

Frequently Asked Questions Regarding the Serious Emotional Disturbance (SED) Target Population Children’s Waiver Eligibility Determination

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General

1. **Question:** When will the Licensed Practitioner of the Healing Arts (LPHA) Attestation policy be released?

Answer: The Department has issued an updated [Serious Emotional Disturbance \(SED\) LPHA Attestation Form](#) that identifies who can sign the form as well as an updated [Eligibility and Enrollment Policy](#) with additional guidance.

2. **Question:** Who is considered an LPHA?

Answer: An LPHA is an individual professional who is licensed under State law to independently diagnose, treat, or recommend treatment for individuals with a mental health condition. For purposes of the LPHA Attestation, the form may also be signed by a licensed practitioner who is being supervised by an LPHA with the ability to diagnose within their scope of practice. A full list of LPHAs is included on the [LPHA Attestation Form](#).

3. **Question:** Is this new process vastly different from the existing process for obtaining the LPHA attestation? Is the update here the explicit requirement of mental health connection?

Answer: The goal of the [webinar](#), guidance, and updated LPHA Attestation Form is to clarify the requirements for HCBS Level of Care for the SED Target Population. The clarification is specific to members who meet SED criteria and are at risk of admission to an institution, and that the LPHA who signs the form and determines risk of institutionalization be someone providing mental health services to the member, or who has completed a comprehensive assessment of the member. The requirement to ensure members who meet this level of care be referred for mental health services applies to the Health Home/C-YES Care Manager.

4. **Question:** What if the Children and Family Treatment and Support Services (CFTSS) Other Licensed Practitioner (OLP) provider is the same agency as the HHCM agency, and the same agency as the HCBS provider?

Answer: To comply with conflict-free care management requirements, the attesting LPHA cannot be a supervisor/director or leadership position associated with oversight of the HHCM program or Children and Youth Evaluation Services (C-YES). For additional guidance, please refer to the [Health Home Conflict Free Care Management Policy](#).

A CFTSS OLP provider can sign the LPHA form if they are currently treating the member or if the member was referred to the CFTSS OLP provider for a comprehensive evaluation.

5. **Question:** Can the State provide a list of C-SPOA locations and contact information throughout the State who are able to serve as a resource if there are any issues with obtaining an SED determination from a mental health provider?

Answer: A list of contacts can be accessed at https://www.clmhd.org/contact_local_mental_hygiene_departments/

6. **Question:** When is the updated LPHA Attestation Form required to be used?

Answer: The updated version of the Form is required to be used from the April 7, 2023 issuance of the [Clarification Guidance Regarding the Children’s Waiver HCBS SED Eligibility Determination Requirements](#) onward.

Multi-systems Involvement

7. **Question:** Is there a list of systems that provides examples of acceptable multi-systems involvement?

Answer: A child is considered to have multi-systems involvement when they are currently receiving mental health services, as well as services from another child-serving system, to support their need for complex services/supports to remain in the community. The child/youth must be in receipt of a clinically appropriate mental health service(s) designed to reduce the risk of institutionalization from a licensed mental health professional or a mental health professional practicing under the supervision of a licensed mental health professional. This does *not* include Family Peer Support, Youth Peer Support, or Psychosocial Rehabilitative Services. If the child/youth is receiving more than one mental health service, this would only count as involvement with one system. Additional information and examples of acceptable multi-system involvement is provided in the [Eligibility and Enrollment Policy](#).

8. **Question:** Can Managed Care Plans (MMCPs) request the supporting documentation for validating multi-systems involvement and/or the LPHA Attestation Form?

Answer: Yes. Documentation can be shared with the parties indicated on the applicable Health Homes Serving Children (HHSC) consent forms and in accordance with [HHSC Consent Form Guidance](#).

9. **Question:** Is a child/youth who is receiving HH care management and mental health counseling considered multi-systems involved?

Answer: No. HH care management is not considered a “system” for purposes of determining multi-system involvement. Systems that support the child’s/youth’s needs that put them at risk of institutionalization may be considered. All children/youth in the SED Target Population must be receiving mental health services. Multi-system involvement does not include systems/services that all children should receive, such as school or primary care services. Enrollment in a Medicaid Managed Care Plan, Health Homes/C-YES, HCBS, or other care coordination services. For more information on multi-systems involvement, please refer to the [Eligibility and Enrollment Policy](#).

