



Bulletin

NUMBER

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DATE

August 14, 2014

OF INTEREST TO

County Directors

Social Services Supervisors

Public Health Supervisors

Financial Worker
Supervisors

Tribal Health Directors

Managed Care
Organizations

LTCC Administrative
Contacts

Home & Community-Based
Service Providers

Nursing Facility
Administrators

ACTION/DUE DATE

Understand changes to
nursing facility level of care
effective January 1, 2015.

EXPIRATION DATE

August 14, 2016

Nursing Facility Level of Care Criteria Changing January 1, 2015 – Update and Legislative Changes

TOPIC

The 2014 Legislature amended the criteria and notice and appeals timelines related to the nursing facility level of care (NF LOC) criteria used to determine eligibility for Medical Assistance (MA) payment of long-term care services.

PURPOSE

This bulletin provides an overview of these changes, potential impact on individuals, and transition resources.

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Continuing Care Administration

TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

I. Background

Strengthening the nursing facility level of care (NF LOC) criteria is part of Minnesota's strategy intended to ensure sustainability in its health care system, including the long term care services sector. Strengthening the criteria that establishes the need for NF LOC is paired with efforts to redirect people with lower care needs to other types of supports. In addition, more clearly defined NF LOC criteria will contribute to greater consistency in the assessment of need for and access to long term services and supports (also referred to as long term care). These combined efforts will help ensure continued access to services for people with the greatest long-term care needs.

In 2009, the Minnesota Legislature adopted revised NF LOC criteria as defined in Minnesota Statutes, section 144.0724, subdivision 11 governing nursing facility resident classifications and reimbursement.

Implementation of the change in NF LOC criteria has been delayed for various reasons, including changes to the Affordable Care Act and other federal reform efforts, until January 1, 2015 for individuals aged 21 and older.

While the change in the criteria is effective January 1, 2015, these changes may affect individuals admitted to nursing facilities on or after October 1, 2014 as explained below.

The statutory language specifies:

- The types and extent of need that defines the NF LOC criteria;
- The assessments that are to be used to establish that NF LOC criteria are met, and the timelines for valid assessments; and
- That this need must be established and documented prior to payment under the Alternative Care (AC) program or Medical Assistance (MA) payment for long-term services and supports, including nursing facility and home and community-based services provided under the Elderly Waiver (EW), Community Alternatives for Disabled Individuals (CADI) waiver, and Brain Injury-NF (BI-NF) waiver.

This bulletin, first in a series, provides an overview of the changes in the NF LOC criteria, information about potentially affected individuals, and information about transition resources available for affected individuals.

The second bulletin will provide extensive information related to nursing facility services, providers, and residents.

The third bulletin will focus on home and community-based programs affected by this change, including the Alternative Care (AC) program or Medical Assistance (MA) payment for home and community-based services provided under the Elderly Waiver (EW), Community Alternatives for Disabled Individuals waiver (CADI), and Brain Injury-NF (BI) waiver programs.

The fourth bulletin will provide information about the Essential Community Supports (ECS) program. This is a new program intended to provide services to individuals of all ages affected by the change in NF LOC at implementation to assist in transition.

ECS also remains in place as an ongoing program to assist individuals age 65 and older with emerging long-term care needs, who do not meet NF LOC criteria, and who are not eligible for Medical Assistance. See section V for a brief overview of ECS.

II. 2014 Legislative Changes Affecting NF LOC Implementation

The 2014 Legislature adopted four changes in statute related to the implementation of the revised NF LOC criteria. Minnesota Statutes, section 144.0724, subdivisions 11 and 12 were amended to:

- Clarify NF LOC criteria related to “living alone” by including individuals who would be homeless without their current housing type;
- Provide for a minimum of 30 days’ advance notice before the effective date of a change in eligibility for long term care services resulting from implementation of the revised NF LOC criteria. This change was adopted as part of the strategy to support individuals potentially affected by the change during transition to the revised criteria;
- Extend the timeline to 30 days in which an individual who is part of the defined “transition” population can request continuation of services when filing an appeal related to termination of services as a result of the revisions in NF LOC.
- Add adult day service to services available under the ECS program.

