

NURSING FACILITY LEVEL OF CARE (NF LOC) CHANGE

Question and Answer

Q. What is the Nursing Facility Level of Care (NF LOC) change?

A. The NF LOC change is a change in the statutory criteria used to establish eligibility for payment of long term care services under Medical Assistance (MA). NF LOC is determined by applying these criteria to the assessed needs of an individual who is requesting MA coverage of long term care services.¹

Q. What are the long term care services that NF LOC is related to?

A. Long term care services that depend on NF LOC under Medical Assistance include nursing facility services and certain home and community-based services (HCBS) available under “waiver” programs funded under MA: the Elderly Waiver (EW), Community Alternatives for Disabled Individuals waiver (CADI), and Brain Injury-NF (BI-NF) waiver. Each of these programs requires a NF LOC determination as part of program eligibility. In addition, NF LOC is used as part of eligibility determination for the state-funded Alternative Care (AC) program for people aged 65 and older.

Q. Why is the NF LOC being changed?

A. The Minnesota Legislature changed the NF LOC criteria in 2009 as part of a strategy to improve the sustainability of publicly-funded long term services and supports system (LTSS) and to ensure its availability to those with the greatest need.

Q. How does the change in NF LOC contribute to sustainability?

A. The change will help direct available resources to individuals with greater need by modifying the type and amount of assessed need that meets the NF LOC criteria. This will delay some very low-need individuals’ ability to access MA-funded NF services, and services available under the EW, CADI, and BI-NF waivers, and AC program.

Q. What are the new NF LOC criteria?

A. In order to meet the new criteria a person must be assessed with the Long Term Care Consultation (LTCC) or preadmission screening (PAS), to need at least one of the following:

- A high need for assistance in four or more activities of daily living (ADL); OR
- A high need for assistance in any one of 3 critical ADLs that requires 24-hour staff availability (critical ADLs of toileting, positioning or transferring); OR
- A need for daily clinical monitoring; OR
- Significant difficulty with cognition or behavior; OR
- The person lives alone (or will live alone) *and* also has other risk factors. These factors include a fall resulting in a fracture within the last 12 months, or significant sensory impairment that affects the ability to maintain community life, or at-risk of maltreatment by another, or at-risk for self-neglect.

¹ Please see Minnesota Statutes, section 144.0724, subdivision 11, for the criteria at <https://www.revisor.mn.gov/statutes/?id=144.0724>

An additional criterion applies to ongoing payment of NF services, referred to as a “qualifying 90 day stay”. See more information below in the questions related to nursing facilities.

Q. Describe an individual who does NOT meet the new NF LOC criteria.

A. A person who has no ADL needs or needs assistance with 1-3 non-critical ADLs, such as dressing or grooming, who has no needs related to cognitive or clinical issues, or who is not assessed as having other risk factors described above will not meet the revised criteria and will not be eligible for MA payment for long term care services.

Q. Who will the changes to NF LOC apply to, and when?

- New HCBS program applicants: The revised criteria will be used to determine eligibility for long term care for all new applicants aged 21 and older to the HCBS programs listed above who are assessed on or after January 1, 2014. The current criteria remain in effect for individuals under age 21 until October, 2019.²
- New NF admissions: The revised criteria will also be applied to all new admissions to NFs occurring on or after January 1, 2014 for individuals aged 21 and older.
- Current HCBS participants: For individuals participating in EW, AC, CADI, or BI-NF on January 1, 2014, the revised criteria will be applied at the person’s next regular reassessment on or after January 1, 2014.
- Current NF residents - Admissions prior to October 1, 2013: For purposes of determining NF LOC as part of eligibility determination for MA payment of NF services, there is no impact on admissions that occurred prior to October 1, 2013 throughout any continued stay for individuals admitted to a NF prior to October 1, 2013. Residents admitted prior to October 1, 2013 are considered to have met the qualifying 90 day stay requirement under the current criteria.
- Current NF residents - Admissions October 1, 2013 and later: The revisions to NF LOC may have an impact for NF residents admitted on or after October 1, 2013, since the revised criteria will be applied at their next MDS assessment occurring on or after January 1, 2014. If the person continues to meet the new NF LOC at the subsequent reassessment, s/he would have a 90 day qualifying stay for purposes of continuing MA payment. See more information below about how the MDS assessment may be used in establishing NF LOC.