10. **Question:** For children/youth who are receiving therapy with a private therapist outside of an Office of Mental Health (OMH) clinic or program such as Children and Family Treatment and Support Services (CFTSS), would that be considered a "system" for multi-systems involvement?

Answer: Yes, except if the provider is employed by a school. A private practice therapist would count as one mental health (MH) service. Please note that MH services must be provided through a licensed professional, which does not necessarily need to be an OMH-licensed provider. If the member is receiving more than one mental health service (CFTSS OLP, clinic, private therapist, clinical school-based behavioral health services in an OMH licensed satellite clinic, Article-29-I Voluntary Foster Care Agency (VFCA) mental health services, etc.), this would only count as mental health system involvement. School-based counseling provided as part of an IEP, does not count as mental health system involvement, but can be counted as a second system.

11. **Question:** Are services from the Office of People With Developmental Disabilities (OPWDD) taken into consideration for multi-systems involvement?

Answer: Yes. However, multi-system involvement is a risk factor for determining HCBS eligibility for children who meet SED criteria. If a child/youth is receiving services through OPWDD, CMs should determine whether DD/MF or DD/FC may be a more appropriate HCBS enrollment Target Population than SED. If the child does not have a co-occurring MF diagnosis and is not in foster care, the OPWDD Waiver should also be considered if more appropriate.

12. **Question:** If a child/youth has an Individualized Education Program (IEP) with counseling included, and is seeing a mental health professional as part of the services outlined in the IEP, is that considered multi-systems involved?

Answer: Counseling services provided as part of an IEP are related to school achievement, not clinical outcomes. Receipt of counseling through an IEP would count as one “system” towards multi-system involvement criteria. However, the child would also need to be in receipt of clinical mental health services outside of any mental health related services received through an IEP, to meet the mental health treatment criteria required for SED multi-system involvement.

13. **Question:** Do CFTSS and Outpatient MH count as two systems?

Answer: No. If the member is receiving more than one MH service (CFTSS OLP, clinic, school-based behavioral health services, etc.), this would only count as one system. Family Peer Support Services (FPSS), Youth Peer Support Services (YPSS), and Psychosocial Rehabilitation (PSR) are not considered clinical mental health treatment.

14. **Question:** Would a LCSW and a Psychiatric NP prescribing psychiatric medications be a good example of two systems for multi-systems involvement?

Answer: No. If the member is receiving more than one mental health service (CFTSS OLP, clinic, school-based satellite clinic mental health services, etc.), this would only count as one system.

15. **Question:** Would Psychosocial Rehabilitation Services and therapy count as two systems to qualify as multi-systems involvement?

Answer: No. CFTSS PSR services are not considered mental health treatment. Additionally, if the member is receiving more than one mental health service (CFTSS OLP, clinic, school-based satellite clinic mental health service, etc.), this would only count as one system.

16. **Question:** Are behavioral analyst (LBA) / graduate level behavioral analyst (BCBA) for behavioral health services considered as multi-systems involvement?

Answer: Receipt of Applied Behavior Analysis (ABA) services provided by an LBA/BCBA to address needs related to autism spectrum and related disorders can be considered one system, separate from the mental health system. ABA services are not considered mental health services and cannot be used to meet the mental health treatment criteria of multisystem involvement.

17. **Question:** If a child/youth is on the waitlist for a mental health service/CFTSS, does that count as multi-systems involvement?

Answer: In instances where a child/youth has a history of mental health services but is not currently engaged and a referral has been made, this service will not count toward multi-systems involvement. The child/youth needs to have a mental health service provider who is working with the child/youth and can attest that the child meets SED and risk criteria. For children/youth who are on a waitlist for mental health services, or who are experiencing other extenuating circumstances, and whom the evaluating LPHA believes are at risk of institutionalization, please contact DOH at BH.transition@health.ny.gov.