Minnesota Statutes, section 144.0724, subdivision 11, paragraph (a), clause (7) was amended as follows:

“(a) For purposes of medical assistance payment of long-term care services, a recipient must be determined, using assessments defined in subdivision 4, to meet one of the following nursing facility level of care criteria:....

(7) the person is determined to be at risk for nursing facility admission or readmission through a face-to-face long-term care consultation assessment as specified in section 256B.0911, subdivision 3a, 3b, or 4d, by a county, tribe, or managed care organization under contract with the Department of Human Services. The person is considered at risk under this clause if the person currently lives alone or will live alone upon discharge or be homeless without the person's current housing and also meets one of the following criteria:

- (i) the person has experienced a fall resulting in a fracture;
- (ii) the person has been determined to be at risk of maltreatment or neglect, including self-neglect; or

(iii) the person has a sensory impairment that substantially impacts functional ability and maintenance of a community residence.”

Minnesota Statutes, section 144.0724, subdivision. 12, was amended by adding a new paragraph (b), as follows:

“(b) The commissioner of human services shall ensure that notice of changes in eligibility due to a nursing facility level of care determination is provided to each affected recipient or the recipient's guardian at least 30 days before the effective date of the change. The notice shall include the following information:

(1) how to obtain further information on the changes;

(2) how to receive assistance in obtaining other services;

(3) a list of community resources; and

(4) appeal rights.

A recipient who meets the criteria in section 256B.0922, subdivision 2, paragraph (a), clauses (1) and (2) (*this subdivision defines a transition population*), may request continued services pending appeal within the time period allowed to request an appeal under section 256.045, subdivision 3, paragraph (h). This paragraph is in effect for appeals filed between January 1, 2015, and December 31, 2016.**EFFECTIVE DATE.** This section is effective January 1, 2015.” Italics added.

See section VI for more information about notice of action and appeals.

In addition, Minnesota Statutes, section 256B.0922 governing the ECS program was amended by adding adult day service to the menu of services included under that program.

III. Important Things to Know About the NF LOC Change

NF LOC is important for payment for *both* nursing facility services and home and community-based services. While the reference to “nursing facility” level of care may imply that only nursing facility services will be affected by this change, this change *does* affect eligibility determination for the Elderly Waiver (EW), Community Alternatives for Disabled Individuals (CADI), and Brain Injured- Nursing Facility (BI-NF) waiver programs. 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 AC program for people aged 65 and older.

This change applies only to individuals aged 21 and older. The revised criteria will be applied to individuals under 21 effective October 1, 2019.

This change is effective January 1, 2015, and can affect nursing facility residents admitted on or after October 1, 2014, as well as individuals participating on January

1, 2015 in the Home and Community-Based Services (HCBS) programs included here.

- There is no impact on nursing facility residents admitted prior to October 1, 2014 throughout that continuous stay. This includes no impact on individuals admitted prior to October 1, 2014 who subsequently spend down and apply for MA at a later time during that continued nursing facility stay.
- Nursing facility residents admitted on or after October 1, 2014 may be affected by the change in the NF LOC criteria if they cannot establish a “qualifying 90-day stay” based on the revised criteria. A “qualifying 90-day stay” must be established for purposes of continuing MA payment of nursing facility services delivered on or after January 1, 2015.
- NF admissions: On or after January 1, 2015: The revised criteria will be applied when completing preadmission screening for all new admissions occurring on or after January 1, 2015 for individuals aged 21 and older. The revised criteria will also be applied at subsequent assessments used to establish a qualifying 90-day stay for purposes of continuing MA payment. See section IV for a brief description of the “qualifying 90-day stay”.
- The revised criteria will be applied to individuals who are participating in EW, AC, CADI or BI-NF on January 1, 2015 BUT only at their next reassessment occurring on or after January 1, 2015.
- The revised criteria will be applied to new applicants to EW, AC, CADI or BI-NF on or after January 1, 2015.

