

Policy Title: **Children's Home and Community Based Services (HCBS) Waiver Enrollment Policy**

Policy number: **CW0005**

Effective date: **April 1, 2021**

Last revised:

Applicable to: This policy pertains to all children and youth receiving Home and Community Based Services (HCBS) under the 1915(c) Children's Waiver. The Health Home Care Managers (HHCMs), Children and Youth Evaluation Services (C-YES), and HCBS providers must ensure that HCBS is provided appropriately according to the Children's Waiver.

Purpose

The purpose of this policy is to outline the steps that HHCMs/C-YES must take to determine eligibility and enroll eligible children/youth in Children's Waiver and the services.

Scope

HHCMs/C-YES are responsible for conducting HCBS Level of Care (LOC) Eligibility Determinations necessary for participation in the Children's Waiver. HHCMs/C-YES will complete different steps, depending on if:

- The child/youth is newly referred to HCBS,
- The children/youth are actively enrolled in Medicaid,
- The child/youth is already enrolled in Health Homes Serving Children (HHSC), or
- The child/youth is being re-assessed for HCBS eligibility.

The HHCM/C-YES must maintain regular contact with the child/youth/family throughout the HCBS LOC Eligibility Determination process.

Procedure

Children/youth who are eligible and appropriate for HCBS must have a physical health diagnosis, developmental disability, and/or mental health diagnosis with related significant needs that place them at risk of hospitalization or institutionalization, or are in need of supports to return safely home and to their community from an institutional level of care.

To be eligible for the Children's Waiver, children/youth must be under 21 years of age, eligible for Medicaid (either through Community budgeting or Family of One budgeting) and meet the HCBS/LOC eligibility criteria for 1) target population, 2) risk factors, and 3) functional limitations. The HCBS/LOC eligibility determination is based upon a decision tree which the first criteria needs to be met to move to the next criteria. All three criteria are separate and distinct and need to be met to become eligible.

Target Populations

To be eligible for the Children's Waiver, children/youth must meet one of the four Target Populations:

- Serious Emotional Disturbance (SED)
- Medically Fragile (MF)
- Developmental Disability (DD) and Medically Fragile (MF)
- Developmental Disability (DD) and Foster Care

Each Target Population has specific outlined diagnoses, conditions, and/or requirements that must be obtained and documented within the child/youth's case record prior to being able to

conduct the HCBS/LOC Eligibility Determination. Eligibility determinations for the Developmental Disability (DD) populations are determined in collaboration with the Office for People With Developmental Disabilities, Developmental Disabilities Regional Offices (DDROs). Children/youth may be eligible for more than one Target Population. The HHCM/C-YES must determine which Target Population to assess for based upon the information provided by the child/youth/family and other involved professional(s).

Each Target Population has specific criteria, risk factors, and functional criteria, which are described in more detail in Appendix A.

Please note:

For children/youth who have previously met and enrolled in the DD/MF or DD/Foster Care target populations, the HHCM/C-YES should continue to work with OPWDD DDROs annually to continue eligibility within these Target Populations, whenever possible.

DD/Foster Care:

- To be eligible for the Children's Waiver HCBS/LOC Eligibility Determination under the Target Population of DD/Foster Care, the OPWDD DDROs must complete the ICF-IDD Level of Care Eligibility Determination (LCED). Then the DDROs will complete the HCBS/LOC Eligibility Determination within the UAS which the HHCM/C-YES will confirm for enrollment/continuous enrollment in the Children's Waivers.

