

July 18, 2025

**VIA EMAIL:**

New York State Department of Health  
Office of Aging and Long-Term Care  
Bureau of Community Integration and Alzheimer's Disease  
One Commerce Plaza, Suite 1610  
Albany, NY 12210.  
[waivertransition@health.ny.gov](mailto:waivertransition@health.ny.gov)

***Re: NHTD Waiver Amendment No. NY.0444***

To Whom It May Concern:

The New York Legal Assistance Group (NYLAG) submits these comments on the New York State Department of Health's (the "DOH") proposed amendment to Waiver No. NY.0444, with a proposed retroactive effective date of July 1, 2025, which was announced in the State Register on June 18, 2025.

Founded in 1990, New York Legal Assistance Group (NYLAG) is a leading civil legal services organization combatting economic, racial, and social injustice by advocating for people experiencing poverty or in crisis. Our services include comprehensive, free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships. NYLAG exists because wealth should not determine who has access to justice. We aim to disrupt systemic racism by serving individuals and families whose legal and financial crises are often rooted in racial inequality. NYLAG goes to where the need is, providing services in more than 150 community sites (e.g. courts, hospitals, libraries) and on our Mobile Legal Help Center. NYLAG's staff of 400 impacted the lives of nearly 130,000 people last year.

NYLAG has multiple units that work to enforce health care rights. Our Public Benefits Unit and Evelyn Frank Legal Resources Program advocate for low-income families, children, veterans, the elderly, Holocaust survivors and those living with disabilities to resolve obstacles to obtaining Medicaid and Medicare and long-term care services to enable them to remain in their homes and avoid institutionalization. LegalHealth partners with medical professionals to address the non-medical needs of low-income people with serious health problems. NYLAG's LGBTQ Law Project provides low-income LGBTQIA+ communities with comprehensive civil legal services.

NYLAG appreciates the state's concern that both the enrollment and cost of the NHTD waiver program has increased in recent years, which can impact cost neutrality as required for 1915(c) waivers. However, freezing enrollment at 9,400 for the current year that began July 1, 2025 and for the next two years is a simplistic solution that will illegally deny necessary services to eligible individuals. With 7,692 enrolled in 2023-24, up from 5,507 the previous year, as reported by DOH, the cap is likely to be exceeded in the current year, if it isn't already. The State must look at and address the causes of increased enrollment and costs, which are discussed below, and cannot be

attributed solely to the growth of the aging population. We support the recommendations of the Alliance of TBI and NHTD Providers to reform the system by addressing its complexities rather than imposing a simple hard cap. In addition, since a hard cap will likely cause a wait list, the waiver amendment fails to include provisions required to prioritize who enrolls and to ensure that the wait list is managed fairly and according to legal requirements. We recommend that DOH withdraw this amendment and amend it further to include these necessary policies on prioritizing enrollment, so that the public has an opportunity to comment on these important safeguards.

### **1. DOH Must Develop Policies and Systems to Stop MLTC Plans from Offloading High-Hour Members to NHTD**

The rapidly increased enrollment and costs in the NHTD waiver program are largely caused by the failure of Managed Long Term Care (MLTC) plans to approve needed increases in hours for members needing 24-hour care. Plans routinely deny these hours, stating “Your needs can be more appropriately and cost-effectively served through other Medicaid programs such as the Nursing Home Transition & Diversion waiver services.”

Several sample notices are attached. In the VNS Choice reduction notice dated March 11, 2025 (Attachment A), the plan’s reduction was from 91 hours (live-in) to 56 hours/week. The original live-in schedule had been authorized by NYC HRA under the Immediate Need procedure, after which the consumer transitioned to VNS Choice MLTC. The notice on page 3 claims that the consumer, who has dementia, needs stand-alone safety supervision, and should transfer to NHTD. However, the marked paragraph on page 2 states that the consumer needs assistance with walking, transferring, and toileting. A fair hearing is pending, which will show that the consumer needs frequent assistance with each of these ADLs at night, not merely stand-alone safety monitoring, meeting the regulatory standard for 24-hour live-in care under 18 NYCRR 505.14.

Another example is attached from Riverspring MLTC, and NYLAG suspects that a review of Riverspring’s notices would show that it routinely denies 24-hour care and directs consumers to enroll in NHTD. In this case, Riverspring denied an increase from 84 hours/day to 24-hour split-shift for a 94-year-old man with dementia who had “recently experienced a hospital stay due to a fall.” (Attachment B). Though he clearly needs frequent unscheduled assistance with the ADLs of ambulation and transfer at night, which meets the criteria for split-shift,<sup>1</sup> the plan improperly claims he needs only “safety supervision” which they say is not covered by MLTC, and refers him to NHTD. Both plans invent a reason for denying 24/7 care—that “PCA hours alone would not guarantee not experiencing a fall.” Id. The standard is not whether the services can guarantee safety but whether they are “medically necessary for maintaining an individual’s health and safety in his or her home” and whether the plan “reasonably expects that the individual’s health and safety in the home can be maintained by the provision of such services...” 18 NYCRR 505.14(a)(1) and (1)(3). The consumer need not prove that services are guaranteed to prevent a fall – a burden that would be impossible to meet.

While the above two MLTC members, like many others who the MLTC plans have referred to NHTD rather than increase their hours, might benefit from the NHTD waiver service of Home and

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<sup>1</sup> [MLTC Policy 16.07](#): Guidance on Task-based Assessment Tools for Personal Care Services and Consumer Directed Personal Assistance Services; 18 NYCRR 505.14(a)(2).