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.

- As noted, the requirements related to notifications and appeals were amended during the 2014 Legislative session. See section VI for more information about appeals and notification requirements,

Provider requirements related to discharge notices and discharge planning requirements remain in place. Individuals also retain all **tenants’ rights** related to housing and lease arrangements.

Lead agencies (counties, managed care organizations and tribes) that perform LOC assessments (face-to-face Long Term Care Consultation (LTCC) or MnCHOICES assessments) and Senior LinkAge Line® (SLL) staff performing preadmission screening (PAS) **must not apply the revised criteria prior to the effective dates of HCBS program eligibility or NF admission dates as outlined above.**

A final determination about NF LOC can only be made through a face-to-face LTCC or MnCHOICES assessment.

- It is important to note that financial workers determine *financial* eligibility for long-term care under MA and will not assume that long term care *service* eligibility (NF LOC) is discontinued *unless* they receive an Assessor/Case Manager/Financial Worker Communication Form (DHS 5181) from a LTCC or MnCHOICES assessor indicating the individual does not, or no longer, meets NF LOC. This reflects the policy and requirement that an individual, whether applying for or receiving nursing facility or EW, AC, CADI, or BI-NF home and community-based services, must have access to an LTCC or MnCHOICES assessment for final determination of NF LOC.

Transition services are available for individuals affected by the change in NF LOC criteria.

IV. Nursing Facility Level of Care Criteria Effective January 1, 2015

An individual must meet an institutional level of care in order to establish MA service eligibility in addition to financial eligibility for long-term care. NF LOC must be established for payment for nursing facility services, or for services provided under the HCBS programs listed above. The requirement that an individual meet an institutional level of care in order to establish MA eligibility for long-term care is *not* new policy.

Long-term care service eligibility for MA can be based on additional institutional levels of care, such as acute hospital, neurobehavioral hospital, or intermediate care facility for persons who are developmentally disabled (ICF-DD). This bulletin, and the legislative revisions to criteria, focuses on nursing facility level of care only.

A. NF LOC Criteria Effective January 1, 2015

The revised nursing facility level of care criteria are described in Minnesota Statutes, 144.0724, subdivision 11. There are five general categories of need that will satisfy the revised level of care criteria requirements¹:

- The person does or would live alone, or be homeless without their current housing type AND
 - has had a fall resulting in a fracture within the last 12 months OR

¹ The order of the criteria are reversed here when compared to statute to highlight the 2014 legislative change.

- has sensory impairment that substantially impacts functional ability and maintenance of a community residence OR
- is at risk of maltreatment or neglect by another or at risk of self-neglect

OR

- The person has significant difficulty with memory, using information, daily decision making, or behavioral needs that require intervention

OR

- The person needs the assistance of another person or constant supervision to complete toileting, transferring, or positioning and the assistance cannot be scheduled

OR

- The person has a dependency in four or more activities of daily living

OR

- The person needs formal clinical monitoring at least once a day.

An individual is only required to meet any *one* criterion to meet NF LOC. See *Attachment A* for information about the items and scores which are captured during PAS or face-to-face assessments, that establish the NF LOC criteria, and that are entered into MMIS.

