Office of Health Insurance Programs
Division of Long Term Care

Managed Long Term Care Policy 22.01: New York Independent Assessor for Personal Care (PCS) and Consumer Directed Personal Assistance Services (CDPAS)

Date of Issuance: April 27, 2022

Effective Date: May 16, 2022

Applicable to: Medicaid Managed Long Term Care (MLTC) plans including Partial Capitation plans and Medicaid Advantage Plus plans. This guidance does not apply to Programs of All-Inclusive Care for Elderly (PACE).

Purpose: This policy provides guidance and instructions regarding changes in how Personal Care Services (PCS) and/or Consumer Directed Personal Assistance Services (CDPAS) or Program (CDPAP) needs are assessed and authorized and how MLTC eligibility is established. These changes are the result of various statutory, regulatory, and administrative reforms included in the enacted 2020-21 New York State (NYS) Budget and regulatory amendments to 18 NYCRR §§ 505.14 and 505.28 finalized in the September 8, 2021, NYS Register with an effective date on or after November 8, 2021.

Scope: Beginning May 16, 2022, the New York Independent Assessor (NYIA) will replace the current Conflict Free Evaluation and Enrollment Center (CFEEC) process. Upon initial enrollment, where a valid NYIA Community Health Assessment (CHA) and practitioner order (PO) are in place, the MLTC plan will no longer conduct a separate CHA to authorize PCS and/or CDPAS and other CBLTSS services.

Transition: If an individual was scheduled under the prior process, they will complete the assessment process under the prior rules. For example, if an individual called the CFEEC prior to May 16, 2022, and was scheduled for a CHA after May 16, 2022, the CFEEC process would continue as currently conducted:

- CFEEC conducts a CHA for MLTC eligibility,
- Plan conducts another CHA for services, and
- A physician's order is obtained by the individual from their chosen practitioner.

Note, MLTC plans are able, and strongly encouraged, to use a CFEEC CHA conducted after May 16, 2022 as the initial assessment to authorize services.

In addition, as of May 16, 2022, a CFEEC CHA is now valid for 12 months. This action repeals the current CFEEC CHA expiration in MLTC policy 16.08 of 75 days.

Until further notice, MLTC plans will continue to perform the following assessment types:

- routine annual reassessments for authorizing PCS and/or CDPAS.
- non-routine reassessments as necessary including:
    - return from institutionalization assessments
    - significant change in condition assessments
    - assessments at the individual's request.
- MLTC to MLTC plan transfer assessments where the last assessment was conducted by the first plan; the new plan would code this as an initial assessment.
    - Note, if the last CHA was completed by NYIA and is still valid, the new plan should use the NYIA CHA and not conduct another CHA.

- Auto-assignments into MLTC plans will follow current process (MLTC Policies 13.10 and 15.02).

A separate MLTC policy that details reassessments through NYIA will be issued prior to reassessment implementation.

DEFINITIONS

New York Independent Assessor (NYIA) – Through a contract with MAXIMUS Health Services, Inc. (MAXIMUS) the NYIA has been created to conduct independent assessments, provide independent practitioner orders, and perform independent reviews of high needs cases for PCS and CDPAS. The NYIA will also take over the work currently done by the Conflict Free Evaluation and Enrollment Center (CFEEC) to assess individuals for MLTC plan eligibility.

Community Health Assessment (CHA) – The assessment used in NYS to determine the need for long term services including PCS and CDPAS; home health aide services; home care including nursing, physical, speech and occupational therapy, and adult day health care. In the context of this ADM, the CHA is referenced in connection with its use in assessing needs for PCS and CDPAS. This assessment is contained in the UAS-NY and is part of the InterRAI suite of assessments. It has been in continuous use in NYS since 2011 and is not changing based on the revised statute or regulation. The NYIA will continue to use this tool for the independent assessments.