The revised criteria will only be applied to individuals who are aged 21 or older on the date of their assessment, or on the date of their next reassessment, whether in HCBS or for NF reassessments.

Lead agencies (counties, managed care organizations and tribes) that perform NF LOC assessments (face-to-face LTCC assessments or preadmission screening assessments) must not apply the revised criteria prior to the January 1, 2014.

HCBS and NF providers are encouraged to thoroughly understand the implementation of NF LOC and options for individuals in order provide accurate information to consumers they are serving and avoid unnecessary or premature discharge or discontinuation of services.

Q. How is NF LOC determined?

A. NF LOC can be determined in 3 ways:

² The current NF LOC can be found in DHS Form 3361. All DHS forms can be found at http://www.dhs.state.mn.us/main/id_000100

- Through a preadmission screening (PAS) completed prior to or after admission to a NF.³
- During a face-to-face assessment performed by a Long Term Care Consultant (LTCC)
- By completion of an MDS quarterly assessment by a nursing facility.

Q. What information is used to determine NF LOC?

A. A person meets NF LOC criteria through assessment of need using items taken from the LTCC assessment tool⁴, DHS Form 3428 at any *one* of these levels,. The same items are also used for NF LOC determinations completed as part of PAS.

- For NF LOC criteria based on ADL dependencies, dependency is indicated by the following scores in each ADL. ADL criteria is either dependency in 4 ADLs or in 1 critical ADL (toileting, positioning or transferring).
 - Dressing, grooming, eating, positioning (bed mobility) transferring (mobility), walking: For each of these ADLs, a score of 2 (which typically means needs help from another in the assessment) or greater.
 - For toileting, a score of 1 or greater is a dependency (Note: an individual who manages continence needs independently is not considered dependent).
 - For bathing, a score of 4 (needs help washing/drying body) or greater.
 - For NF LOC criteria based on cognitive or behavioral needs, the assessment items for self-preservation, orientation, the need for staff intervention, or the Mental Status Exam are all used.
- For clinical monitoring, the individual must require clinical monitoring at least once every 24 hours.
- For the risk category “living alone”, the individual must be living alone (or would live alone) and meet one of the other risk criteria described earlier. The LTCC assessment includes all the information needed to establish this criteria . Only LTCC staff can make NF LOC determinations that rely on risk of maltreatment or self-neglect.

Q. How will the MDS assessment be used to establish NF LOC?

A. The determination of NF LOC using the MDS assessment is possible because much of the information about needs that is used to establish NF LOC is contained in the MDS assessment. The first quarterly MDS assessment will re-establish NF LOC for all resulting RUGS classifications with the exceptions of PA1 and PA2. For individuals who are classified in these groups, a face-to-face LTCC assessment must be performed to further determine NF LOC.

Q. What is a “qualifying 90 day stay”?

A. A qualifying 90 day stay is one of the NF LOC criteria is defined in Minnesota Statute, section 144.0724, subd. 11, that applies to continuing MA payment of NF services. An individual must meet NF LOC through PAS AND at their first MDS quarterly assessment (or, if needed, through an in-person LTCC assessment) in order to continue to qualify for MA payment of NF services beyond 90 days.

³ At present, admissions from an acute hospital with a projected length of stay of less than 30 days are exempt from PAS. In these cases, individuals receive PAS within 40 days after admission. Redesign of PAS during the 2013 Legislative session has removed this exemption for admissions occurring on or after October 1, 2013. Bulletins, in-person meetings and other communications and training opportunities will be available as soon as 2013 Legislative initiatives can be fully implemented pending negotiations with CMS.

