

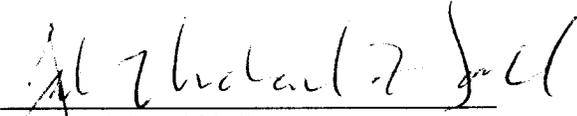
 <p>COMMONWEALTH OF PENNSYLVANIA DEPARTMENTS OF AGING AND PUBLIC WELFARE OFFICE OF LONG TERM LIVING</p>	PENNSYLVANIA DEPARTMENT OF AGING	
	1. File Number: APD # 09-01-02	2. Disposition: Clarifies and supplements NFCE Definition, HCBS Manual, Chapter 1
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6. Origin: Department of Aging Department of Public Welfare Office of Long Term Living (OLTL)		7. Contact: OLTL, Bureau of Policy & Strategic Planning (717) 705-3705

AGING PROGRAM DIRECTIVE

SUBJECT: NURSING FACILITY CLINICALLY ELIGIBLE (NFCE) CLARIFICATION

TO: EXECUTIVE STAFF,
PA DEPARTMENTS OF AGING & PUBLIC WELFARE,
OFFICE OF LONG TERM LIVING
AREA AGENCIES ON AGING

PA COUNCIL ON AGING
PA ASSOCIATION OF
AREA AGENCIES ON AGING

FROM: 
John Michael Hall
Acting Secretary
Pennsylvania Department of Aging

PURPOSE: The purpose of this Aging Program Directive (APD) is to clarify the standard that is used to assess whether or not an individual needs the level of care provided in a nursing facility.

SCOPE: This APD is directed to all Area Agencies on Aging (AAA) and AAA staff responsible for conducting the nursing facility level of care assessments, which are used to authorize eligibility for Medical Assistance (MA) nursing facility services and MA Home and Community-Based (HCB) waiver services under the Attendant Care Waiver, the Independence Waiver, the COMMCARE Waiver, the Elwyn Waiver, LIFE programs, the Aging Waiver and other programs. This bulletin clarifies and supplements the guidance regarding Nursing Facility Clinical Eligibility determinations found on pages 7-8 of Chapter 1 (Assessments) of the Home and Community-Based Services Procedures Manual (Procedures Manual) and in the Level of Care Assessment Instructions.

BACKGROUND: The Department of Public Welfare (DPW) is the state agency that has overall responsibility for the administration of the Commonwealth's Title XIX Medicaid Program, which is known in Pennsylvania as the MA Program. The MA Program provides eligible recipients with coverage for health care and services, including nursing facility services, under the Commonwealth approved Title XIX Medicaid

State Plan. In addition, the MA Program provides coverage for HCB services under the Commonwealth's approved 1915(c) Waivers to a limited number of eligible recipients who meet certain criteria and who would otherwise require services in an institutional setting, including a nursing facility.

An individual must meet both financial and clinical eligibility criteria to receive MA nursing facility services or MA HCB waiver services. To be clinically eligible for either MA nursing facility services or the MA HCB waiver services provided as an alternative to nursing facility care, an individual must be assessed and determined to require the level of care provided in a nursing facility. See 55 Pa. Code § 1187.22(2) and 42 CFR 441.302(c). In addition to meeting financial and clinical eligibility, the individual must also meet the criteria specified in the individual waiver to receive MA HCB waiver services. For example, in addition to being financially eligible and requiring the nursing facility level of care, an individual must be 60 years or older to receive MA HCB services under the Aging Waiver.

The AAAs currently conduct the level of care assessments that DPW uses to authorize clinical eligibility for both MA nursing facility services and MA HCB waiver services under the Attendant Care Waiver, the Independence Waiver, the COMMCARE Waiver, the Elwyn Waiver, LIFE programs, and the Aging Waiver. An individual who is assessed and determined by an AAA to need the level of care provided in a nursing facility is considered "nursing facility clinically eligible" (NFCE). An individual who is assessed and determined not to require the level of care provided in a nursing facility is considered "nursing facility ineligible" (NFI). An individual who is NFI is not clinically eligible for either MA nursing facility services or those MA HCB waiver services that are provided in lieu of nursing facility care.

As specified in the Commonwealth's Waivers, the AAAs use the same level of care assessment instrument to assess clinical eligibility for both MA nursing facility and MA HCB waiver services.

In October 2007, the Centers for Medicare and Medicaid Services (CMS) completed a review of Pennsylvania's Aging Waiver services program. Although finding that Pennsylvania demonstrated compliance with Federal waiver requirements, CMS recommended that DPW take measures to better assure that level of care assessments are conducted consistently throughout the Commonwealth in determining whether individuals are clinically eligible to receive MA services in either institutional or community settings.

Individuals and their advocates have also expressed concerns about perceived inconsistencies in level of care assessments and outcomes, particularly those conducted in re-determining an individual's continued eligibility for MA HCB waiver services. Specifically, they have suggested that, in applying the current Procedures Manual NFCE provisions, some AAAs have found an individual to be NFCE only if he or she required the skilled level of care that would be funded under the Medicare Program, rather than the broader level of care that is provided in an MA nursing facility and funded under the MA Program.

Although we do not view the current Procedures Manual NFCE provisions as unduly restricting eligibility to individuals requiring the Medicare skilled level of care, we do agree that the outcome of an individual's level of care assessment should not vary either because it is conducted by one AAA rather than another or because the individual is seeking MA services under an MA HCB waiver rather than in an MA nursing facility. To better assure consistency in level of care assessments and to remove any question as to the scope of individuals whom we consider to be NFCE, we are issuing this guidance to AAAs for use in conducting level of care assessments for MA nursing facility or waiver services.