Independent Practitioner Panel (IPP) – The regulations replace the requirement for a physician's order to authorize PCS and/or CDPAS with a requirement that these services are ordered by a qualified, independent practitioner, and expand the list of ordering practitioners to include Medical Doctors (MD), Doctors of Osteopathy (DO), Nurse Practitioners (NP) and Physician Assistants (PA) contracted to work for the Independent Practitioner Panel (IPP) under the NYIA.

Clinical Appointment – The IPP clinician will conduct a clinical exam, review the CHA and any supporting documents, and issue a Practitioner Order (PO) for PCS and/or CDPAS.

Practitioner Order (PO) – The Practitioner Order (PO) is the order form, which is required to authorize PCS and/or CDPAS, that must be completed by the IPP clinician after reviewing the CHA in the UAS-NY and determining if the individual is self-directing, or has an appropriate self-directing other, and can safely receive PCS and/or CDPAS at home based on their medical stability. The PO replaces the currently used Physician's Order forms (DOH-4359 and HCSP-M11Q) which are obtained prior to an assessment.

Customer Service Representative (CSR) – When a consumer initiates a call to the Helpline requesting a CHA, the NYIA call center representative (CSR) screens the caller to determine if an appointment should be scheduled. The CSR will proceed with scheduling a CHA and a clinical appointment upon verifying the consumer's identity, contact information, preferred assessment modality (telehealth or face-to-face) and, if needed, the location of an in-person visit.

Operations Support Unit (OSU) – The interface between the NYIA and LDSS or Plans when referring a specific case for action such as an expedited or immediate need request, or a disputed assessment.

Independent Review Panel (IRP) – An independent panel of clinicians under the NYIA that will provide a secondary medical review for high needs cases and issue a recommendation to the LDSS or MLTC plan regarding whether the proposed plan of care is reasonable and appropriate to maintain the individual's health and safety at home.

High Needs Cases – For the purposes of the Independent Review Panel, high needs cases are defined as needing, for the first time, more than 12 hours of care per day, on average.

Plan of Care (POC) – a person-centered plan of care developed in consultation with the individual and their representative(s), if any, that reflects the individual's needs, preferences, and goals in receiving services to maximize independence and community integration and incorporates social and cultural considerations for the provision of care.

Telehealth – synchronous live interactive video teleconference.

ASSESSMENT PROCESS

Medicaid Eligibility

The NYIA will only conduct the initial assessment process for individuals with active Medicaid. If the NYIA Customer Service Representative (CSR) cannot verify the individual's Medicaid enrollment, or if the enrollment is not current, the CSR will refer the individual to the LDSS to apply for, or request an increase in, Medicaid to include coverage of community based long term care services before returning to the NYIA for the CHA and clinical appointment. If an individual contacts an MLTC plan for enrollment, the MLTC plan should refer them to either the LDSS if they do not have active Medicaid, or to the NYIA if they do have active Medicaid.

18 NYCRR §505.14(b)(4)(i) states that "a members eligibility for medical assistance and services, including the member's financial eligibility and eligibility for personal care services" must be established before services are authorized or reauthorized.

NYIA Assessment

NYIA will conduct an initial assessment for individuals who have expressed an interest in enrolling in an MLTC plan. In addition, NYIA will conduct the initial assessment for individuals seeking PCS and/or CDPAS in Mainstream Managed Care or Fee For Service.

The NYIA will schedule both a CHA and a Clinical Appointment for the individual, both to be completed within 14 days of contact with the NYIA. These documents are used to develop a POC to address the individual's identified CBLTSS needs and authorize services. If NYIA has conducted the CHA and Clinical Appointment, the MLTC plan shall not conduct its own CHA but use the NYIA CHA and PO to inform its POC development.

1. Community Health Assessment (CHA) in UAS-NY

The CHA conducted by the NYIA is valid for 12 months unless another CHA is required due to a significant change in condition or at the member's request. A CFEEC CHA conducted after May 16, 2022 will also be good for 12 months and can be used to determine both service needs and MLTC plan eligibility, barring a significant change in condition or member request for another assessment. MLTC plans are encouraged to use this CFEEC CHA as the initial assessment to develop a plan of care.

