

Were You in the ICS MLTC Plan?

Update on Your Rights -- February 2020

Evelyn Frank Legal Resources Program eflrp@nylag.org

1. **ICS MLTC plan closed April 1, 2019.**
2. **Most ICS members were auto-assigned to or opted to enroll in VNS CHOICE MLTC plan**, with enrollment starting February, March or April 1, 2019. Those who were auto-assigned were enrolled in VNS Choice on April 1, 2019.
3. **You have “transition rights” in VNS Choice or any other MLTC plan you chose.** Members of any MLTC plan that closes have “Transition rights” that are explained in NYS Department of Health MLTC Policy 17.02.¹ First, these rights mean that for a certain period of time, usually 120 days, the new plan may not reduce the member’s hours of home care or other services below the amount the consumer received from the plan that closed. Second, the new plan must use the same providers as the plan that closed, such as your home care agency or CDPAP fiscal intermediary.
4. **ICS members who transitioned to VNS CHOICE have special transition rights** greater than those in Policy 17.02. VNS Choice must continue all home care and other services you received from ICS -- in the same amount that ICS provided -- for **ONE YEAR** from the date of your enrollment in VNS Choice. The one-year period was a special agreement with the NYS Dept. of Health just for ICS members who joined VNS Choice.
 - a. For those members who enrolled in VNS Choice on April 1, 2019, that **one-year period will end March 31, 2020.**
 - b. If ICS members switched to VNS Choice earlier, in Feb. or March 2019, their one-year transition period ended January 31, 2020 or Feb. 29, 2020.
5. **If you chose to enroll in an MLTC plan other than VNS Choice**, that MLTC plan must continue your same home care services and all other services for **120 days** from the date of your enrollment in that plan.

¹ Download MLTC Policy 17.02 here

https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/17-02.htm.

- a. ICS members who initially enrolled in a plan other than VNS Choice (we'll call it "MLTC PLAN B") were allowed to switch to VNS CHOICE later in 2019. If they switched to VNS Choice by December 1, 2019, they have "transition rights" that will end March 31, 2020. But – the amount of hours VNS Choice was required to continue depends on when you switched to VNS Choice from "MLTC PLAN B."
- i. If you switched to VNS CHOICE *within* the first 120 days you were in MLTC Plan B, in most cases by August 1, 2019, then VNS Choice must continue the **same home care services that ICS last provided to you** until March 31, 2020.
 - ii. If you switched to VNS CHOICE *after* the first 120 days in MLTC Plan B, which in most cases was between August 1 and December 1, 2019, VNS Choice must continue the **same home care services that MLTC PLAN B provided** at the time you switched to VNS. VNS must continue these services until March 31, 2020.

6. Can VNS CHOICE or your other MLTC Plan B reduce your home care services *during* the Transition Period, which means for most people, before March 31, 2020?

NYS Department of Health MLTC Policy 17.02 allows plans to reduce services even *during* the transition period if you "agree" to a different plan of care. The transition period is one year (if you join VNS CHOICE) or 120 days (if you join any other MLTC plan). To avoid any reduction, you should not sign any document agreeing to fewer hours or services than you now receive from ICS.

WARNING: The new plan may ask you to sign a written Plan of Care that has fewer hours or services than you now receive from ICS. Do not sign it. If you do sign it, we suggest you write in, "I acknowledge receipt of this proposed care plan but am not agreeing to the care plan."

What are my Rights After the Transition Period Ends?

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What are my Rights After the Transition Period Ends?

4. What happens after your Transition Period is over? Can VNS CHOICE or your other new MLTC Plan B reduce your home care services?

For most former ICS members, their transition period will end March 31, 2020. Many are nervous about whether VNS CHOICE or their new MLTC Plan B may reduce their hours. All MLTC plan members have important rights. An MLTC plan may only reduce their home care or other MLTC services after the transition period ends, or at any other time, if it gives you **advance written notice** and can **prove** that:

- your medical or mental condition has **improved** so much that you no longer require the same services, or
- your social **circumstances have changed** in a way that you no longer require the same services, such as if a family member is now more available and willing to provide you with informal help than they were able to provide before, or
- A **mistake occurred in the previous authorization**, which, if corrected, results in fewer hours. The Department of Health has said in **MLTC Policy 16.06**² that it is not a “mistake” if a plan’s new assessment says you need fewer hours than were determined from an earlier assessment. There must be a particular mistake. Policy 16.06 gives an example, where an earlier assessment allowed a certain number of hours for the aide to do laundry because it was thought there were no washing machines in the building. When it turned out that the building had a laundry room, fewer hours were needed. This sort of explanation would have to be specifically stated in the notice of “Initial Adverse Determination” proposing to reduce services.