DISCUSSION: An individual is NFCE if he or she needs the level of care provided in a nursing facility.

Under Federal and State law and regulations, which identify the level of care provided in a nursing facility,¹ an individual should be considered NFCE if:

1. The individual has an illness, injury, disability or medical condition diagnosed by a physician; **and**
2. As a result of that diagnosed illness, injury, disability or medical condition, the individual requires care and services above the level of room and board; **and**
3. A physician certifies that the individual is NFCE; **and**
4. The care and services are **either**
 - a) skilled nursing or rehabilitation services as specified by the Medicare Program in 42 CFR §§ 409.31(a), 409.31(b)(1) and (3), and 409.32 through 409.35; **or**
 - b) health-related care and services that may not be as inherently complex as skilled nursing or rehabilitation services but which are needed and provided on a regular basis in the context of a planned program of health care and management and were previously available only through institutional facilities.

Although an individual must have an illness, injury, disability or medical condition diagnosed by a physician to require the level of care provided by a nursing facility, a diagnosed medical condition alone does not automatically make an individual NFCE. Many individuals have diagnosed medical conditions and are able to take care of their own medical needs. They would not require care and services at the level provided in a nursing facility.

¹ See 42 U.S.C §§ 1396d(f) (defining “nursing facility services”) and 1396r(a) (defining a “nursing facility”); 35 P.S. § 448.802a (defining “long-term nursing facility”); 42 CFR §§ 440.40 (defining “nursing facility services”) and 440.155 (defining “nursing facility services, other than in institutions for mental diseases”); 35 P.S. § 448.802a (defining “long-term care nursing facility”); 28 Pa. Code § 201.3 (defining “nursing care” and “skilled or intermediate nursing care:”) and 55 Pa. Code § 1181.2 (defining “intermediate care” and “skilled nursing facility services:”).

Other individuals may have functional and cognitive impairments or experience symptoms of a disease process that impact their ability to meet their own medical needs. When an individual cannot take care of his or her own medical needs, a planned program of health care management provided by or under the supervision of a skilled medical professional may be required to address the individual's medical needs. In such instances, the individual may be determined NFCE even though the individual does **not** require or receive services at the Medicare skilled nursing or rehabilitation services level. Under both Federal and State law, and under Department of Health (DOH) and DPW regulations, an individual who needs care and services that meet the definition of intermediate care in 55 Pa. Code § 1181.2² would require the level of care in a nursing facility. For example, under Medicare requirements, an individual must require skilled nursing services on a daily basis to receive Medicare coverage for post hospital skilled nursing facility care. For MA nursing facility and MA HCB waiver services, however, an individual may be NFCE if he requires skilled services on a regular, but not necessarily daily basis. Further, an individual who requires only personal care services may be NFCE if his or her mental or physical condition is such that the overall development, management and evaluation of his or her care plan must be performed by technical or professional personnel, such as registered nurses or licensed practical nurses, even though these care plan activities are not required by or provided to the individual on a daily basis.

In addition, there are circumstances in which an individual who does not currently receive or require services at the nursing facility skilled or intermediate care level may still be considered NFCE. Specifically, under Federal regulations, an individual who only needs personal care services to remain at home or in a community setting may be NFCE if, absent those personal care services, the individual's condition would deteriorate to the point that he or she would be institutionalized in a nursing facility in the near future (that is, a month or less).

On the other hand, an individual may need some assistance with activities of daily living (ADLs) or instrumental activities of daily living (IADLs), but not require that assistance either as part of a planned program of health care and management for the treatment of a diagnosed medical condition or disability or to avoid being admitted forthwith to a nursing facility. Under these circumstances, the individual would be considered NFI.

An individual who has been determined eligible for MA nursing facility services or HCB waiver services must undergo a re-determination of eligibility at least on an annual basis. As part of the re-determination process, the individual's clinical eligibility must be reassessed and evaluated to determine if the individual continues to be NFCE.

² “*Intermediate care ... [is] ... care ... ordered by, and provided under the direction of a physician [that] is available on a continuous 24-hour basis to a person who does not require the degree of care and treatment provided in a hospital or skilled nursing facility. Because of a mental or physical disability, the person does, however, require nursing and related health and medical services in the context of a planned program of health care and management.*” 55 Pa. Code § 1181.2. See also 42 U.S.C. § 1396r(a)(1)(C) (a “nursing facility” provides “(A) skilled nursing care and related services for residents who require medical or nursing care, (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or (C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities”).

Generally, once an individual has been properly determined to be NFCE, the individual should remain NFCE unless there is some change in circumstance that warrants a different outcome. Therefore, as a general matter, if the individual's medical condition has not changed since his or her last assessment, an individual should continue to be NFCE. On the other hand, if the individual's condition has improved to the extent that he or she would not be institutionalized if waiver services were discontinued, the individual would be NFI even though he or she was previously determined NFCE.

Although, in most cases, a change in an individual's status from NFCE to NFI will be based on an improvement in an individual's medical condition, there may be limited instances in which an individual may be found to be NFI even though his or her medical condition has not changed. For example, the AAA may find that a prior assessment was incorrect based on new information that was not available at the time of the prior assessment which, if it had been available and considered, would have resulted in a different outcome. Based upon the information available to it at the time of reassessing the individual, the AAA may conclude that the individual does not require the level of care provided in a nursing facility.