DD/MF:

- To be eligible for the Children's Waiver HCBS/LOC Eligibility Determination under the Target Population of DD/MF, the OPWDD DDROs must complete the ICF-IDD Level of Care Eligibility Determination (LCED). When the HHCM/C-YES has the ICF-IDD LCED from OPWDD for the Children's Waiver annual HCBS/LOC Eligibility Determination, then the HHCM/C-YES will complete the HCBS/LOC Eligibility Determination within the UAS.
 - If the HHCM/C-YES is still awaiting the ICF-IDD LCED from OPWDD and the Children's Waiver annual HCBS/LOC Eligibility Determination is due, then the HHCM/C-YES should go through the MF Target Population to be timely with the annual HCBS/LOC Eligibility Determination. The HHCM/C-YES will continue to work with OPWDD DDROs to complete the ICF-IDD LCED.
 - The annual HCBS/LOC Eligibility Determination and the ICF-IDD LCED may not be due at the same time.
- If OPWDD has determined ICF-IDD LCED for a child/youth, it is encouraged that this LCED is maintained annually with OPWDD. Should the child/youth need to transfer to OPWDD's services or the OPWDD Comprehensive Waiver, the child/youth can do so without difficulty. The annual OPWDD LCED maintenance is less difficult/time consuming than when there has been a lapse in eligibility. If the child/youth's OPWDD LCED has lapsed and they need OPWDD services, the child/youth must start all over to obtain OPWDD ICF-IDD LCED.
- Additionally, it is absolutely necessary that children/youth at the age of 14 years old and above annually maintain their OPWDD LCED eligibility to ensure proper access to adult HCBS services (at age 21) provided under the OPWDD Comprehensive HCBS Waiver and other State Plan clinic services.
 - If the child/youth is **not** found HCBS/LOC eligible for the Children's Waiver under the MF target population, but may have a DD condition, then the child/youth should be referred to OPWDD for the ICF-IDD LCED for determination of DD eligibility and possible enrollment in the OPWDD Comprehensive Waiver.

Risk Factors

The Risk Factors items vary by Target Population and demonstrate the high-level need of the individual to obtain HCBS. The Risk Factors by Target Population:

Serious Emotional Disturbance (SED):

- Request documentation of high need level of service by hospitalization and/or multi-system involvement **AND**
- Require a determination by a Licensed Practitioner of the Healing Arts (LPHA) who has the ability to diagnose within their scope of practice or a licensed practitioner supervised by the LPHA to attest that the child/youth, in the absence of HCBS, is at risk of institutionalization (i.e. hospitalization). This form may not be needed during HCBS/LOC re-assessment.

Developmental Disability and Medically Fragile Medically Fragile (MF) (DD/MF):

- Require a determination by a Licensed Practitioner of the Healing Arts (LPHA) who has the ability to diagnose within their scope of practice or a licensed practitioner supervised by the LPHA to attest that the child/youth, in the absence of HCBS, is at risk of institutionalization (i.e. hospitalization). This form may not be needed during HCBS/LOC re-assessment.

Developmental Disability (DD) and Foster Care:

- Request documentation of foster care placement or previously in foster care when enrolled in HCBS, without a break in HCBS

Once the Target Population and Risk Factors information has been obtained and documented, then the Functional Criteria must be established to finalize the HCBS/LOC Eligibility Determination.

Functional Criteria

Functional criteria are a subset of questions located within the CANS-NY tool where the responses are driven by an algorithm that, together with risk factors, determine whether there is a need for HCBS based on the child/youth's present level of functioning. The HHCM/C-YES must provide answers to the functional criteria questions in the HCBS/LOC tool specific to the child/youth's Target Population. When completing the HCBS/LOC eligibility determination, the HHCM/C-YES must obtain/link documentation to support their responses/ratings.

For the Target Population of *Developmental Disability (DD) and Foster Care*, the functional criteria are met by OPWDD determination and does not have a separate subset of CANS-NY questions.

HCBS LOC Eligibility Determination

To begin the Children's Waiver enrollment process, the HHCM/C-YES must first conduct the HCBS/LOC Eligibility Determination to assess whether the child/youth is eligible for HCBS based on meeting target population, risk factors, and functional limitation criteria. The HCBS /LOC Eligibility Determination is housed within the Uniform Assessment System (UAS) Child and Adolescent Needs and Strengths – NY (CANS-NY) assessment.