18. **Question:** If a member who was eligible under multi-systems involvement then loses one of the systems (e.g., no longer having an IEP or completing probation), can they continue to receive services until their next recertification?

Answer: Yes. The HCBS Eligibility Determination is effective for one year. The LPHA Attestation Form is needed for the annual recertification of LOC to demonstrate the child/youth continues to be at risk of institutionalization and meet the required clinical and risk factors to receive HCBS.

19. **Question:** Should we terminate HCBS if the child/youth is not attending MH treatment? What action(s) should be taken if the documentation is over 12 months?

Answer: As outlined in the [Clarification Guidance Regarding SED Determination Requirements](#), HHCMS/C-YES must help to connect members with mental health services within 60 days, if the member is not already receiving mental health services. At the time of the annual reassessment,

current documentation of the child's diagnosis, risk factors, and functional limitations must be obtained.

20. **Question:** Since some families/children have been overwhelmed with the multi-systems involvement approach, does the Department have recommendations on how to balance multi-systems involvement while avoiding out-of-care hospitalization?

Answer: Children who meet the eligibility criteria for waiver enrollment are at risk of institutionalization. Children who meet the SED criteria have a mental health diagnosis that results in moderate to severe functional impairments. Therefore, mental health services are clinically appropriate. The HHCM or C-YES staff assigned to the member must maintain regular contact with the child/youth/family throughout the HCBS Eligibility Determination process to help ensure the services add value to the child/youth's life without overburdening them.

21. **Question:** What should HHCMs do in instances where potentially eligible children/youth are not involved in mental health treatment because their parents/caregivers are resistant to their child/youth receiving mental health services?

Answer: HCBS alone is not designed nor intended to ameliorate mental health needs, and therefore, children/youth with serious mental health needs who are at risk of institutionalization must also be referred for treatment by a mental health professional. If the parents/caregivers are receptive to receipt of HCBS, HHCMs/C-YES are encouraged to discuss the need for and benefit of mental health services.

22. **Question:** If a member is considered multi-systems involved, is a letter from their clinician stating that they are exhibiting risky behaviors a sufficient/acceptable form of documentation to confirm need?

Answer: No. The [LPHA Attestation Form](#) must be completed and accompanied by supporting documentation of the child's/youth's risk of institutionalization, all of which must be maintained in the member's case record.

23. **Question:** Does Medication Management count as a "Mental Health Service"?

Answer: Medication Management may be provided as part of mental health treatment. However, medication management alone, is not considered a mental health service. To qualify for the Children's Waiver under the SED Target Population, a child/youth must be in receipt of a clinically appropriate mental health service(s) designed to reduce the risk of institutionalization from a licensed mental health professional or a mental health professional practicing under the supervision of a licensed mental health professional.

Eligibility

24. **Question:** Does the SED designation apply up to the age of 21? For Clinics, is it still up to their 19th birthday?

Answer: For the purposes of the Children's Waiver, the SED determination applies to youth up to age 21. Any child/youth under the age of 21 with significant mental health issues who has

been identified as having SED or Serious Mental Illness (SMI) are able to be considered for eligibility for HCBS under the Children's Waiver.

25. **Question:** For children/youth who have been in HCBS for a year and now no longer meet Risk Factors 1-3 and are not multi-systems involved, will they no longer be eligible for waiver services?

Answer: Yes. If children/youth do not meet the SED criteria, they are no longer eligible for HCBS. When it is time for re-assessment, this should be discussed with the family to plan for disenrollment. If the family requests to continue waiver services, the HHCM/C-YES completes the HCBS Eligibility Determination and provides a Notice of Decision (NOD) to the child/youth/family.

26. **Question:** Is the LPHA required to conduct an evaluation/assessment to determine the risk factors required for the SED Target Population?

Answer: It is likely that an LPHA who is actively treating the child/youth has already conducted an evaluation/assessment through the course of their work with the child/youth, and are only required to complete the required fields on the LPHA Attestation Form. Clinicians who have not previously worked with the child/youth but have been engaged for the purposes of conducting an assessment of the child's condition for SED and risk of institutionalization must complete a comprehensive evaluation.

