] See GIS 21 MA/24 for how home care will continue after disenrollment Member is notified that they may transfer to a different MLTC plan. If member does not respond, they are disenrolled and local district must continue same plan of care until they reassess. This will likely require advocacy to ensure services continue.

e. **You have been in a nursing home for 3 or more months,** were determined eligible for Nursing Home Medicaid, and do not have an active discharge plan to return home**.** See http://www.wnylc.com/health/entry/199/.

f. **Coming May 2022 – You received no services in the previous calendar month**. No guidance yet issued as of March 22, 2022 by DOH told MLTC plans this will start. See n. 8.

C. What are your Rights after the TRANSITION PERIOD ENDS? Changes After Nov. 8, 2021

See next page

[9] Transferring Medicaid and MLTC services to a different county can be a complicated process. The procedure in this guidance should avoid disruption in coverage. See 2008 LCM-01 - Continued Medicaid Eligibility for Recipients Who Change Residency (Luberto v. Daines). In addition to notifying your local Medicaid office of your move, and your request to transfer Medicaid to your new county,[9] also call NY Medicaid Choice at **1-888-401-6582** about transferring to an MLTC plan in the new county.

[10] Consumers were allowed to pause home care during COVID, if they went to stay with family or wanted to limit exposure to home care aides. See COVID-19 Guidance for Voluntary Plan of Care Schedule Change issued April 23, 2020 (Web) (PDF). See *NYLAG Know Your Rights Fact Sheet for MLTC Members* about this guidance allowing voluntary pause of services. GIS 21 MA/24, issued in Dec. 2021, requires plan to submit form to NY Medicaid Choice stating last date of contact with enrollee.

C. What are your Rights after the TRANSITION PERIOD ENDS? Changes After Nov. 8, 2021

As background, MLTC plans may generally reduce your hours of home care services only for reasons allowed by state regulations. The reasons a plan may reduce hours are stated in a State policy MLTC Policy 16.06: *Guidance on Notices Proposing to Reduce or Discontinue Personal Care or CDPAP Services.*[11] A plan is allowed to reduce your hours only if your medical condition improved, your social circumstances changed, or in very limited situations, if a mistake was made in the earlier authorization. The plan must show that this change reduces your need for home care.

Before Nov. 8, 2021 – The same MLTC Policy 16.06 that restricts a plan's ability to reduce your hours generally also applied after a Transition Period ended. A plan could reduce your hours after the Transition Period ended only if they could prove that a major change in your condition or circumstances occurred since your hours were previously authorized by your old plan or by the Medicaid office if you received Immediate Need home care. The new Plan would have to explain why this change reduces your need for home care.

After Nov. 8, 2021 – A change in a state regulation allows MLTC plans to reduce your hours after the Transition Period if the Plan determines that the previous plan or Medicaid agency gave you "more services than are medically necessary," without proving any *change*. The Plan's notice proposing to reduce your services need only "indicate a clinical rationale that shows review of the client's specific clinical data and medical condition."[12] The Plan no longer has to prove that you need less home care for one of the reasons in MLTC Policy 16.06.

What has NOT changed- If your new plan wants to reduce or end services after the Transition Period, the plan must still give you:

---

[11] MLTC Policy 16.06 applies longstanding due process principles that prohibit reductions in services without a justification. *Mayer v. Wing*, 922 F. Supp. 902 (S.D.N.Y. 1996), available online at https://law.justia.com/cases/federal/district-courts/FSupp/922/902/1593058/.

[12] 18 NYCRR Sec. 505.14(b)(4)(viii)(c)(3)(vii), 505.28(i)(4)(iii)(h) as amended eff. 11/8/21 (posted here - at pp. 60 and 137). NYLAG, along with the NYSBA and other organizations submitted extensive comments (pp. 29-32) opposing these changes. **NOTE:** Most other changes in the state regulations will not go into effect until 2022 or later, not the official effective date is Nov. 8, 2021. This includes restrictions on eligibility for personal care or CDPAP and new "Independent Assessor" procedures described here. See DOH summary (Recording) - (PDF) and new *Independent Assessor* website https://www.health.ny.gov/health_care/medicaid/redesign/nyia/.

1. A letter called an "Initial Adverse Determination" (**IAD**) notice at least 10 days before reducing services. If you request a **Plan Appeal** before the effective date of the reduction, your services will not be reduced while the appeal is pending (this is known as "**Aid Continuing**"). But this does not mean your fight is over. Seek help from the resources listed below.
2. If you lose your appeal, the Plan should send you a "Final Adverse Determination" notice at least 10 days before the reduction takes effect. If you request a **Fair Hearing** before the effective date, you will have Aid Continuing, so your services will not be reduced while the fair hearing is pending. Seek help from the resources listed below.

Remember: These new rules only allow a plan to reduce hours more freely after a Transition Period ends. Any other reductions in hours must be for one of the reasons stated in MLTC Policy 16.06. Seek help from resources listed below.

See more about MLTC Appeals and Hearings here.