⁴ Long Term Care Consultants will become Certified Assessors and will perform assessments using the MnCHOICES software beginning in fall, 2013. However, all of the assessment items used to determine NF LOC are present in the MnCHOICES assessment tool.

Q. Is there any impact on individuals in nursing facilities who are not on MA?

A. While the revised NF LOC criteria does not affect any other payer criteria, such as Medicare, long term care insurance, or private payment an individual who applies for MA payment of NF services will be assessed for NF LOC using their last MDS assessment (or LTCC assessment) that occurred before their MA eligibility start date.

Q. How many people getting home and community-based services were estimated to be affected by the change?

ADHS analyzed everyone in a NF or receiving EW, AC, CADI, and BI-NF on July 1, 2011. The number of persons in this sample, by program, was:

<u>HCBS Recipients 7/1/11</u>		<u>Would not meet revised NF LOC⁵</u>	
EW	23,000	EW	3,068
AC	3,100	AC	268
CADI	16,960	CADI	501
BI-NF	987	BI-NF	0
Total	44,047		3,837 (8.7%)

The estimated effect within the sampled population was:

EW:

- 13 % of the 23,000 EW recipients (3,068 people) would not meet the revised NF LOC
- 2,822 (92%) of those 3,068 lived in their own home or apartment
- 337 (11%) received customized or 24 hour customized living services
- 241 (7.8%) lived in the home of a relative
- 5 people lived in foster care settings

AC: 8.5% of 3100 (268 people) AC recipients would not meet NF LOC; all of them lived in their own home or apartment or with a relative.

CADI: 3% of the 16,960 CADI recipients (501 people) would not meet the revised NF LOC criteria

BI-NF: All recipients remained eligible (i.e. met at least one of the revised criteria)

Q. How many people in NFs were estimated to be affected by the change?

A. There were 17,535 persons in NFs on 7/1/11. The NF LOC analysis for NF residents was performed by looking at MDS admission and quarterly assessments. The information in the MDS assessment allows NF LOC criteria to be established for all but two of the RUGs classifications, PA1 and PA2, the lowest resource use group classifications. There is more information below about how the MDS assessment will be used in establishing NF LOC.

Fewer than 2% of the sample NF population had an MDS assessment of a RUGS classification of PA1 or PA2. While this RUGs classification indicates that the person *may not* meet the revised NF LOC, it is expected that NF LOC will be established for many of these individuals through the more comprehensive face-to-face Long Term Care Consultation assessment that better captures additional risk in qualifying categories, such as self-neglect.

⁵ The analysis was based on the most recent assessment information available in MMIS for the sample individuals.

While it is impossible to predict how many of the 2% of residents assessed at PA1 or PA2 through MDS will fail to meet *any* NF LOC criteria, it is expected to be a significantly smaller group of people in PA1 or PA2.

Q. What will happen to people who no longer meet NF LOC at reassessment?

A. Of those in the HCBS programs July 1, 2011 sample who would not meet the revised criteria:

- Impact on MA eligibility:
 - EW - 93% (2,853) would remain eligible for MA coverage for basic health care, including state plan services like personal care assistance (PCA).
 - CADI - All 501 CADI participants who would not meet the modified NF LOC criteria would remain eligible for MA state plan coverage.
 - All of the NF residents were anticipated to remain eligible for MA.

- Alternative services: Essential Community Supports for the “Transition Group”

In addition to state plan services like PCA available to individuals participating in MA, the 2013 Legislature authorized the Essential Community Support services for individuals who lose their eligibility for MA-funded long term care services at reassessment because of the change in NF LOC. This group is referred to as the “Transition Group”.