² **Policy 16.06** is an important policy that describes what a plan’s notice must say if it wants to reduce your services. It is available at https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/16-06.htm. **Policy 16.07** is also important in explaining how needs must be assessed on an individual basis, not using standard “task times.” http://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/16-07.htm

MLTC Policy 16.06 also says that if the plan determines that one of these justifications exists to reduce your services, the plan must send you a **written notice, called an Initial Adverse Determination (IAD)** at least 10 days before it reduces services, giving you time to request an appeal and explaining how to request it. The notice must specify in detail exactly how your condition improved, how they made a mistake, or whatever other reason they give for reducing your services. **See the FACT SHEET about MLTC APPEALS & FAIR HEARINGS** at <http://www.wnyc.com/health/download/654/>.

These consumer protections in MLTC Policy 16.06 are based on the due process clause in the United States Constitution. A federal court said over 20 years ago that when Medicaid home care services are reduced arbitrarily, it violates these constitutional rights.³

7. If you do receive an Initial Adverse Determination proposing to reduce your home care or other services after April 1, 2020:

- a. **Request a PLAN APPEAL right away.**
- b. **The next page is a sample of the first page of the notice of Initial Adverse Determination**, showing **THREE** important dates to look for:
 1. **Notice date** at the top (April 1st on the sample on next page).
 2. **Effective date** is 10 days after the notice date, and is the date your services will be reduced UNLESS you fax the plan appeal BEFORE that effective date. In the sample on the next page, 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.”
 3. **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 next page) but your services will be reduced on April 11, 2018 – the effective date, while the appeal is being processed.

³ This court decision is called *Mayer v. Wing*, 922 F. Supp. 902 (S.D.N.Y. 1996), which can be found online at <https://law.justia.com/cases/federal/district-courts/FSupp/922/902/1593058/>.

MODEL MMC/MLTC INITIAL ADVERSE DETERMINATION (WITH AC) (Revised 11/17)

Template begins below this line -- UNOFFICIAL SAMPLE Reduction by NYLAG

Notice date

April 1, 2018

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

**INITIAL ADVERSE DETERMINATION
NOTICE TO REDUCE, SUSPEND OR STOP SERVICES**

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.

- b. How to request a 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 appeal form has checkboxes – here are tips on how to complete the form.

Checkbox on Form	NYLAG COMMENT – TIP
<input type="checkbox"/> I do <u>NOT</u> 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.*
<input type="checkbox"/> 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.
<input type="checkbox"/> 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.
<input type="checkbox"/> 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.wnyc.com/health/download/654/>.

- 8. If You Lose The Plan Appeal** – You will receive a notice of *Final Adverse Determination*. It looks like the Initial Adverse Determination. This time to appeal -- you request a Fair Hearing from the state. Website is <https://otda.ny.gov/hearings/request/>. Again, you must request a Fair Hearing before the “effective date” of the notice, which is only 10 days after the notice date.
- 9. TIP:** Always **save the envelope that the adverse notice was mailed in**. Sometimes the notice is postmarked AFTER the “notice date.” This can help you get Aid Continuing even if it is after the “effective date.”

WHERE TO GET HELP

ICAN – Independent Consumer Advocacy Program TEL: 844-614-8800
 TTY Relay Service: 711 ican@cssny.org

NYLAG

Evelyn Frank Program eflrp@nylag.org M, W 10-2 pm 212-613-7310
 Public Benefits Unit M, W, Thurs 9:00 am – 3:00 pm 212-613-5000

Legal Services NYC 917-661-4500

The Legal Aid Society 888- 663-6880

Cardozo Bet Tzedek Legal Services 212-790-0240

JASA/ Queens Legal Services for the Elderly (Queens only) 718- 286-1500

More info online at www.nyhealthaccess.org

- Rights when an MLTC plan closes--
<http://www.wnylc.com/health/entry/217/>
- MLTC NEWS UPDATES <http://www.wnylc.com/health/news/78/>
- All about MLTC <http://www.wnylc.com/health/entry/114/>
- MLTC Appeal Rights <http://www.wnylc.com/health/entry/184/>

ICAN WEBSITE Website: www.icannys.org

See **FACT SHEET about MLTC APPEALS and FAIR HEARING RIGHTS**, at <http://www.wnylc.com/health/download/654/> for more information.

**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.