The HCBS/LOC Eligibility Determination is an annual (12 month) determination. Once the HCBS/LOC Eligibility Determination outcome is complete within the UAS, it remains active for one year from the date of signature and finalized date, with these two exceptions:

1. Significant life event

2. In the event that a child/youth that has been determined HCBS/LOC eligible and initially declines HCBS, but later requests HCBS, or if a child has been determined HCBS/LOC eligible, but has been placed on a waitlist due to capacity limitations of the Children's Waiver. A new HCBS/LOC Eligibility Determination is required if an approved/active HCBS/LOC Eligibility Determination is not utilized within six months from the date of the HCBS/LOC Eligibility Determination outcomes.

If a child/youth is found HCBS/LOC ineligible and there is a change in circumstances, the child/youth can be reassessed at any time, as there is no wait period between assessments.

For children/youth with active Medicaid:

- Children/youth with active Medicaid are directed to Health Homes, where the HHCM will perform the HCBS/LOC Eligibility Determination
- If the child opts out of Health Home enrollment, C-YES will perform the HCBS/LOC Eligibility Determination
- HHCM/C-YES works with LDSS if there is a concern that the child/youth's Medicaid may lapse or there is a need for Family of One budgeting
- Once the HCBS/LOC Outcomes Finalization is signed within the UAS, NYSDOH Capacity Management will receive a system notification that an HCBS/LOC Eligibility Determination is complete and will assign the child/youth waiver slot or place them on a waitlist if no waiver slots are available
- If a waiver slot is available, the NYSDOH Capacity Management Team completes a cover letter for NYSDOH eligibility staff to enter the appropriate eligibility Recipient Restriction/Exemption (R/RE) codes of K-codes in the eMedNY system

For children/youth without active Medicaid:

- The HCBS/LOC Eligibility Determination must be performed by C-YES
- If determined HCBS eligible, C-YES will work with the family to complete a Medicaid application (and Supplement A for a certified disabled child/youth or a child/youth in a Medically Fragile diagnostic group), including supporting documentation and any associated disability forms for a child/youth in a Medically Fragile diagnostic group
- Once the HCBS/LOC Assessment is Finalized, NYSDOH Capacity Management will receive a system notification that an HCBS/LOC Eligibility Determination is complete and if the child/youth does not already have Medicaid, a waiver slot will be placed on hold pending Medicaid or if no slots available, the child will be placed on a waitlist
- C-YES will send the Medicaid application with the HCBS Eligibility Cover Letter to the LDSS
- LDSS will review the Medicaid application and determine Community Medicaid eligibility or Family of One Medicaid eligibility. If the child/youth is found Medicaid eligible, the LDSS will enter appropriate eligibility Recipient Restriction/Exemption (R/RE) codes of K-codes in the eMedNY system
- Once Medicaid enrolled, C-YES will assist in the selection of and referral to a Health Home Serving Children (HHSC) if child/youth is not already enrolled in a Health Home

Verification and Notification of HCBS Eligibility and Enrollment:

When the child/youth is found HCBS/LOC eligible and the HHCM/C-YES has confirmed that the child/youth/family wants to continue with HCBS, then it is necessary for the child/youth's Medicaid member file to have the proper R/RE code with the K-codes that indicates HCBS eligibility and enrollment by target population (see Appendix B for the list of K-codes). The R/RE K-codes are established by New York State Department of Health (NYS DOH) Capacity Management.

NYS DOH Capacity Management manages the HCBS slots for the Children's Waiver according to the 1915(c) Amendment, which dictates the number of slots available per year.

When a child/youth has been determined to be eligible for the Children's Waiver based on the HCBS/LOC Eligibility Determination, the Capacity Management Team at NYSDOH will receive the UAS report of all completed HCBS/LOC Eligibility Determinations. If capacity is available, Capacity Management will assign the appropriate eligibility R/RE K-code to the child/youth's Medicaid file.