Community Support Services [HCSS], they are also eligible to continue receiving personal care services (PCS) or CDPAP through MLTC, but simply need increased hours. It is the steady push by MLTC plans of members who need high hours of care to NHTD that has caused the problem that DOH is now trying to address with a flat NHTD enrollment cap. Since all of these consumers need high hours (as otherwise the MLTC plans would not refer them to NHTD), the costs of their care are increasing the NHTD costs and jeopardizing cost neutrality. But imposing a flat cap on NHTD enrollment will prevent consumers who truly need HCSS services – who cannot be served by PCS or CDPAP – from enrolling in the waiver. See Part 2 below regarding the need for prioritizing who may enroll in the waiver with a finite cap.

It is especially ironic that the plans in part deny the increased hours because they are not “cost-effective.” Because MLTC plans receive a flat capitation premium, which is in part based on the acuity of the members, when plans provide the necessary care is highly cost-effective for the State. However, these members have needs that exceed the capitation rate, meaning Plans serve them at a loss. It is NOT cost-effective for the State when plans unload their high need members and transfer them to NHTD, which then jeopardizes cost-neutrality requirements of the waiver.

The RRDC that administers the waiver in New York City has attempted to slow the influx of new enrollees by adding an unauthorized eligibility requirement. The RRDC is requiring that the prospective enrollee’s MLTC plan deny an increase in hours to 24-hour care. The screenshot below is from the website of an NHTD Service Coordinator, which lists as one of the NHTD application documentation requirements a “Denial Letter from Managed Care company” denying an increase to 24/7 (split shift) hours. While this website says the letter should be submitted “if available,” NYLAG has heard reports that a denial letter from the plan is *required*. This requirement adds an eligibility restriction unauthorized by the waiver, implicitly limiting the waiver to people transferring from MLTC plans. The waiver must be open to others in the community and in nursing homes seeking discharge to the community – who are not in MLTC plans.

The screenshot shows the 'NHTD Waiver Application Documentation Requirements' page. At the top, there is a navigation bar with the 'Always Home Care' logo and links for 'Our Services', 'About Us', 'Jobs', 'NYC Locations', 'Check My Eligibility', and 'Sign In'. The main heading is 'NHTD Waiver Application Documentation Requirements'. Below this, a message addresses the 'Dear Program Applicant or Family Member' and lists the required documentation. A red arrow points to the 'Denial Letter from Managed Care company' requirement. At the bottom, there is an 'Apply to NHTD Program' button.

Dear Program Applicant or Family Member,

Thank you for selecting us as your provider of Service Coordination services for the Nursing Home Transition and Diversion (NHTD) Medicaid Waiver Program. As we embark on this journey together, we aim to facilitate a smooth transition for you and your family into the NHTD Waiver program. To initiate the process and ensure your eligibility for services, we kindly request the following documentation. Once gathered, please email the listed items to the address provided:

- Completed **questionnaire** (attached to this document)
- Copy of **Medicare & Medicaid Card**
- Copy of **other insurances cards** - (if applicable)
- Copy of **social security card**
- Copy of **state identification** (e.g., driver's license, passport, or naturalization certificate)
- Documentation of **health care proxy, power of attorney, or guardianship**
- Documentation of income: current **Social Security Award Letter, Pension Award Letter, Retirement account RMD** or **bank statement** showing Social Security, Pension, and Retirement account RMD Deposits
- **Medical Documentation of Diagnoses**: A list of diagnoses signed by a physician within the last few months, accompanied by a personalized letter describing specific cognitive deficits and a recommendation for 24-hour care. (An optional template is included in this email)
- **Denial Letter from Managed Care company** (if applicable/available): A letter denying 24/7 (split-shift) hours of care requested from the Managed Care company.

Your cooperation in providing these documents is greatly appreciated as it expedites the process of accessing the services you require. Should you have any questions or require further assistance, please do not hesitate to reach out.

[Apply to NHTD Program](#)

As the entity that contracts with and regulates the MLTC plans, it behooves DOH to develop policies and systems that prevent MLTC plans from off-loading their members to NHTD when they need increased hours of personal care or CDPAP. If DOH does not take these steps and instead imposes the enrollment cap, the cost neutrality problems will not be solved because the new enrollees will all be high-hour cases off-loaded by the MLTC plans. Moreover, the applicants who truly need the NHTD waiver – those trying to return to the community from a nursing home, those who truly need stand-alone safety monitoring so need HCSS or other unique waiver services – will be denied them.

## **2. With Limited Slots, DOH Must Prioritize who may Enroll in the Waiver, Reserve Slots for Priority Categories, and Establish a Waiting List with Fair Policies that Comply with ADA Requirements**

It is very likely that the proposed enrollment cap will be met, if it hasn't already been exceeded, during the current year or the following two years. Yet the proposed waiver amendment makes no mention of who will have priority to enroll or whether a waiting list will be established and how it will be managed. This should be addressed in Appendix B-3. For example, will enrollment be first-come first-serve or will certain groups be prioritized? Will everyone who meets the criteria for the waiver be waitlisted and taken in order of application, or will some people be prioritized? The criteria for the waiver are broad – Medicaid eligibility, age 18 and over, and needing a Nursing Home Level of Care (NHLOC). Should certain groups, such as people seeking to be discharged home from a nursing home or other institution, be given priority?