D. TIPS IF HOURS ARE REDUCED AFTER TRANSITION PERIOD

1. If you receive an Initial Adverse Determination (IAD), request a PLAN APPEAL ***right away*** to get Aid Continuing. Check carefully to make sure the IAD title says NOTICE TO REDUCE, SUSPEND OR STOP SERVICES and not DENIAL NOTICE. Only the NOTICE TO REDUCE gives the right to continue the same amount of services until the plan appeal is decided. If plan sends a "denial" notice instead of a "notice to reduce," tell the plan they must provide Aid Continuing and get help at contacts below.
    a. Look for THREE important dates on the Initial Adverse Determination (IAD) notice:
        i. *Notice date* at the top (April 1st on the sample on page 9).
        ii. *Effective date* must be at least 10 days after the notice date. This is the date your services will be reduced UNLESS you fax the plan appeal BEFORE that effective date. In the sample on page 9, the effective date is April 11, 2018. You must request the Plan Appeal before APRIL 11, 2018, the effective date, if you want your services to continue without being reduced until the Plan Appeal is decided. This is called "Aid Continuing." If the IAD Notice is not dated at least 10 days before the Effective Date, the notice is defective. Be sure to point this out when you appeal.
        iii. *Appeal deadline*, which is 60 days after the notice date. You may still request an appeal until the appeal deadline (May 31st on sample on page 9) but your services will be reduced on April 11, 2018 – the effective date, while the appeal is being processed.

b. **Save envelopes that notice was mailed in – for postmarks!** If the **postmark** of the envelope that the notice was mailed in is not 10 days before the Effective Date of the notice, then the notice is defective. Be sure to point this out when you appeal. This should be a win for the consumer, with the notice being dismissed.

c. How to request plan appeal. The Initial Adverse Determination notice should have an *Appeal Request Form* attached, which you can complete and fax to the number shown on the form. A Sample Appeal Request form is attached. Be sure to keep the confirmation that the fax went through. If you mail it, it must be RECEIVED by the plan by the effective date. You may call to request the appeal.

The plan appeal form has checkboxes –
Here are tips on how to complete the form (sample attached).

Checkbox on Form	NYLAG COMMENT – TIP
☐ I do NOT want my services to stay the same while my Plan Appeal is being decided.	WE ADVISE YOU DO NOT CHECK THIS BOX. IF YOU CHECK THIS BOX, you will NOT receive AID CONTINUING. Your home care hours will be cut immediately while you appeal.*
☐ I request a Fast Track Appeal because a delay could harm my health.	We advise you do not check this box if you are filing the appeal before the Effective Date of the notice. Since you will have Aid Continuing, it is not necessary to fast-track the appeal.
☐ I enclosed additional documents for review during the appeal.	Enclose documents if you have them. You can write in that you will submit documents after the Plan gives you your case file, which they are required to do.
☐ I would like to give information in person.	This is optional.

You should sign the form as "enrollee." Someone else may sign the form on your behalf as "requester" only if they have your Power of Attorney or if you sign an authorization allowing them to represent you.

*More tips about Plan appeals including "Aid Continuing" are in a **FACT SHEET about MLTC APPEALS and FAIR HEARING RIGHTS**, at http://www.wnylc.com/health/download/654/.

2. If you receive a Final Adverse Determination (FAD), request a Fair Hearing ***right away*** to get Aid Continuing.
3. Check carefully to make sure the FAD title says NOTICE TO REDUCE, SUSPEND OR STOP SERVICES and not DENIAL NOTICE. Only the NOTICE TO REDUCE gives the right to request that services continue without any reduction until a fair hearing is decided. If plan sends a "denial" notice instead of a "notice to reduce," ask for Aid Continuing in the Fair Hearing request and contact the NYS Office of Temporary & Disability Assistance to explain why - (518) 474-8781 or (800) 342-3334. Get Help - below.
4. **GET RECORDS OF PAST AUTHORIZATIONS FROM BEFORE YOU JOINED NEW MLTC PLAN -**may be useful later to refute a new plan's claim that the hours authorized previously were not medically necessary.
    a. In the plan appeal or fair hearing, say that the **new Plan has the burden of proof of producing the previous records from the Local Medicaid office or previous plan**. These records are necessary for the Plan to prove that you receive more hours than medically necessary; the Plan should not be able to reduce services without producing these records.
    b. Consumers receiving Immediate Need services should ask their Medicaid office for their **complete home care file**.
    c. Those receiving home care from a **mainstream managed care health plan** and become enrolled in Medicare should ask the health plan for their home care file.
    d. If your MLTC plan is closing, ask for your case file before you transition to a new plan.
5. Despite the change in the regulations, advocates believe that **due process** still forbids plans from reducing hours unless there was a **change** since the hours were first authorized. See *Mayer v. Wing*, footnote 11 above. Changes could be that the consumer's medical condition improved, social circumstances changed, or a mistake was made in the previous assessment. See note 8 and MLTC Policy 16.06. Consumers should raise this argument in all appeals and fair hearings.
6. If you want help in the appeal or hearing, get help from organizations at the end of this fact sheet. This regulation is still new so new strategies are being developed.