If there is no capacity for a child/youth to participate in the Children's Waiver, the child/youth will be placed on a waitlist until capacity becomes available.

- If a child/youth enrolled in the Children's Waiver loses Medicaid coverage, the NYSDOH Capacity Management Team will not release that slot to a new child/youth for 90 days, so that the HHCM/C-YES can assist the child/youth to re-establish Medicaid eligibility if possible. If the child/youth regains Medicaid coverage within the 90 days, the child/youth can resume participation in the Children's Waiver immediately.
- Subsequently, if the child/youth enrolled in the Children's Waiver becomes institutionalized (hospitalization, nursing home, residential placement, etc.), the child/youth can remain in an ineligible level of care for up to 90 days while maintaining HCBS enrollment. If beyond 90 days, the child/youth must be discharged and Capacity Management notified to remove the R/RE K-codes.

Detailed information on how and when to communicate with Capacity Management is located in the [Communication with NYS DOH Capacity Management for the Children's Waiver](#) document.

Notice of Decision

Upon signing and finalizing the HCBS/LOC Eligibility Determination within the UAS, the HHCM/C-YES will be presented with an outcome confirming that the child/youth is HCBS/LOC eligible or ineligible for the identified Target Population. HHCMs/C-YES must notify the child/youth of the enrollment decision within 3 – 5 business days of determining the eligibility outcome.

If the child/youth is determined eligible and there is a Children's Waiver slot available per Capacity Management, the HHCM/C-YES will send the child/youth a [Notice of Decision \(NOD\) Notice of Decision Enrollment \(DOH5287\) form](#). The NOD will document the outcome of the HCBS/LOC Eligibility Determination and provide information on State Fair Hearing rights available to the child/family if they do not agree with the HCBS/LOC Eligibility Determination.

If the child/youth is determined HCBS/LOC eligible but no slot is available per Capacity Management, the child/family will still receive a NOD from the HHCM/C-YES. Once a slot becomes available, DOH Capacity Management will notify the HHCM/C-YES and the HHCM/C-YES will issue an updated letter to the child/family, indicating a slot is available.

If the child/youth is not found to be HCBS eligible, the HHCM/C-YES will send the NOD form to the child/family and will work with the child/family to connect to other needed services, as appropriate. The same form - [Notice of Decision \(NOD\) Notice of Decision Enrollment \(DOH5287\)](#) - is sent for both enrollment and denial of enrollment.

Participant Rights and Choice

Prior to participating in Children's Waiver services, the HHCM/C-YES must review the *Children's Waiver Participant Rights and Responsibilities* document with the child/youth/family and confirm the child/youth understands their choices by reviewing and completing the [Freedom of Choice \(DOH 5276\)](#) form – a signed version should be kept in the child/youth's record and the family should receive a copy for their records.

The HHCM/C-YES should also obtain appropriate consent(s) from the child/youth/family. If the child/youth is already enrolled in a Health Home, the HHCM should review and appropriately update the consent form.

Role of the Plan of Care (POC)

After being determined HCBS/LOC eligible and enrolled in the Waiver, the HHCM/C-YES must meet with the child/youth and their family and their identified care team to discuss the strengths and needs of the child/youth, using person-centered planning guidelines/principles and develop the Plan of Care (POC). The POC development is based upon the assessment of needs which is determined through interaction with the child/youth and their family, and should align with information from the HCBS/LOC Eligibility Determination. The POC must outline at least one HCBS monthly to maintain HCBS eligibility. Once an initial POC has been developed following the guidelines in the [Health Home Plan of Care Policy](#), the HHCM/C-YES will work with the child/youth and their family to make referrals for appropriate HCBS. The child/youth must begin receiving HCBS within 45 days of the POC being finalized¹. Further information regarding the Plan of Care and HCBS referral process can be located in the [Children's Home and Community Based Services \(HCBS\) Plan of Care \(POC\) Workflow Policy](#).