One place where a state can prioritize enrollment of at-risk groups is in Appendix B.3.c. -- **Reserved Waiver Capacity.**

The state may reserve a portion of the participant capacity of the waiver for specified purposes (e.g., provide for the community transition of institutionalized persons or furnish waiver services to individuals experiencing a crisis) subject to CMS review and approval. The state (*select one of two boxes*):

As in the past, the proposed waiver amendment checks the box “Not applicable. The state does not reserve capacity.” Given that this amendment proposes to cap enrollment, the other box should have been checked -- “The state reserves capacity for the following purpose(s),” and then proceed to identify groups to be prioritized. The state should reserve waiver capacity to children aging out of other waivers, people leaving institutions, emergencies, military families, and, as explained below, individuals who fail the new ADL thresholds for PCS, CDPAP and MLTC that begin Sept. 1, 2025.

The “Reserved Waiver Capacity” is a place where the state could give the lowest priority to individuals who are already enrolled in MLTC plans. If DOH announced that current plan members would be given the lowest priority for transferring to NHTD, this – in addition to DOH enforcing plans’ duty to authorize medically necessary services – would help slow enrollment.

One group that should be prioritized, in addition to those listed above, are those who are denied personal care, CDPAP services or MLTC enrollment under the new minimum needs ADL thresholds that begin Sept. 1, 2025, and who have a Nursing Home Level of Care. We believe a significant number will fail the new ADL test but nevertheless will have a Nursing Home Level of Care. Those individuals ages 18 and over will be eligible for the NHTD waiver and will have *no other option* to get services. Moreover, these individuals would also be eligible for Community

First Choice Option (CFCO) services, for which the criteria are similar to NHTD – live in the community and need an NHLOC. Since NYS has opted to provide CFCO, it must provide CFCO services to these individuals. As they will no longer be eligible for the primary services NYS has designated for CFCO – PCS and CDPAP – they must be able to access services through NHTD. Otherwise, they would be illegally denied CFCO services.

In NYS, the need for NHLOC for CFCO as well as for NHTD enrollment requires a score of five (5) or more using a formula based on values entered on the UAS-NY Community Health Assessment (CHA).<sup>2</sup> As DOH explains in a recent annual MLTC quality report, using the term “Nursing Facility Level of Care” (NFLOC):

The NFLOC score is comprised of 11 components that are derived from 22 items from the UAS-NY instrument. The items include the areas of incontinence, cognitive performance, Activities of Daily Living (ADLs), and behavior. Points are allocated to the different levels of functioning, with the number of points increasing as functional deficits increase. The maximum number of points is 48. A level of care score of five or more indicates need of services usually provided in a nursing home. The current statewide average CHA NFLOC score is 19.<sup>3</sup>

Of the 22 items used to calculate the NFLOC score, only seven are ADLs, with the rest encompassing memory and cognitive skills, six behavior symptoms, the ability to climb stairs, mode of nutritional intake, primary mode of locomotion indoors, and incontinence.<sup>4</sup> An individual who scores an NFLOC of 5 or higher qualifies for a NHLOC.

Because the NFLOC score is based on important factors in addition to ADLs, such as continence, behavior and cognitive skills, many consumers living in the community will have an NFLOC score of 5 – and be eligible for CFCO services – yet be denied those services using the restrictive new ADL test for PCS/CDPAP. An example is NYS’s own sample NFLOC report in the UAS-NY tool training materials. This example shows a hypothetical consumer named “Any Person” who needs “extensive” physical assistance with only one ADL – locomotion – and supervision with five other ADLs. See n. 3. She would fail the new ADL test because she does not need physical assistance with three ADLs. Since the level of care formula takes into account many factors, this person’s

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<sup>2</sup> An NFLOC score of 5 is required to enroll in the TBI or NHTD 1915(c) Waivers. See NYS DOH, *Nursing Home Transition & Diversion Program and UAS-NY*, June 18, 2018, available at [https://www.emedny.org/listserv/NursingHomeTransitionDiversion/NHTD\\_Program\\_-\\_6-21-18.pdf](https://www.emedny.org/listserv/NursingHomeTransitionDiversion/NHTD_Program_-_6-21-18.pdf); HHS Office of the Inspector General, *New York Followed Its Approved Methodology for Claiming Enhanced Medicaid Reimbursement Under the CFCO Option*, Feb. 2020, available at <https://oig.hhs.gov/oas/reports/region2/21701015.pdf>.

<sup>3</sup> NYS DOH, 2023 Managed Long-Term Care Report, Oct. 2023, page 10, available at [https://www.health.ny.gov/health\\_care/managed\\_care/mltc/pdf/mltc\\_report\\_2023.pdf](https://www.health.ny.gov/health_care/managed_care/mltc/pdf/mltc_report_2023.pdf) on webpage available at [https://www.health.ny.gov/health\\_care/managed\\_care/mltc/reports.htm](https://www.health.ny.gov/health_care/managed_care/mltc/reports.htm).

<sup>4</sup> NYS DOH, *Uniform Assessment System–NY, Nursing Facility Level of Care*, May 16, 2013, on file with NYLAG, Copy attached as Attachment C. This document lists the 22 factors considered in the NFLOC score, but does not give the exact formula, which is unknown.

NFLOC score is 20, far exceeding the minimum score of 5 for CFCO eligibility. Assuming she lives in the community, she is eligible for the NHTD waiver as well as CFCO services, which include cueing and supervision with ADLs and IADLs – a mandatory CFCO service. 42 C.F.R. § 441.520(a). Yet, she would be denied PCS/CDPAP services under the new strict ADL test – and as a result she would be denied CFCO services, since NYS has no other service to provide ADL/IADL assistance as a CFCO service.