27. **Question:** If a child/youth has already been determined to meet SED criteria but then loses one of the systems for multi-system involvement, will they lose eligibility immediately upon losing part of the multi-system involvement or not until the annual redetermination?

Answer: In this instance, the child/youth is not required to be disenrolled from the Children's Waiver, as the HCBS Eligibility Determination is valid for one year. If a child/youth is no longer in receipt of mental health services, the care manager should assist with referring/securing mental health services. To meet Waiver eligibility criteria, children/youth must also be at risk of institutionalization. If the child/youth is not multi-system involved at the time of re-assessment, does not meet SED criteria, or is not at risk of institutionalization as determined by an LPHA, then the child/youth would not meet eligibility criteria and should be disenrolled.

28. **Question:** Can a child under the age of 5 qualify for SED Determination?

Answer: It is rare and uncommon for children under the age of 5 to be determined SED and meet risk factors for HCBS enrollment.

29. **Question:** Is the Uniform Assessment System (UAS) re-authorization LOC due at 11 months or 12 months?

Answer: An HCBS eligibility determination is valid for 365 days. If the child/youth HCBS eligibility determination period ends and a new assessment is not completed, the child must be disenrolled from the waiver and the HHCM/C-YES must send a Notice of Decision (NOD) for Discontinuance in the New York State 1915(c) Children's Waiver (DOH588) within five business

days of the end of the eligibility period. HHCMs are required to start the assessment (collection of supporting documentation) two months prior to the reauthorization date.

30. **Question:** If the LPHA Attestation Form was recently updated as part of the annual re-eligibility process, does the Department still require another evaluation?

Answer: No. The LPHA Attestation Form is valid for one year.

31. **Question:** How are children getting the K3 code when they have not met the criteria?

Answer: The K3 code identifies children who meet HCBS Eligibility Criteria under the SED Target Population, including SED criteria and risk of institutionalization. If a child has this code on their record and it is believed this is not accurate, please contact NYS DOH capacity management at capacitymanagement@health.ny.gov.

32. **Question:** Our experience has been that because clinicians are not being paid to complete the LPHA Attestation Form, they are apprehensive to do so or to complete in a timely manner. Does the State have any plans to reimburse for the time spent completing this form?

Answer: Medicaid covers a variety of clinical mental health services in a variety of settings. If the child/youth is receiving ongoing mental health treatment in which an evaluation and diagnosis has already been made and the licensed professional believes the child/youth needs HCBS to assist with remaining in the community, then completing the [LPHA Attestation Form](#) is part of their assessment and clinical services.

Documentation

33. **Question:** Does the HHCM or HCBS provider need to maintain documentation of the LPHA Attestation Form?

Answer: Yes. The HHCM/C-YES must retain the LPHA Attestation Form and supporting documentation in the child's record. While the HCBS provider may request a copy of the LPHA Attestation Form, they do not need to maintain this documentation in their case file, as this is the responsibility of the HHCM/C-YES.

34. **Question:** What documentation is required to support the child/youth's diagnosis (e.g., treatment plan, evaluation, clinic letter), and does it need to be within one year of the completion of the LPHA Attestation Form?

Answer: Documentation is required that contains the diagnosis, date of diagnosis, and name/credentials of the clinician making the diagnosis. Additionally, documentation of the SED determination that the child/youth has experienced moderate to severe functional limitations due to emotional disturbance over the past 12 months on a continuous or intermittent basis is required. The diagnosis and SED determination is required within one year of completion of the LPHA Attestation Form and the HCBS Eligibility Determination.

35. **Question:** For members who have been enrolled in HCBS, but the LPHA Attestation Form is missing, what is the correct direction to tell the CMAs?

Answer: As outlined in the [Clarification Guidance Regarding SED Determination Requirements](#), for children/youth who are currently enrolled in HCBS but for whom the LPHA Attestation Form and/or SED Risk Factor documentation is missing from the record, the HHCM/C-YES is out of compliance with HCBS Children's Waiver requirements. The HHCM/C-YES must immediately contact the Lead HH for coordination and must ensure that the member is currently connected to mental health services. HHCMs/C-YES must help to connect SED members with mental health services within 60 days, if the member is not already receiving mental health services.