B. How NF LOC is Established

Nursing facility level of care is determined through:

- **A LTCC or MnCHOICES Assessment:** During a face-to-face LTCC or MnCHOICES assessment completed by a lead agency.² These assessments are performed as part of eligibility determination for EW, AC, CADI, and BI-NF, and at required reassessments for continuing participation in these programs. An individual can also choose facility-based services as a result of this assessment.
- **Preadmission Screening:** During PAS completed as required for admission to a certified NF. Under federal requirements, PAS is required for ALL admissions to a MA-certified nursing facility, regardless of payer source for nursing facility services. See the second bulletin in the series for more information related to PAS and NF LOC.
- **“Qualifying 90-Day Stay”:** In order to continue MA payment for nursing facility

² “Lead agencies” as defined here and under Minnesota Statutes, section 256B.0911 governing Long Term Care Consultation (LTCC) services include counties, and tribes and managed care organizations under contract with the Minnesota Department of Human Services to provide LTCC services.

services for individuals admitted on or after October 1st, 2014, NF LOC must be re-established 90 days after admission. This re-establishment of NF LOC can occur through the:

- Minimum Data Set (MDS) quarterly assessment completed by nursing facilities, or
- PAS-like process initiated by the nursing facility, or
- LTCC or MnCHOICES face-to-face assessment performed by a lead agency.

See more detailed information about NF LOC changes and nursing facility residents, and the use of the MDS quarterly assessment and other methods to establish NF LOC in the second bulletin in this series.

C. Who Can Determine NF LOC

For nursing facility admissions, all of the criteria listed above, with the exception of the criteria related to risk of maltreatment or self-neglect, can be established in the on-line PAS process used by SLL.

An LTCC or MnCHOICES assessment is always required for eligibility determination for all HCBS programs.

Nursing facilities will be able to establish NF LOC for residents to satisfy the qualifying 90-day stay requirement using the online PAS process and tool.

The criterion related to living arrangement and risk of maltreatment or neglect can only be established through a face-to-face assessment completed by a Long Term Care Consultant or MnCHOICES Certified Assessor.

Only LTCC or MnCHOICES assessors can make a *final* determination of NF LOC for home and community-based programs, for NF admission, or to re-establish NF LOC 90 days after admission for nursing facility residents.

V. Essential Community Supports (ECS) Program

A. Eligibility for ECS

Essential Community Supports is a new program intended to provide services to two populations:

1. Individuals age 65 and older with emerging long-term care needs, who do not meet NF LOC criteria, and who are not eligible for Medical Assistance.
2. Individuals of all ages affected by the change in NF LOC at implementation to assist in transition.

Individuals who will be eligible for ECS as part of the NF LOC transition include people who:

- Were in EW, CADI or BI-NF *as of January 1, 2015*, and remain in the program until their next reassessment occurring on or after January 1, 2015, and who do not meet any of the revised LOC criteria at that next reassessment, or
- For nursing facility residents, the “transition” population is defined as:
 - Individuals admitted between October 1 and December 31, 2014
 - Who were or became eligible for MA before January 1, 2015 and had at least one day of MA eligibility after admission, and
 - Who do not meet NF LOC at the first quarterly MDS assessment completed on or after January 1, 2015

Eligibility determination for ECS must be established based on a face-to-face LTCC or MnCHOICES assessment, and a community support plan that indicates a need for an ECS service.

Individuals in the transition group who remain eligible for MA state plan services and who have dependencies in activities of daily living cannot access ECS, and must access state plan PCA services.

Individuals who live in congregate settings are not eligible for ECS.

While most individuals included in the transition group will continue to be eligible for MA, ECS is also available to individuals in the transition group, 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. *For this non-MA group, an individual must meet the financial eligibility criteria for Alternative Care in order to be eligible for ECS.*

B. ECS Program Services and Requirements

The Essential Community Supports program includes the following services:

- Homemaker
- Personal emergency response
- Chore
- Caregiver education/training
- Home delivered meals
- Service coordination (case management)
- Community living assistance as developed by the commissioner
- Adult day service (as amended and added under Minnesota Statutes, section 256B.0922 in the 2014 Legislative Session)

When offered under ECS, the definition and scope of these services, provider qualifications and standards, and rates are the same as when these services are provided under the EW program. For more information about each of these services, please see the Community-Based Services Manual at http://www.dhs.state.mn.us/main/id_000402#

Other ECS program requirements include:

- \$400 monthly maximum budget
- Required service coordination and monitoring, limited to \$600 annually
- For the transition group, an additional \$600 for service coordination to assist in transition planning is available one time.
- ECS will be authorized by a LTCC or MnCHOICES assessor, using MMIS service agreements, for needed services, including for individuals in managed care

More detailed information about Essential Community Supports will be included in subsequent bulletins.