Just as Appendix B.3.c. should assign Reserved Waiver Capacity for certain priority groups, a waiting list system should be included in the waiver amendment at Appendix B.3.f. Unlike most states, NYS has avoided the need to create wait list for its waivers, which is a complex undertaking. The *Olmstead* case challenged wait lists as violating the Americans with Disabilities Act, and since then there has been extensive litigation over whether wait lists move fast enough and whether they are maintained fairly. By setting an enrollment cap that is likely to be met during the remaining term of the waiver, the State must address these thorny issues.

Since this waiver amendment contains *no* proposed prioritization system for selecting enrollees (presumably relying on a first come first serve system) and *no* waiting list policies, the waiver amendment should be withdrawn and further amended, and released for further public comment with those changes.

\* \* \*

Thank you for the opportunity to submit comments. If any questions arise concerning this submission, please feel free to contact us at [rwallach@nylag.org](mailto:rwallach@nylag.org).

Sincerely,



Rebecca Wallach, Director  
Valerie Bogart, Of Counsel  
Evelyn Frank Legal Resources Program  
New York Legal Assistance Group  
TEL: 212-613-7320  
FAX: 212-714-7447  
E-MAIL [rwallach@nylag.org](mailto:rwallach@nylag.org)

ENCL.:

Attachment A - Adverse Determination Notice 3/11/2025 – VNS Choice MLTC – excerpt redacted

Attachment B - Adverse Determination Notice 4/08/2025 – Riverspring MLTC – excerpt redacted

Attachment C - HHS Office of the Inspector General, *New York Followed Its Approved Methodology for Claiming Enhanced Medicaid Reimbursement Under the CFCO Option*,” Feb. 2020, available at <https://oig.hhs.gov/oas/reports/region2/21701015.pdf>



220 East 42nd Street  
New York, NY 10017

**VNS Health MLTC  
FINAL ADVERSE DETERMINATION  
NOTICE TO REDUCE, SUSPEND OR STOP SERVICES**

■■■■/2025

■■■■  
■■■■  
Enrollee Number: ■■■■  
Coverage type: MLTC Partial Capitation Plan  
Plan reference number: 2 ■■■■  
Provider: ■■■■  
Facility: N/A  
Service developer/manufacturer: N/A  
Date appeal filed: ■■■■2025  
Date of appeal determination: ■■■■/2025

Dear ■■■■

This is an important notice about your services. Read it carefully. If you think this decision is wrong, [you have four months to ask for an External Appeal or] you can ask for a Fair Hearing by [7/9/2025]. If you want to keep your services the same until your Fair Hearing is decided, you must ask for a Fair Hearing by 3/21/2025. 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 1-888-867-6555.

**Why am I getting this notice?**

You are getting this notice because on ■■■■ you or your provider asked for a Plan Appeal about our decision to reduce your Personal Care Services hours.

On ■■■■/2025, VNS Health MLTC decided we are not changing our decision.

From 01/01/2025 to 04/01/2025, the plan approved:  
Personal Care Services, 24 hours a day, 7 days a week for a total of 91 hours per week

On ■■■■2025, we decided to reduce your service from 24 hours a day, 7 days a week for a total of 91 hours to 8 hours a day, 7 days a week for a total of 56 hours starting on 4/2/2025.

On ■■■■/2025, we have denied your Plan Appeal and:

On 4/2/2025, we will reduce your service to 8 hours a day, 7 days a week for a total of 56 hours per week.

Why did we reduce your service?

We made this decision because the service is not medically necessary.

- Your service will be reduced because:
  - Continuity of care ends.
  - 4/1/2025
  - Your Uniform Assessment System (UAS) evaluation/s which shows what level of help you need on a daily basis with your Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL). We also relied on the Hours Evaluation for Paraprofessional Support (HELPS) tool, a guide used to calculate the level and amount of time needed for your ADLs and IADLs. Your Care Management record was reviewed. Lastly, we also applied the MLTC Policy 16.06: Guidance on Notices Proposing to Reduce or Discontinue Personal Care Services or Consumer Directed Personal Assistance Services (11/17/2016) and NYSDOH Guidelines, Title: Section 505.14- Personal Care Services in Medicaid Managed Care (rev. 11/08/2021).
- You no longer meet the criteria for your current level of service because:
  - The plan received a request from your daughter [REDACTED] to appeal the reduction of Personal Care Services to 8 hours per day, 7 days per week. The last assessment to evaluate your care was completed 6/29/2024. Your daughter [REDACTED] was present during the assessment. The assessment showed you need help with preparing meals, housekeeping, shopping, bathing, dressing, hygiene, walking, transferring, and toileting.

Your care management record was reviewed. You live alone in a 2-bedroom apartment on the 4<sup>th</sup> floor of an elevator building. There are 10 steps to enter the building and a handicap ramp to access elevators. You are alert and oriented to person and place. This mean you know who you are and where you are. You are forgetful. You are diagnosed with dementia. You can make your needs known. Your needs can be scheduled. Your family is supportive and involved in your care. You depend on your daughter to help with important decisions. You can safely be left alone. You are able to dial 911 in the event of an emergency. The plan suggests a personal emergency response system (PERS). In the event of an emergency, you can active a personal emergency response system for help.