36. **Question:** What does it mean to be "connected" to a mental health service?

Answer: The child/youth must be actively receiving a mental health service (CFTSS OLP, clinic, private therapist, clinical school-based behavioral health services in an OMH licensed satellite clinic, Article-29-I VFCA mental health services, etc.). MH services must be provided through a licensed professional, but not necessarily through an OMH-licensed provider. For more information, please refer to the [Children's Home and Community Based Services \(HCBS\) Waiver Enrollment Policy \(ny.gov\)](#)

37. **Question:** What is the appropriate documentation to support Child Protective Services (CPS) involvement?

Answer: Any third-party documentation that demonstrates CPS engagement is acceptable.

38. **Question:** Should cases from C-YES be accompanied with documentation (i.e., evidence of recent hospitalization) for the LPHA Attestation Forms?

Answer: Yes. The requirements of the [LPHA Attestation Form](#) are applicable to both HHCMs and C-YES.

39. **Question:** Is record of an inpatient stay on PSYCKES appropriate for documentation?

Answer: Yes, since this demonstrates that the child/youth was recently hospitalized. However, a discharge summary from the hospital itself would be preferred, as this would verify the child/youth's condition and diagnosis.

40. **Question:** On the LPHA Attestation Form, does the LPHA need to select the Risk Factors they are attesting to?

Answer: The LPHA must select and attest to each element of the [LPHA Attestation Form](#). The LPHA Attestation Form contains a narrative portion to provide an explanation of the determination that the child/youth is at risk for hospitalization/ institutionalization. Supporting documentation for the SED determination and all risks factors must be maintained in the child's record by the HHCM/C-YES.

41. **Question:** Is the LPHA due every time an annual HCBS Eligibility Determination is due?

Answer: When completing the HCBS assessment prior to the annual reassessment deadline due

to a significant life event, it is best practice to obtain a new LPHA attestation in all cases, since a significant life event may have an impact on the child's SED determination. The redetermination will be valid for one year, but in all cases, an LPHA attestation is only valid for 12 months. Care managers must initiate the annual HCBS redetermination two months prior to the eligibility expiration date. The redetermination requires an updated LPHA attestation; the LPHA attestation that was used for the previous assessment cannot be used to renew eligibility. Further details are outlined in the Eligibility and Enrollment Policy.

42. **Question:** What is the process after the LPHA has completed the LPHA Attestation Form?

Answer: If supporting documentation from the LPHA indicates an SED determination and the need for HCBS, then the HHCM:

- retains the completed LPHA Attestation Form and all supporting documentation in the member's case file,
- completes the HCBS Eligibility Determination within the UAS, and
- completes the CANS functional assessment to determine if the child/youth is eligible.

43. **Question:** How often does the LPHA Attestation Form need to be signed?

Answer: The SED determination is valid for one year (12 months). Children must be re-evaluated annually (within 365 days) for continued Health Home enrollment and for the annual HCBS Eligibility Determination. The SED determination must be made by an LPHA based on [OMH SED determination criteria](#). The HHCM/C-YES must maintain documentation of the SED determination within the child's/youth's case record. For more information on the LPHA Attestation Form, please refer to the [Clarification Guidance Regarding SED Determination Requirements](#).

44. **Question:** Do both the HH SED Determination Form and the LPHA Attestation Form need to be submitted?

Answer: Yes, these are different forms and requirements. The HH SED Determination Form documents that the child/youth meets SED criteria for Health Home enrollment, and the [LPHA Attestation Form](#) documents the child's/youth's diagnosis, SED Determination, Risk Factors, and Risk of Institutionalization for purposes of HCBS Eligibility Determination.

45. **Question:** Can an MMCP authorization be used in place of the LPHA Authorization Form?

Answer: No. The LPHA Attestation Form is a required to verify that children/youth meet criteria to be eligible for HCBS. The [HCBS Authorization and Care Manager Notification Form](#) is completed after the child/youth is determined eligible for HCBS and referred to an HCBS provider.

46. **Question:** Are CFTSS OLP or a Social Worker from an OMH/outpatient clinic allowed to sign the LPHA Authorization Form?