VI. Notifications and Appeals

A. Notice of Action

For purposes of information provided below related to NF LOC determinations, a “notice of action” is a communication between a lead agency and a person related to an agency decision that affects eligibility for and access to long-term care services under MA or AC. This notice can be in the form of an approval for services, or can be an “adverse” action in which a person has been denied services, or when services will be terminated or reduced.

“Lead agencies” with the authority to determine NF LOC include counties, and tribes and managed care organizations under contract with the Minnesota Department of Human Services (DHS, or “the department”) that deliver Long Term Care Consultation services defined in Minnesota Statutes, section 256B.0911. Long Term Care Consultants become Certified Assessors and will perform assessments using the MnCHOICES software as begun in fall 2013.

LTCC services include assessment to determine NF LOC (as well as other institutional levels of care) and eligibility determination for home and community-based programs and other long term services and supports.

There are existing notices required to be used by lead agencies when there is a denial, termination or reduction of long term care (or other) services:

- For fee-for-service MA participants and applicants and AC, the Notice of Action (DHS-

2828) is used to communicate this information. This form will be revised prior to implementation to include the legislative changes related to extended timelines for notification as well as extended timelines related to filing an appeal with requested continuation of services described in B. below.

- Managed care enrollees receive this notice using a “DTR” (denial, termination, reduction) template approved by the DHS; this notice is used for all managed care denials, terminations or reductions, for all types of service (or payment).

There are separate templates used for individuals enrolled in Minnesota Senior Health Options (MSHO) and Special Needs Basic Care (SNBC), and one used for enrollees in other managed care products. Copies of the templates will be posted at the NF LOC initiative website at www.dhs.state.mn.us/nfloc no later than December 1, 2014.

Regardless of the type of notice used, all must contain information about the action taken, the reason for the action, the statutory or other legal basis for the action, appeal rights, request for continuation of services and timelines associated with this request, how to file an appeal, and other timelines.

The department has created consumer information for use by lead agencies related to NF LOC determinations and notices of adverse action. This content included information reflecting the legislative changes related to the minimum advance notice requirement, as well as extended timelines related to filing an appeal with requested continuation of services described in section IV.B below. Providing this information for lead agency use in completing a notice of action is intended to ensure that an individual understands what a LOC determination means in terms of access to, or continuation of, long-term care payment under MA, and clarification that this LOC determination does NOT affect other payer criteria such as Medicare.

B. Changes to Notification and Appeal Timelines

As noted in section II, Minnesota Statutes, section 144.0724, subdivision 12, was amended during the 2014 Legislative Session.

1. This amendment changes the *minimum* advance notification timeline requirements to 30 days when notifying an individual that long term care services will be terminated because, at reassessment, the person no longer meets NF LOC criteria. This 30 day notification requirement applies whether the “reassessment” is an annual reassessment required for home and community-based program participation or assessment used to establish the “qualifying 90-day stay” for continuing MA payment of nursing facility services.

“Advance notice” means that the individual’s effective date of termination of long-term care services can be no sooner than 30 days from the date the notice of action is sent to the individual.

This requirement is effective January 1, 2015 and is an ongoing requirement related to NF LOC determinations that result in termination of long-term care services.

2. This amendment also extends the timeline in which a person can file an appeal of an adverse action resulting from a LOC determination that includes a request for continuation of services from 10 to 30 days from the receipt of the notice of action by the individual.

This extension of time to file an appeal that includes a request to continue services applies to individuals defined as part of the “transition” population potentially affected by changes to the NF LOC criteria, and is limited to appeals filed between January 1, 2015 and December 31, 2016 related to changes to NF LOC criteria.