You need assist with your daily care needs. With the use of your assistive devices, you do not need hands on assistance with tasks related to personal hygiene, walking, transferring, eating or bed mobility. The aide assists with your housekeeping, shopping, and meal needs. The aide assists with your bathing and toileting needs. The aide assists you to get in and out of the shower. You have a shower chair which allows you to sit during the shower. You are unable to hold your urine and full control of your bowels. You use adult protective briefs to help manage these episodes and keep you dry. The plan suggests barrier cream to protect your skin. You can walk with a walker. You are unsteady when walking. You have grab bars to help you get on and off the toilet easily. You have a bedside commode. You can use it instead of getting to the bathroom. This will lower your chances of falling. You are at risk for falls. The plan suggests fall precautions are

put in place. Giving more aide hours cannot prevent all falls or injuries. An aide is not able to always watch you. To help you stay as independent as possible in your home, the Plan suggests Physical Therapy (PT) and Occupational Therapy (OT). Physical therapy can help you with range of motion, strength, balance, endurance, gait exercise and a home exercise program. Occupational therapy can help you with modifying your daily activities. This will help manage your daily activities. The therapists can also evaluate you for other items to help in your care at home.

The plan determines the number of hours based on daily tasks that you need help with. There are no unscheduled medical needs for you to get up at night or for frequent personal care that cannot be met appropriately by using adaptive equipment or supplies in your home. The plan authorized Personal Care Services (PCS) 8 hours a day, 7 days a week. Time is approved for the aide to assist with your daily tasks and to assist with your personal care needs such as activities of daily living (ADLs) and Instrumental Activity of Daily Living (IADL) i.e., mobility, dressing, grooming, toileting, bathing, shopping, cleaning, meal preparation, etc. Many of your overnight needs can be anticipated, such as setting up snacks, water, and frequently used items, (i.e. TV remote) within easy reach. Other care provided during overnight hours is related to supervision, monitoring, and companionship. Hours are tasked based on your needs per day and not per week. The plan suggests splitting your schedule into 2 shifts. This will meet your morning and evening needs. The aide can make sure you are clean, dry, and comfortable before they leave. Your care manager can assist you with coordinating your schedule. The plan suggests a lock box. It is a box locked with a code that has your key inside. It hangs on your door. It would allow the aide to enter your home without you needing to get up to open the door. You can discuss its use with your Care Manager and the Plan will work with you on how to obtain one.

VNSNY CHOICE is a Medicaid Managed Long Term Care Plan under contract with the New York State Medicaid Program to provide all medically necessary long-term care services to members, including personal care services to meet your care needs. The plan determines the number of hours based on daily tasks that you need help with. As per current New York State Medicaid Regulations, personal care services shall not be authorized if a member's needs can be met by equipment or supplies. Safety supervision is not a covered service under your benefit plan. The plan does not provide an aide for supervision while no task is being done. This is covered under the NYS Medicaid Nursing Home Transition and Diversion Waiver program (NHTD). Your care manager can help you to get information about this program.

Based on these tools, assessments and the NYSDOH Guidelines, Title: Section 505.14- Personal Care Services, your appeal for the reduction is upheld because it is not medically necessary for you to receive 24 hours a day, 7 days a week (Live-In) a week of Personal Care Services to assist your activities and maintain your health within the home.

This decision was made under 42 CFR Sections 438.210 and 438.404; NYS Social Services Law Sections 364-j(4)(k) and 365-a (2); 18 NYCRR Section 360-10.8; MLTC Policy 16.06: Guidance on Notices Proposing to Reduce or Discontinue Personal Care Services or Consumer

RiverSpring at Home  
80 West 225<sup>th</sup> Street  
Bronx, New York 10463  
(800) 370-3600

## FINAL ADVERSE DETERMINATION DENIAL NOTICE

Dear [REDACTED]

This is an important notice about your services. Read it carefully. If you think this decision is wrong, you have **four months** to ask for an External Appeal or you can ask for a Fair Hearing by 08/06/2025. 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: 1-800-370-3600.

On ■■■/2025 the plan approval stays at: PCA services, 84 hours per week, 12 hours per day, 7 days per week from ■■■ 2025 to 8/31/2025.

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 deny the request?

RiverSpring at Home decided to deny this service because: Service is not medically necessary

The request for service was denied because you do not meet the criteria.

This decision was based on:

- We have received the appeal request via telephone call from your son Igor. It was mentioned on the appeal review reason that at 94 years old, you have recently experienced a hospital stay due to a fall. You have been diagnosed with dementia, which affects your ability to understand your surroundings and function independently. It's unsafe for you to be alone, especially since you tend to wake up and walk around at night without full awareness of your actions. Throughout both day and night, you often appear confused and disoriented. To ensure your safety, your son has installed cameras to monitor you and help prevent another fall. Despite these measures, the situation is challenging for him as he is constantly worried about your safety. You sometimes forget to use your walker, increasing your risk of falling. It's crucial to have continuous support to help manage these risks and provide you with the care you need.
- The plan recommends that you continue to follow up with your Primary Care Physician (PCP) and Oncologist to address and manage your ongoing medical conditions and follow their plan of care. Additional PCA hours would not address your medical problems. PCAs are not qualified to address medical problems as it's out of their scope of practice.
- The plan also recommends that you follow up with a Psychiatrist to manage your reported behavioral issues and explore cognitive redirecting.
- The plan recommends implementing safety precautions in your home such as: Caregivers might consider removing stove knobs from the stove when not being used or painting doors and doorframes the same color as walls or hanging curtains on windows and doors that match the color of the walls. This will help exits blend in with surroundings and make them less "visible" to loved ones living with dementia. Another optical trick that some dementia caregivers have used is placing a dark, solid colored doormat in front of doors leading outside.
- Your authorized hours were based on an assessment of your functional and medical status in regard to your Activities of Daily Living needs (ADL) and personal care needs. Your son requested an increase in part due to your reported repeated falls and wandering episodes. As per NYS Department of Health Guidelines for the provision of Personal Care Services in Medicaid Managed Care: "Allotment of time separate and apart from the personal care tasks authorized is not required for safety monitoring." Safety Supervision is not a covered benefit under the MLTC program.
- The additional help requested to prevent wandering and falls is not related to a current functional and task ability decline and is strictly for standalone safety. We recognize you have