2. Practitioner Order (PO) for PCS or CDPAS

The current practice of initiating PCS and/or CDPAS with the HCSP-M11Q or the DOH-4359 is discontinued. The NYIA includes an Independent Practitioner Panel (IPP) to conduct the Clinical Appointment exam that is now required to obtain PCS and/or CDPAS. The IPP is comprised of qualified, independent clinicians including Medical Doctors (MDs), Doctors of Osteopathy (DOs), Nurse Practitioners (NPs) and Physician or Specialty Assistants (PAs).

At the completion of the Clinical Appointment, the clinician will complete the PO, which will be uploaded to the UAS-NY.

During the Clinical Appointment, an IPP clinician will:

- review the CHA, examine the individual, either in person or through a telehealth modality; and, if necessary, interview providers and others who may have insight into the individual's needs;
- ensure that the current diagnoses and medications are documented accurately and thoroughly;
- attest to the individual's need for assistance;
- indicate whether the individual is self-directing, or has identified an appropriate self-directing other;
- indicate if the individual can complete the consumer's roles and responsibilities if they are authorized for and enroll in CDPAS; and
- determine if the individual is medically stable to receive PCS and/or CDPAS.

The PO represents the clinical judgment of the practitioner. They will indicate whether there is a need for services and whether they believe that the individual is medically stable to receive PCS and/or CDPAS. If the IPP clinician determines the individual is not medically stable to receive PCS and/or CDPAS, then the MLTC plan may not authorize PCS and/or CDPAS.

Upon completion of both the CHA and the PO, the individual will receive a NYIA Notice indicating their eligibility for MLTC enrollment and whether their health condition is stable to receive PCS and/or CDPAS in their home. If qualified for enrollment, the notice provided by NYIA to the individual will direct the individual to contact NYIA for information about available MLTC plans. If the IPP clinician determines the individual is not medically stable to receive PCS and/or CDPAS, the notice from NYIA will include conference and fair hearing language. Note that medically unstable individuals may still qualify for MLTC enrollment. If a medically unstable individual is qualified and seeks MLTC enrollment, the MLTC plan will review the CHA and PO and evaluate if other Community Based Long Term Services and Supports (CBLTSS) may address the member's demonstrated needs.

Plan of Care (POC) and Authorization of Services

The MLTC plan remains responsible for authorizing PCS and/or CDPAS and other CBLTSS that may address demonstrated needs to maintain the member's health and safety in the community. The MLTC plan must review the NYIA CHA and the PO in the UAS-NY, which contains the relevant information to inform the development of a POC. The POC should be updated and documented at least every twelve months if continuing to meet the enrollee's needs; or more frequently if the enrollee's condition changes, at the request of the enrollee, or as otherwise appropriate. The MLTC plan must develop and maintain a process to permit an enrollee to request an updated person centered POC if the enrollee's circumstance necessitate a change.

As part of this process, MLTC plans continue to be responsible for:

a) reviewing other available services and supports to determine whether they meet the individuals needs and if they are cost effective,
b) determining frequency of nursing supervision,
c) determining the individual's preferences and social and cultural considerations for the receipt of care,
d) heightened documentation requirements for 24-hour cases, and
e) confirming the willingness and availability of any informal supports. See 18 NYCRR §505.14(b)(2)(iii) and §505.28(d)(3).

MLTC plans remain ultimately responsible for the authorization of services and must record in the POC the level, amount, frequency and duration of services that they authorize, and send notice of service authorization to the enrollee.

In evaluating the cost effectiveness of services, MLTC plans must consider the availability of informal caregivers and the availability of other Medicaid and non-Medicaid services, programs, equipment or adaptive or assistive technologies that meet the individual's needs. Where these services and supports are available, MLTC plans must authorize them, or discount them from the PCS and/or CDPAS authorization as applicable. See 18 NYCRR §505.14(b)(2)(iii)(b)(2) and 505.28(d)(3)(ii)(b). When determining the availability of voluntary informal supports, MLTC plans must contact the caregiver identified by NYIA during the assessment process, or one identified by the MLTC plan through care planning activities. The MLTC plan must then record in the POC the days and times the caregiver is willing to provide assistance.