The “Transition Group” is made up of individuals who:

- For HCBS:
 - were in EW, CADI or BI-NF *as of January 1, 2014*, and
 - remained in EW, CADI or BI-NF until their next reassessment due date on or after January 1, 2014, and
 - do not meet any of the revised LOC criteria at that next reassessment, and
 - have NO dependencies in activities of daily living (i.e. is not eligible for PCA), and
 - have an assessed need for at least one ECS service as described below.
- For NF residents:
 - were admitted to a NF between October 1, 2013 and December 31, 2013, and
 - do not meet any of the revised LOC criteria at their next quarterly MDS assessment (or LTCC assessment on or after January 1, 2014, and
 - have NO dependencies in activities of daily living (i.e. is not eligible for PCA), and
 - have an assessed need for at least one ECS service.

Individuals in the “Transition Group” who remain eligible for MA state plan and who have ADL dependencies will access state plan PCA services.

While most individuals included in the “Transition Group”, as defined above, will continue to be eligible for MA state plan services, ECS is also available to individuals, both over and under age 65, who are no longer eligible for MA state plan coverage, as a result of no longer meeting NF LOC.⁶ *For this non-MA group, an individual must meet the financial eligibility criteria for Alternative Care in order to be eligible for ECS.*

⁶ NF LOC is required to apply special rules related to determining eligibility for long term care under Medical Assistance. Because of these special rules, which include different treatment of some kinds of income and assets, some individuals who lose LOC will no longer be able to meet financial eligibility requirements for MA state plan.

Q. What services are included under Essential Community Supports?

Essential Community Supports include:

- Homemaker
- Personal emergency response
- Chore
- Caregiver education/training
- Home delivered meals
- Service coordination (case management)
- Community living assistance (to be developed)

Eligibility determination for ECS must be established based on a face-to-face Long Term Care Consultation assessment.⁷ For the “Transition Group”, the required reassessments for waiver participants will serve to open a person for ECS, if eligible. Other ECS program requirements include:

- \$400 monthly maximum budget
- Required service coordination, limited to \$600 annually
- ECS will be authorized by a certified assessor/case manager’s, using MMIS service agreements, for needed services, and ongoing monitoring is required, as applicable.
- For the “Transition Group”, an additional \$600 for service coordination to assist in transition planning is available one time.

Persons who are 60 and older are also eligible for Federal Older Americans Act Title III services.

Q. How will DHS help lead agencies identify the people who may be losing eligibility for waiver services because of the change in NF LOC?

A. DHS will provide information to lead agencies (health plans, counties and tribes) by October 1, 2013 about individuals who *may* no longer meet the modified NF LOC criteria at their next reassessment, based on analysis of participant’s most recent assessment information in MMIS. This information will assist lead agencies to prepare for the transition of these potentially affected individuals. This information should not be interpreted to mean that these individuals do not meet LOC; it is a method to identify individuals who *may not* meet the revised criteria at their next reassessment that occurs on or after January 1, 2014. Similar information will be forwarded again for participants who enter a waiver program in November or December, 2013 in order to provide the most complete information to lead agencies.

Q. How will nursing facilities know who might not meet NF LOC?

A. Since NF LOC is determined as part of required PAS, facilities will know before admission whether an individual may be eligible for MA payment of long term care. Nursing facilities are also in the best position to know, through the ongoing provision of service to residents, when an individual should be assisted and/or referred to other assistance for relocation and transition prior to the completion of the MDS quarterly assessment, in particular for residents classified as PA1 or PA2 under RUGs.

Q. How will people whose eligibility changes be connected to the services they need?

⁷ The Essential Community Support program will also be available, on an ongoing basis, for individuals aged 65 and older, who do not yet meet NF LOC, who are not eligible for MA, who meet AC financial eligibility criteria, and who have an assessed need for at least one ECS service. This service option was originally designed to meet emerging needs of older individuals, as part of the implementation of the revised NF LOC criteria, and was expanded by the Legislature to include support for the “Transition Group” described in this document.