safety supervision needs which can be more appropriately covered by other Medicaid programs such as the Nursing Home Transition and Diversion waiver (NHTD) program. Your NCM can assist you and/or caregiver to follow up your application for NHTD services. These services are used when oversight and/or supervision as a discrete service is necessary to maintain your health and welfare in the community. Managed Long Term Care does not cover these safety supervision needs as a standalone benefit while no Level I or II personal care services tasks are being provided. You were advised that in order to you to continue with your NHTD application, a denial for this Split Shift request is necessary. The plan is denying your appeal for this reason.

- PCA services alone do not prevent falls. Members can and do fall even with a PCA or family present. Falls can even occur in facilities such as Hospitals or Nursing Homes. Therefore, additional PCA hours alone would not guarantee not experiencing a fall.
- As part of the reason for request, your son requested an increase in part due to frequent falls. Please remember to report any fall incidents to your Nurse Case Manager (NCM) as soon as possible so that the plan can assist you with appropriate interventions.
- The plan recommends a Social Work (SW) visit in order to offer additional support options related to your depression. SW may complete an application for a Safe Return Bracelet (SRB) to assist with keeping you safe in the community as it was reported that you have wandering episodes. The Safe Return program provides a safety net for memory impaired adults who may wander and become lost.
- On 3/31/2025, a nursing assessment was conducted to determine the amount of Personal Care Assistance (PCA) hours needed to cover your personal care needs. Based on a thorough review of your medical records including but not limited to clinical documentation, assessments and current plan of care by the appeal review team: You are alert. You live alone. You have a supportive family that assists with your care. There were no changes in your need for assistance with personal hygiene, dressing upper body, transfer toilet and toilet use. There were some changes in your need for assistance with bathing, dressing lower body, walking, locomotion, bed mobility and eating compared to your prior assessment. After reviewing your assessments (Tasking Tools), we recognize a change in your functional status. According to the most recent assessment conducted on 4/8/2025, you require 40 hours/week to address your Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). You are currently authorized for PCA services for 84 hours/week, which is significantly more than what you need per the New York State Department of Health (NYSDOH) approved Tasking Tool, we have determined that your current hours are still enough to meet your current needs. Your needs can be scheduled.
- You have and use a walker, cane, chux, pull-ups, shower chair, grab bars, orthopedic footwear and foot insert in order to assist in meeting your Activities of Daily Living (ADL) needs.
- Your son requested an increase in part due to your reported frequent incontinence with bladder and occasional incontinence with bowel. The plan recommends super absorbent overnight diapers to assist with your nighttime toileting tasks. This item is designed to keep you comfortable and keep your skin dry and protect your skin from moisture overnight. If you are interested in this item, please contact your NCM who can assist in having this item ordered.
- Considering your previous decision to decline the use of a commode, urinal, and raised toilet seat, the plan would like to re-discuss their potential benefits for you. These aids are designed to enhance safety and independence in the bathroom. A commode can be placed conveniently near your bed or in your living area, reducing the need to travel to the bathroom, which can be

particularly helpful at night or when mobility is limited. This reduces the risk of falls and the strain of moving long distances. A urinal provides a secure and accessible option when you need quick relief, especially during times when getting to the bathroom isn't feasible. It's practical and can significantly ease your comfort. The raised toilet seat is another beneficial tool, designed to lessen the effort needed to sit down and stand up from the toilet. It's particularly advantageous if you experience pain or difficulty bending your knees or if you have reduced strength. Reconsidering these aids could significantly improve your daily comfort and ensure your safety, reducing the risk of accidents and enhancing your overall independence. If you change your mind, please reach out to your NCM to have these items authorized and delivered to your home.

- You currently have a personal emergency response system (PERS) in place for use in the event of an emergency. However, it has become evident that you are unable to effectively use the system due to confusion and cognitive difficulties associated with your condition. As a result, the plan moving forward will explore the possibility of removing the PERS from your home, given that it no longer serves its intended purpose. We will work with your healthcare team to assess other options that may provide a more suitable solution for your safety and well-being.
- Personal care services shall not be authorized to the extent that the patient's need for assistance can be met by adaptive or specialized equipment or supplies including but not limited to, bedside commodes, urinals, super absorbent diapers, walkers and wheelchairs (18 NYCRR 505.14(a)(3)(iii)).
- The plan also recommends either a Physical Therapy or Occupational Therapy evaluation to determine if you would benefit from a home exercise program to help optimize your functional ability and perform therapy as indicated. PT/OT may evaluate if you would benefit from any additional equipment to support your daily needs, transfer safely, and/or ability to ambulate safely and educate on proper use of your equipment to promote safe transfers and/or walking. If you are interested, please contact your NCM who can assist in having this authorized.
- The plan recommends that you consider incorporating Robopet into your plan of care. Robopet, offered by RiverSpring Health Plans, is a mechanical pet program aimed at helping seniors alleviate feelings of loneliness and isolation. If you're interested, please reach out to your NCM.
- The plan recommends having an Audiologist evaluation as you may benefit from hearing aids.
- The PCA is expected to keep you engaged during the daytime and evening hours so that you can obtain proper rest and sleep at night to prevent a further decline in your health. Your NCM will ensure your aide is actively working to assist you with proper rest at night.
- After review, you may benefit with having your medications pre-poured by your pharmacy. If you're interested, please contact your NCM or the Doctor's office can coordinate this for you.
- The plan has determined that your current hours to complete your daily functional tasks and other housekeeping tasks are sufficient to provide the care you currently need. Your RSH team will continue to evaluate your functional and social needs to provide you with appropriate services to maintain you safely in the community.
- The PCA hours approved are enough to meet your needs. It has been determined PCA services, 12 hours per day, 7 days per week are sufficient to meet your activities of daily living needs per regulation 18 NYCRR 505.14.