MODEL MMC/MLTC INITIAL ADVERSE DETERMINATION (WITH AC) (Revised 11/17)
Template begins below this line -- UNOFFICIAL SAMPLE Reduction by NYLAG

Notice date

ACME MLTC PLAN
00 Acme Lane – New York, NY 10000
1-800-MCO-PLAN

INITIAL ADVERSE DETERMINATION
NOTICE TO REDUCE, SUSPEND OR STOP SERVICES

April 1, 2018

Jane Doe
111 Consumer Lane
New York, NY 11111

Enrollee Number: 5555
Coverage Type: Managed Long Term Care
Service: Personal Care services
Provider: Helping Hands Home Care
Plan Reference Number: 222222

Appeal deadline

Effective date – deadline to request plan appeal if you want Aid Continuing

Dear Jane Doe:

This is an important notice about your services. Read it carefully. If you think this decision is wrong, you can ask for a Plan Appeal by **May 31, 2018. If you want to keep your services the same until your Plan Appeal is decided, you must ask for a Plan Appeal by April 11, 2018.** You are not responsible for payment of covered services and this is not a bill. Call this number if you have any questions or need help: 1-800-MCO-PLAN.

Why am I getting this notice?

You are getting this notice because ACME MLTC Plan is reducing the service(s) you are getting now.

Before this decision, from April 1, 2017 to April 11, 2018, the plan approved:
12 hours/day x 7 days/week of personal care services – total 84 hours/week

On April 11, 2018 the plan approval **changes** to:
8 hours/day x 5 days/week and 4 hours/day x 2 days/week – total 48 hours/week
From April 11, 2018 to October 11, 2018.

We will review your care again in six months.

This service will be provided by a participating provider. You are not responsible for any extra payments, but you will still have to pay your regular co-pay if you have one.

Why did we decide to reduce your service?

ACME MLTC Plan is taking this action because the service is not medically necessary.

- Your personal care services will be reduced because:
  - Your social circumstances have changed since the previous authorization was made.

MLTC APPEAL REQUEST FORM
FOR SERVICES BEING REDUCED, SUSPENDED, OR STOPPED

Mail To: **Date**: _____
Plan Name/UR AGENT] _____ **Fax:** _____

Address _____City, State Zip _____

DEADLINE:

- **If you want to keep your services the same** until the Plan Appeal decision, you must ask within 10 calendar days of the date of this notice, or by the date the decision takes effect, whichever is later. **(**If you lose your appeal you may have to pay for services you got while waiting for the decision.)
- **The last day to ask for a Plan Appeal to keep your services the same is [Notice Date+10].**
- You have a total of 60 calendar days from the date of this notice to ask for a Plan Appeal. **The last day to ask for a Plan Appeal for this decision is [Notice DATE+60**]. **If you want a Plan Appeal, you must ask for it on time.**

Enrollee Information

First Name _____ Last Name_____

Enrollee ID: _____Plan Reference Number _____
Address: _____City, State, Zip _____
Home Phone: _____ Cell Phone: _____

Type of Service being reduced, suspended or stopped: _____

I think the plan's decision is wrong because:

_____

_____

_____

Check all that apply:

- ☐ **I do NOT want my services to stay the same** while my Plan Appeal is being decided.
- ☐ I request a Fast Track Appeal because a delay could harm my health.
- ☐ I enclosed additional documents for review during the appeal.
- ☐ I would like to give information in person.
- ☐ I want someone to ask for a Plan Appeal for me:
  - Have you authorized this person with this plan before? YES ☐ NO ☐
  - Do you want this person to act for you for all steps of the appeal or fair hearing about this decision? You can let us know if change your mind. YES ☐ NO ☐

Requester (person asking for me):

Name: _____ E- mail: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone #: (_____)_____ Fax #: (_____)_____

Enrollee Signature: _____ Date:_____

Requester Signature: _____ Date:_____

If this form cannot be signed, the plan will follow up with the enrollee to confirm intent to appeal.

E. GET HELP

Statewide - ICAN – Independent Consumer Assistance Network – Ombudsprogram for MLTC
ican@cssny.org TTY: 711 Website: icannys.org (844) 614-8800

New York City --

CSS – Community Health Advocates (888) 614-5500

New York Legal Assistance Group (NYC) –
- General intake (212) 613-5000
- Evelyn Frank Legal Resources Prog. (Mon. 10 AM -2 PM) (212) 613-7310 eflrp@nylag.org

The Legal Aid Society (NYC) (888) 663-6880

JASA/ Queens Legal Services for Elder Justice (Queens only) (718) 286-1500

Legal Services NYC (citywide) (M – F 10 AM – 4 PM) (917) 661-4500

Outside NYC –

- ICAN (844) 614-8800
- Empire Justice Center Health@empirejustice.org (800) 724-0490 x 5822
- Center for Elder Law & Justice (716) 853-3087
  10 counties in western NY: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Niagara, Orleans, Steuben, Wyoming
- Use www.lawhelpNY.org to find other local legal services

This fact sheet prepared by NYLAG Evelyn Frank Legal Resources Program
12/8/2021 updated 8/1/22 eflrp@nylag.org

Posted at http://www.wnylc.com/health/download/797/

Related article at http://www.wnylc.com/health/entry/232/

Check at these links for updates!