¹ Since the POC is an evolving document, in this case, it is considered "finalized" when it has been signed by the participant or their representative.

Appendix A – Target Populations and Respective Risk Factors

I. Serious Emotional Disturbance (SED)

The following **criteria** must all be present for the SED Target Population:

- Child/youth must be under age 21
- Child/youth has been diagnosed with a designated mental illness according to the most recent Diagnostic and Statistical Manual of Mental Disorders (DSM) (a comprehensive list of the designated mental illnesses is included on the [LPHA Attestation form](#))
- Child/youth has experienced functional limitations due to emotional disturbance over the past 12 months on a continuous or intermittent basis, as determined by a Licensed Mental Health Professional; the functional limitations **must** be moderate in at least two of the following areas or severe in at least one of the following areas:
 - Ability to care for self (e.g. personal hygiene; obtaining/eating food; dressing; avoiding injuries); **or**
 - Family life (e.g. capacity to live in a family or family-like environment; relationships with parents or substitute parents, siblings, and other relatives; behavior in family setting); **or**
 - Social relationships (e.g. establishing and maintaining friendships; interpersonal interactions with peers, neighbors, and other adults; social skills; compliance with social norms; play and appropriate use of leisure time); **or**
 - Self-direction/self-control (e.g. ability to sustain focused attention for a long enough period of time to permit completion of age-appropriate tasks; behavioral self-control; appropriate judgment and value systems; decision-making ability); **or**
 - Ability to learn (e.g. school achievement and attendance; receptive and expressive language; relationships with teachers; behavior in school)

Once the Target Population criteria information has been obtained and documented, the **risk factors** must be noted with the supporting documentation obtained. SED risk factors include:

- The child/youth is currently in an out-of-home placement, including psychiatric hospital
- The child/youth has been in an out-of-home placement, including psychiatric hospital within the past six months
- The child/youth has applied for an out-of-home placement, including placement in psychiatric hospital within the past six months
- The child/youth currently is multi-system involved (i.e. two or more systems) and needs complex services/supports to remain successful in the community

A Licensed Practitioner of Healing Arts (LPHA) who has the ability to diagnose within his or her scope of practice under state law has determined in writing that the child/youth, in the absence of HCBS, is at risk of treatment in a more restrictive setting. The LPHA has submitted written clinical documentation to support the determination.

After the Target Population and Risk Factor(s) have been determined, the **functional limitation** must be determined by answering a subset of CANS-NY questions within the UAS.

II. Medically Fragile (MF)

The following **criteria** must all be present for the MF Target Population:

- Child/youth must be under age 21
- Child/youth must have a documented physical disability using one of the following protocols:
 - Current SSI Certification **or**

- [Disability Review Team Certificate – DOH-5144](#) or
- Completion of the following forms, which need to be completed yearly for the annual redetermination of HCBS/LOC Eligibility: [Child Medical Disability Report \(DOH 5151\)](#), [Questionnaire of School Performance \(DOH 5152\)](#), [Description of Child's Activities \(DOH-5153\)](#)

Once the Target Population criteria information has been obtained and documented, the **risk factors** must be noted with the supporting documentation obtained. The only risk factor for the MF population is LPHA determination whether the child/youth, in the absence of HCBS, is at risk of placement in a more restrictive setting, with submitted written clinical documentation to support the determination.

After the Target Population and Risk Factor(s) have been determined, the **functional limitation** must be determined by answering a subset of CANS-NY questions within the UAS.

III. Developmental Disability (DD) and Medically Fragile (MF)

The Office for People With Developmental Disabilities (OPWDD) DDROs in collaboration with the HHCM/C-YES will complete the HCBS/LOC Eligibility Determination for children/youth that would meet DD MF and DD Foster Care Target Populations, including both new children/youth and annual re-determinations. The HHCM/C-YES will work with the family and other involved providers to gather the necessary documentation needed for the child/youth's record and HCBS/LOC Eligibility Determination. Further information regarding this process is located in the [OPWDD DDRO Manual Eligibility Process for Children's Waiver](#).