# Uniform Assessment System for New York



## Nursing Facility Level of Care

v 2013-05-16



Office of Health Insurance Programs  
Division of Long Term Care

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## **INTRODUCTION TO THE UAS-NY**

Welcome to the Uniform Assessment System for New York (UAS-NY), a Medicaid Redesign Team (MRT) project. The UAS-NY is a secure, web-based software application housed in the New York State (NYS) Department of Health's (DOH) Health Commerce System (HCS).

The UAS-NY contains electronic adult and pediatric assessment instruments for individuals being served in New York State's Medicaid home and community-based long term care setting.

### **The Purpose of this Document**

The purpose of this document is to provide information on the Nursing Facility Level of Care (NFLOC) score generated from responses to the UAS-NY Assessments.

### **UAS-NY Support Desk**

Upon reading this document in its entirety, if you have questions about if or how the UAS-NY implementation affects your organization, contact the UAS-NY support desk at:

518-408-1021

or

[uasny@health.state.ny.us](mailto:uasny@health.state.ny.us)

## NURSING FACILITY LEVEL OF CARE

This section of this guide presents information related to the items and scoring of the Nursing Facility Level of Care (NFLOC).

### Overview

The NFLOC is determined using a scoring index that was developed by New York State. New York conducted field testing using items from the various tools used by programs in parallel with corresponding items from the interRAI tool. The testing resulted in a uniform NFLOC scoring index which is being used in the UAS-NY for all programs.

The scoring index utilizes responses within the following domains of the **UAS-NY Community and Pediatric 4 through 17** assessment instruments:

- Section B. Cognition
- Section C. Communication and Vision
- Section D. Mood and Behavior
- Section F. Functional Status
- Section G. Continence
- Section J. Nutritional Status

The specific items are presented in the “UAS-NY Community and Pediatric 4-17 Assessment Items used for NFLOC” section of this document. The intent, definitions, process, and coding information for each item are described in the UAS-NY Community and Pediatric 4-17 Assessment Reference Manuals.

Upon completion of the items, response options are converted to points, with a greater number of points indicating a greater need or severity. The sum of the points is the NFLOC score and is **automatically** calculated by the UAS-NY. An NFLOC score of 5 or greater indicates qualification for nursing facility level of care.

The NFLOC scoring index for the **UAS-NY Pediatric Assessment for Birth through Age 3** uses a subset of the scoring index used for the Community and Pediatric 4-17 Assessments. The NFLOC uses the following domains from the Pediatric Assessment for Birth through Age Three:

- Section F. Functional Status
- Section G. Continence
- Section J. Nutritional Status

The specific items are presented in the “UAS-NY Pediatric Assessment for Birth through Age Three Items used for NFLOC” section of this document. The intent, definitions, process, and coding information for each item are described in the UAS-NY Pediatric Assessment for Birth through Age Three Reference Manual.

## Implications for Programs and Plans

In accordance with program requirements and best practice, all UAS-NY Community Assessments that are conducted for an individual must be **signed** and **finalized**. This requires the completion of all required items. The responses to the completed, finalized assessment will be used to generate a number of assessment outcome reports and support service and care planning.

Organizations that opt to conduct an initial NFLOC determination may complete only the 22 NFLOC items (or 8 NFLOC items for the Pediatric Assessment for Birth through Age 3) to determine initial program eligibility. To do this, the assessing organization would initiate a UAS-NY Community or Pediatric 4-17 Assessment and complete the 22 (or 8) NFLOC items. A sample Level of Care Report, which is available in the UAS-NY, is attached. **The completion of only the 22 (or 8) items does not fulfill program requirements for an assessment.**

## UAS-NY Community and Pediatric 4-17 Assessment Items used for NFLOC

The UAS-NY uses 22 items and sub-items from the UAS-NY Community and Pediatric 4-17 Assessments to generate the NFLOC. These items and sub-items are presented below and are organized by section.