Answer: Yes, provided that the OLP/OMH/outpatient clinic provider meets conflict-free requirements and has an active license or is under the supervision of an LPHA who has the ability to diagnose within their scope of practice and meets one of the following criteria:

- i. Actively working with the child/youth, or
- ii. Has previously worked with the child/youth within the past year (12 months), or
- iii. Has completed a comprehensive evaluation of the child/youth to verify diagnoses and determine the child/youth meets SED criteria

47. **Question:** Can a therapist supervisor sign the LPHA Attestation Form?

Answer: Yes, provided that the therapist meets conflict-free requirements and the following criteria:

- i. Actively working with the child/youth, or
- ii. Has previously worked with the child/youth within the past year (12 months), or
- iii. Has completed a comprehensive evaluation of the child/youth to verify diagnoses and determine the child/youth meets SED criteria

48. **Question:** Can the child/youth's Primary Care Physician (PCP) sign the LPHA form, including PCPs who prescribe medications for MH diagnoses?

Answer: Yes, provided that the PCP meets the following criteria **AND** that the child/youth is also in receipt of mental health services to address the MH diagnosis:

- 1. Actively working with the child/youth, or
- 2. Has previously worked with the child/youth within the past year (12 months), or
- 3. Has completed a comprehensive evaluation of the child/youth to verify diagnoses and determine the child/youth meets SED criteria

As a reminder, PCP services do not count toward multi-system involvement. Please note that while the child's primary care physician/pediatrician (Physicians, Physician Assistants, and Nurse Practitioners) are all allowable LPHAs to sign the HCBS Attestation Form, it is strongly recommended that the HHCM seek an attestation from the child/family's existing mental health practitioner. If the child's existing mental health practitioner does not meet LPHA qualifications, the PCP can complete the form, if they can adequately attest to the severity of the child's mental health needs. However, if the child is not connected with mental health services and/or if a child's needs can be sufficiently met through their PCP, it is extremely unlikely that the child/youth would meet SED criteria or be at risk of institutionalization as a result of SED.

Foster Care

49. **Question:** Is foster care taken into consideration for multi-systems involvement?

Answer: Yes, child welfare (including foster care) can be considered in determining multi-systems involvement.

50. **Question:** If a client is in foster care and has an IEP, but is not in therapy, will they no longer qualify under multi-systems involvement?

Answer: If the child is receiving mental health services through an Article 29-I VFCA, this would be considered mental health system involvement. Foster care involvement would be considered the second "system. If the child is actively in receipt of services as the result of an established, IEP, this may also count as another "system" towards multi-system involvement criteria;

however, it cannot be used to meet the involvement in mental health services requirement. The child must actively be in receipt of clinical mental health services (outside of any mental health related services included in an IEP) in order to meet the criteria for enrollment in the waiver under the SED Target Population.

51. **Question:** Is preventing foster care also a consideration for HCBS eligibility, in addition to preventing hospitalization or institutional setting?

Answer: The aim of HCBS is to prevent admission to an institutional level of care, which includes residential foster care programs.

52. **Question:** Does out-of-home placement include placement in kinship care?

Answer: Yes

53. **Question:** Do preventive services qualify as child welfare systems?

Answer: Yes.

Education System

54. **Question:** Does a child/youth with an IEP or 504 plan meet the multi-systems involvement criteria?

Answer: Having an active IEP or 504 plan and being in receipt of services through the school district counts towards one “system” required to meet multi-system involvement criteria. To meet SED multi-system involvement requirements, the child must also be actively in receipt of clinical mental health services (in addition to any mental health related services received through the IEP/504 Plan, if applicable).

55. **Question:** Does a child/youth receiving Early Intervention (EI) services with an IFSP meet criteria for multi-systems involved?

Answer: Yes; if the child/youth is also in receipt of mental health services.

56. **Question:** If a member is attending an OMH school can this be used as affiliation for mental health services?

Answer: If the child/youth is receiving mental health services at the school, then this would be considered receipt of mental health services for the purposes of multi-system involvement and would count as one “system”. Attending the school alone is not sufficient to meet the multi-system criteria.