The following **criteria** must all be present for the DD/MF Target Population:

- Child/youth must be under age 21
- Child/youth has a developmental disability as defined by OPWDD which meets one of the criteria a-c as well as criteria d, e, and f:
 - a) is attributable to intellectual disability, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, Prader-Willi syndrome or autism; **or**
 - b) is attributable to any other condition of a child/youth found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior of a child/youth with intellectual disability or requires treatment and services similar to those required for such children; **or**
 - c) is attributable to dyslexia resulting from a disability described above; **and**
 - d) originates before such child/youth attains age 22; **and**
 - e) has continued or can be expected to continue indefinitely; **and**
 - f) constitutes a substantial handicap to such child/youth's ability to function normally in society

Once the Target Population criteria information has been obtained and documented, the **risk factors** must be noted with the supporting documentation obtained. The only risk factor for the DD/MF population is LPHA determination whether the child/youth, in the absence of HCBS, is at risk of placement in a more restrictive setting, with submitted written clinical documentation to support the determination.

After the Target Population and Risk Factor(s) have been determined, the **functional limitation** must be determined by answering a subset of CANS-NY questions within the UAS.

IV. Developmental Disability (DD) and Foster Care

The Office for People With Developmental Disabilities (OPWDD) DDROs in collaboration with the HHCM/C-YES will complete the HCBS/LOC Eligibility Determination for children/youth that would meet DD MF and DD Foster Care Target Populations, including both new children/youth and annual re-determinations. The HHCM/C-YES will work with the family and other involved providers to gather the necessary documentation needed for the child/youth's record and HCBS/LOC Eligibility Determination. Further information regarding this process is located in the [OPWDD DDRO Manual Eligibility Process for Children's Waiver](#).

The following **criteria** must all be present for the DD/Foster Care Target Population:

- Child/youth must be under age 21
- Child/youth has a developmental disability as defined by OPWDD which meets one of the criteria a-c as well as criteria d, e, and f:
 - g) is attributable to intellectual disability, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, Prader-Willi syndrome or autism; **or**
 - h) is attributable to any other condition of a child/youth found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior of a child/youth with intellectual disability or requires treatment and services similar to those required for such children; **or**
 - i) is attributable to dyslexia resulting from a disability described above; **and**
 - j) originates before such child/youth attains age 22; **and**
 - k) has continued or can be expected to continue indefinitely; **and**
 - l) constitutes a substantial handicap to such child/youth's ability to function normally in society

Once the Target Population criteria information has been obtained and documented, the **risk factors** must be noted with the supporting documentation obtained. DD/Foster Care risk factors include:

- The child/youth is currently in foster care placement **or**
- The child/youth was previously in foster care when enrolled in HCBS, without a break in HCBS

For the Target Population of *Developmental Disability (DD) and Foster Care*, the functional criteria are met by OPWDD determination and does not have a separate subset of CANS-NY questions.

Appendix B – R/RE K-codes for the Children’s Waiver

RR/E code	R/RE Code Description
K1	HCBS LOC
K2	HCBS LON (not in use currently)
K3	HCBS Serious Emotional Disturbance (SED)
K4	HCBS Medically Fragile (MF)
K5	HCBS Developmentally Disabled and Foster Care (DD & FC)
K6	HCBS Developmentally Disabled and Medically Fragile (DD & MF)
K7	HCBS Complex Trauma (not in use currently)
K9	Foster Care
KK	Family of One
A1	Children’s Health Home: indicates the member is in outreach or enrolled with a Care Management Agency (CMA)
A2	Children’s Health Home: indicates the member is in outreach or enrolled with a Health Home (HH)