Requirements for authorizing continuous PCS and/or CDPAS or live-in 24-hour PCS and/or CDPAS remain unchanged from prior directives, except for the requirement for additional medical review by the IRP in the first instance once the NYIA is implemented. (See "High Needs Review," below).

Changes in a member's need for services unrelated to a significant change in condition (such as availability of informal supports) do not require CHA reassessment but do need to be documented in the POC and the MLTC plan must consider and make any authorization changes. See 18 NYCRR §§505.14(b)(4)(viii) and 505.28(f)(3).

High Needs Review – Independent Review Panel (IRP)

Starting May 16, 2022, for initial assessments implemented under this guidance, if the MLTC plan proposes to authorize more than 12 hours of services per day on average, then the MLTC must refer the case to the NYIA Independent Review Panel (IRP). The IRP will provide additional independent medical review and supply a case recommendation to the MLTC plan. The MLTC plan must consider the IRP recommendation when finalizing the POC and authorization. See 18 NYCRR §505.14(b)(2)(v) and 505.28(d)(5).

When the requirement to perform an IRP review is triggered, the MLTC plan must call the NYIA Operations Support Unit (OSU). NYIA will provide a designated, secure URL for the MLTC plan to submit the IRP review request. The MLTC plan must submit the request through the secure URL using the IRP Request Form and include all records and documents used to develop the POC other than the CHA and PO. The MLTC plan should submit the IRP review request once the applicant has agreed to the proposed plan of care and the MLTC Plan has submitted the enrollment to NYMC. It is expected that the IRP will finalize their recommendation within one week of assignment.

The regulations, as cited above, define the high needs threshold as more than 12 hours a day, on average of PCS and/or CDPAS. To determine the average, the MLTC plan may add up the total number of hours they intend to authorize over the course of a week for which services are needed, and then divide by 7. Using this method, a high-needs case is any case where the MLTC plan would authorize more than 84 hours in a given week. Hours covered by voluntary informal assistance, or other services or programs, do not count towards the high needs threshold and should not be included in the calculation. The MLTC plan may submit any documentation they wish to support the proposed POC.

The IRP is comprised of a panel of at least two clinicians, including a lead physician (MD or DO). It is charged with reviewing the most recent NYIA CHA and PO as well as the POC, and any additional documents or records that may be necessary to make a recommendation

about whether the proposed POC is adequate and reasonable to ensure the individual's health and safety in the home. This additional medical review is expected to primarily be a review of the noted records, although the IRP may determine that they need to speak to or evaluate the individual through a telehealth modality or speak to the individual's primary care practitioner and/or designated representative. The independent medical professional who conducted the IPP exam may not participate in the IRP. The IRP Recommendation must be signed by the lead physician. MLTC plans will be notified of completed IRP reviews by a phone call or secure email from the OSU.

The recommendation may suggest alternative services and supports or other changes to the POC but cannot specify the number or hours or the specific changes that must be made. The IRP Review Panel Report and Recommendation Form for High Needs Cases will be uploaded to the UAS-NY and must be considered by the MLTC plan prior to finalizing the POC and authorizing services.

In addition, an IRP review is not required if the member:

- is already in receipt of more than 12 hours a day, on average, of PCS and/or CDPAS as of the start date of the IRP
- has had an IRP review and services are maintained at this higher level of care through subsequent proposed POCs regardless of whether proposed by the current plan, new plan or LDSS
- has authorized hours above 12 previously and the hours are increased further, e.g., an increase from 16 to 24 hours.

See 18 NYCRR §505.14(b)(3)(xi)(b)

Coordinating Responsibilities

18 NYCRR §§505.14 and 505.28 require MLTC plans to coordinate with the NYIA to streamline the process for the MLTC plan applicant. This includes maintaining updated enrollment records in the UAS-NY so that future Reassessment Notices go out automatically from the NYIA when NYIA begins reassessment activities. If the NYIA requests the MLTC plan to confirm or update a member's record in the UAS-NY, the MLTC plan must respond within one business day and confirm or update the record within three business days. See 18 NYCRR §§505.14(b)(iv)(c) and 505.28(d)(4)(iii).