### Section B. Cognition

- Cognitive skills for daily decision making
- Memory/Recall Ability
  - ✓ Short-term memory
  - ✓ Procedural memory

### Section C. Communication and Vision

- Making self understood (expression) – expressing information content – both verbal and non-verbal

### Section D. Mood and Behavior

- Behavior Symptoms
  - ✓ Wandering
  - ✓ Verbal Abuse
  - ✓ Physical Abuse
  - ✓ Socially inappropriate or disruptive behavior
  - ✓ Inappropriate public sexual behavior
  - ✓ Resists Care

### Section F. Functional Status

- IADL Self-Performance and Capacity
  - ✓ Stairs (Performance Only)
- ADL Self Performance
  - ✓ Bathing
  - ✓ Dressing Upper Body
  - ✓ Dressing Lower Body
  - ✓ Locomotion
  - ✓ Transfer Toilet
  - ✓ Toilet Use
  - ✓ Eating
- Primary mode of locomotion indoors

### Section G. Continence

- Bladder Continence
- Bowel Continence

### Section J. Nutritional Status

- Mode of Nutritional Intake

## **UAS-NY Pediatric Assessment for Birth through Age Three Items used for NFLOC**

The UAS-NY uses 8 items and sub-items from the UAS-NY Pediatric Assessment for Birth through Age Three to generate the NFLOC score. These items and sub-items are presented below and are organized by section.

### **Section F. Functional Status**

- ADL Self Performance
  - ✓ Bathing
  - ✓ Dressing
  - ✓ Locomotion
  - ✓ Toilet Use
  - ✓ Eating
- Wheelchair/Cart/Mobility is main mode of locomotion

### **Section G. Continence**

- Special Bowel/Bladder Appliance Needed

### **Section J. Nutritional Status**

- Mode of Nutritional Intake

## Sample Level of Care Report

### Uniform Assessment System – New York Level of Care Report

Person, Any

Date of Birth: 01/01/1950

Medicaid ID: BB12345G

#### NF-LOC Score 20: Meets NF-LOC

##### Cognitive skills for daily decision making

Making decisions regarding tasks of daily life - e.g., when to get up or have meals, which clothes to wear or activities to do:

Minimally impaired - In specific recurring situations, decisions become poor or unsafe; cues / supervision necessary at those times

##### Memory / Recall Ability

Code for recall of what was learned or known:

Short-term memory OK - Seems/appears to recall after 5 minutes:

Yes, memory OK

Procedural memory OK - Can perform all or almost all steps in a multi-task sequence without cues:

Yes, memory OK

Making self understood (expression)

Expressing information content - both verbal and non-verbal:

Often understood - Difficulty finding words or finishing thoughts AND prompting usually required

##### Behavior Symptoms

Code for indicators observed in last 3 days, irrespective of the assumed cause:

Wandering - Moved with no rational purpose, seemingly oblivious to needs or safety.

Present but not exhibited in last 3 days

Verbal abuse - e.g., others were threatened, screamed at, cursed at:

Present but not exhibited in last 3 days

Physical abuse - e.g., others were hit, shoved, scratched, sexually abused:

Present but not exhibited in last 3 days

Socially inappropriate or disruptive behavior - e.g., made disruptive sounds or noises, screamed out, smeared or threw food or feces, hoarding, rummaged through other's belongings:

Not present

Inappropriate public sexual behavior or public disrobing:

Present but not exhibited in last 3 days

Resists care - e.g., taking medications/injections, ADL assistance, eating:

Present but not exhibited in last 3 days

Stairs - How full flight of stairs is managed (12-24 stairs)

Stairs - PERFORMANCE:

Supervision - Oversight/cuing

##### ADL Performance

If all episodes are performed at the same level, score ADL at that level.

If any episodes at the level of Total dependence, and others less dependent, score ADL as a Maximal assistance.

Otherwise, focus on the three most dependent episodes [or all episodes if performed fewer than 3 times].

If most dependent episode is Independent, setup help only, score ADL as Independent, setup help only.

If not, score ADL as least dependent of those episodes in between Supervision to Maximal assistance.

Bathing - How takes bath or shower. Includes how transfers in and out of tub or shower AND how each part of body is bathed: arms, upper and lower legs, chest, abdomen, perineal area - EXCLUDE WASHING OF BACK AND HAIR.

Independent, setup help only - Article or device provided or placed within reach, no physical assistance or supervision in any episode

Dressing Upper Body - How dresses and undresses (street clothes, underwear) above the waist, including prostheses, orthotics, fasteners, pullovers, etc.

Supervision - Oversight/cuing

Dressing Lower Body - How dresses and undresses (street clothes, underwear) from the waist down including prostheses.

Supervision - Oversight/cuing

*Person, Any*

*Date of Birth: 01/01/1950*

*Medicaid ID: BB12345G*

**NF-LOC Score 20: Meets NF-LOC**

orthotics, belts, pants, skirts, shoes, fasteners, etc.:

Locomotion - How moves between locations on same floor (walking or wheeling). If in wheelchair: self-sufficiency once in chair:

Extensive assistance - Weight-bearing support (including lifting limbs) by 1 helper where person still performs 50% or more of subtasks

Transfer toilet - How moves on and off toilet or commode:

Toilet use - How uses the toilet room (or commode, bedpan, urinal), cleanses self after toilet use or incontinent episode(s), changes pad, manages ostomy or catheter, adjust clothes

Supervision - Oversight/cuing

Supervision - Oversight/cuing

EXCLUDE TRANSFER ON AND OFF TOILET:

Eating - How eats and drinks (regardless of skill). Includes intake of nourishment by other means (e.g., tube feeding, total parenteral nutrition):

Supervision - Oversight/cuing

Primary mode of locomotion indoors:

Walking, uses assistive device, e.g., cane, crutch, pushing wheelchair

Bladder continence:

Infrequently incontinent - Not incontinent over last 3 days, but does have incontinent episodes

Bowel continence:

Infrequently incontinent - Not incontinent over last 3 days, but does have incontinent episodes

Mode of nutritional intake:

Requires diet modification to swallow solid food - e.g., mechanical diet (pureed, minced, etc.) or only able to ingest specific foods