A. People need access to someone who can assist and support them as they move to a different set of services and supports. Case managers/care coordinators will receive training to familiarize them with home and community-based services funded by ECS, Older Americans Act Title III and Community Service/Community Services grants, and transition issues specific to these program changes as part of the NF LOC/ECS implementation plan.

It is estimated that all of the individuals who may lose eligibility for the CADI waiver and 92% of the individuals who may lose EW eligibility will remain MA eligible. The majority of persons aged 65 and older will continue to receive MA services from a health plan, including care coordination. Case management for those moving to ECS as part of transition support will continue to be provided by their county (including individuals transitioning from AC) or health plan.

Case managers are responsible for periodic monitoring of each individual's services and for reassessment if needs change. Case managers must also ensure access to needed services and will assist the individual to re-enter AC, EW, or CADI if their needs increase.

Minnesota's Senior LinkAge Line®'s Return to Community Initiative (RCTI) assists persons who want to move home from a NF. While these people are primarily private pay clients, an earlier return to home can help avoid a problem later.

Q. How will the more immediate needs of monitoring the impact of the NF LOC changes on individuals be met?

A. There will be several support options in place for those who may not meet the new criteria:

- NF residents who become ineligible for MA payment of long term care because they do not meet NF LOC criteria will have transition support available through discharge planning carried out by the facility, through support provided under the RTCI, or Moving Home Minnesota (Money Follows the Person) initiative. Some individuals may also be served under ECS.
- Persons, who were enrolled in waiver programs and retain Medicaid eligibility under managed care but no longer meet NF LOC have access to care coordinators.
- Persons who leave EW, AC and CADI and move to ECSs will also still have access to case management.

Q. What about people who could lose their housing because they lose eligibility for EW?

A. EW doesn't pay for housing. It pays for services that help people remain in their own homes. Some individuals receive EW services in housing with services settings (assisted living) that require them to receive services to live there. The sample data run of July 1, 2011 showed that 337 of 3068 EW recipients who would no longer meet the changed NF LOC received customized living or 24 hour customized living. Certainly, some of those 337 live in settings that are governed by leases where tenancy isn't tied to services. For individuals living alone, an in-person LTCC assessment may result in a NF LOC determination based on risk of self-neglect (and thus retain EW eligibility).⁸

Q. Can people appeal LOC decisions?

A. Yes. People retain all appeal rights related to denial, termination or reductions in services, and LOC is specifically appealable under Minnesota Statutes, section 256B.0911 governing Long Term Care Consultation. In addition, provider requirements related to discharge notices and discharge planning requirements remain in place.

⁸ This potential risk and NF LOC group is believed to be somewhat under-represented in the July 2011 analysis because of (then) available data, as well as lack of consistency in data coding practices amongst lead agencies. Consistent coding of assessment information will be part of lead agency training for implementation of NF LOC.

Individuals also retain all tenants' rights related to housing and lease arrangements.

Q. How will we know if these changes have worked as they are intended?

A. In 2009, DHS contracted with the University of Minnesota for a 5-year longitudinal study of several initiatives to promote more effective and efficient use of long-term care services. The study includes an evaluation of the changed NF LOC, ECS, RCTI and PCA reform. The four initiatives differ in design and target populations, but they have common goals of greater efficiency and cost control through more effective utilization of care. These general questions frame the evaluation.

- Were personal health, functioning, family support, and other individual outcomes maintained or improved by the initiative?
- Were unintended adverse outcomes avoided?
- Did the initiative achieve MA system savings? Cost savings for NF, PCA or other services targeted by the initiatives should not be offset by increases in MA medical costs.
- Were services provided more efficiently?

The study is well underway for the RCTI and PCA programs but has been delayed for NF LOC and ECS because of the delayed implementation of those programs. DHS is in the process of developing a thorough evaluation plan for the Reform 2020 initiatives enacted this year which will be closely aligned with the longitudinal study already underway.