Discrepancies in CHA or PO

The Department has defined processes to address any discrepancies the MLTC plan finds in the NYIA CHA or PO. See 18 NYCRR §§505.14(b)(2)(iv)(d) and 505.28(d)(4)(iv). The process, which is called the CHA Variance request process, can be initiated when the MLTC plan identifies either one of two concerns: a mistake or a clinical disagreement.

A. Mistake

If the MLTC plan identifies a material mistake in the CHA or PO that can be confirmed by the submission of evidence, the MLTC plan must submit the NYIA CHA Variance Form to the NYIA OSU through a secure URL along with the evidence that a mistake has occurred and that the mistake is material. A mistake is an error of fact or observation that occurred when the assessment was performed that is not subject to the assessor's clinical judgment. A mistake is material when it would affect the amount, type, or duration of services authorized. When identifying the mistake, the MLTC plan must provide evidence of the mistake to NYIA and indicate how the mistake is material.

When the MLTC plan submits a material mistake via the CHA Variance Form, NYIA will promptly issue a corrected assessment or schedule a new assessment. If NYIA decides to schedule a new assessment, it will complete the new CHA within 10 days of the date it receives the notice from the MLTC plan.

B. Clinical Disagreement

After reviewing the NYIA CHA and PO, and the result of any MLTC plan observation of the individual, if the MLTC plan has a material disagreement regarding the outcome of the independent assessment, the MLTC plan may, using the same NYIA CHA Variance Form. submit a material disagreement. A disagreement occurs when the MLTC plan disputes a finding or conclusion in the CHA that is subject to the independent assessor's clinical judgment. A disagreement is material when it would affect the amount, type, or duration of services authorized. When submitting a disagreement to NYIA, the MLTC plan must provide the clinical rationale that forms the basis for the disagreement and indicate how the disagreement is material. Upon submission and confirmation of a material disagreement, NYIA will schedule and complete a new CHA within 10 days of the date it receives notice from the MLTC plan.

The MLTC plan is expected to submit a CHA Variance Form with due expediency upon discovery of a mistake or clinical disagreement. NYIA OSU staff will review the form and the evidence submitted in support of the contention that a mistake or clinical disagreement occurred. If NYIA cannot reach a decision on whether such variance occurred due to insufficient or incomplete information, OSU staff will reach out to the MLTC plan to obtain additional documentation.

The dispute record will be set to "disregard" if the information is not received by NYIA within 10 business days. The MLTC plan will be notified via secure email. Once the OSU staff verify that the application for the variance process is complete, it is referred to a Quality Assurance Nurse (QAN). The QAN will notify the MLTC plan of the determination by secure email sent via MOVEit.

C. Requirement of the CHA Variance process

When submitting a CHA Variance request to the NYIA, the MLTC plan must also inform the individual that a new CHA may be conducted because of this request. The MLTC plan may explain the reason for the new CHA. If the individual refuses the new CHA, the MLTC plan must use the CHA on file in developing the plan of care and authorization.

Penalties

DOH is authorized to impose monetary sanctions pursuant to NYS Public Health Law § 12 on MLTC plans for failure to coordinate with the NYIA in accordance with 18 NYCRR §505.14(b)(iv)(a)-(c) or if the MLTC plan engages in abusive behavior that affects the coordination of the assessment process. This includes any abuses with respect to the variance process intended to address mistakes or clinical disagreements.
DOH will monitor MLTC plan participation in coordinating assessments through the NYIA and assess violations in light of their own performance and against their peers, their history, the impact of any violations and evidence of good faith effort and past responsiveness in determining whether to levy such sanctions.

Questions

Questions on this policy can be sent to independent.assessor@health.ny.gov.