The “transition” population is defined in section V.A above.

C. Communication with Consumers and Financial Workers

More detailed information and instruction will be provided in subsequent bulletins related to communication with individuals applying for or participating in HCBS programs and nursing facility residents, as well as communications that must occur between lead agency assessors and financial workers related to MA long-term care eligibility determination.

VII. Communications and Training Opportunities

Communication and training is a vital part of the implementation strategy for changes in NF LOC. Training opportunities for NF and HCBS providers will continue to be developed. Please go to www.dhs.state.mn.us/nfloc periodically for additional information about additional training opportunities.

Bulletins, which will be published as a series, are scheduled as described on page 2-3 of this bulletin. There will also be communication about the PAS redesign under the “First Contact” initiative. More information about this initiative can be found at <http://www.mnaging.net/en/News/PASRR.aspx>

A revised PAS bulletin will be published and will document PAS policy and processes, including information about the web-based PAS tools that can be accessed by a variety of agencies including nursing facilities, under the “First Contact” initiative.

Videoconferences are scheduled, with the first occurring July 31, 2014, with a focus on the NF LOC changes and nursing facilities. These sessions will include review of bulletin material and will include ECS training. *Pre-registration is required for these sessions.* Each person needs to register through the link provided below. Registration will be open approximately 30 days before the date of the video conference and closes at 5:00 p.m. on the Monday prior to the session. Registration information can be found at <http://agingtraining.dhs.state.mn.us>

Other presentations and training: Organizations can request presentations and training, and department staff will accommodate as many of these requests as possible. Please forward any requests to dhs.nfloc@state.mn.us

Recipient notices and information: The department's Continuing Care Administration (CCA) staff will amend existing materials, and develop new consumer materials, to provide information about resources and service options for individuals who may not be eligible for publicly-funded long term services and support (LTSS). These materials will also include information intended to educate consumers about eligibility requirements for publicly-funded LTSS.

A Recipient Notice of 2014 Legislative changes will be sent to all Minnesota Health Care Program Enrollees. This notice will include the NF LOC change to become effective January 1, 2015. This is NOT a notice to individuals identified in some way as potentially no longer meeting NF LOC.

The **NF LOC Stakeholder Group** will continue to meet with CCA staff to assist in review of communication materials, clarify policy, and review draft content for publication. Stakeholders provide an important communication link to their constituents. Information about the NF LOC Stakeholder Group can be found at www.dhs.state.mn.us/nfloc

Lead agency communications and reports will also be used to assist lead agencies in implementing the changes to NF LOC.

VIII. Additional Information

The information provided here is general information about NF LOC, home and community-based programs, and nursing facility services. More extensive information related to NF LOC changes, home and community-based programs and participants, and nursing facilities and residents will be provided in upcoming bulletins.

A. People in the Community

How will the department help lead agencies identify the people who may be losing eligibility for waiver or AC services because of the change in NF LOC?

Notices to participants: Using HCBS enrollment information, DHS will provide information to all current EW, AC, CADI and BI-NF participants in November, 2014 describing the change and notifying all participants that they might, as a result of this change, be offered alternative services at their next reassessment occurring on or after January 1, 2015.

Notices to Lead Agencies: DHS will also provide lead agencies (health plans, counties and tribes) by November 1, 2014 a list of individuals who are due to be reassessed during January, February, and March 2015, and who *may* no longer meet the modified NF LOC

criteria at their next reassessment, based on analysis of the participants' most recent assessment information in MMIS. This information will assist lead agencies to prepare for the transition of these potentially affected individuals. The department will continue to provide similar information throughout 2015. **This information MUST 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 scheduled on or after January 1, 2015.

What about people who could lose their housing because they lose eligibility for waiver or AC services? The waiver programs and AC do not pay for housing. These programs pay for services that help people remain in their own homes. Other individuals receive housing support through the Group Residential Housing (GRH) program or Minnesota Supplemental Assistance – Shelter Needy programs, which are not dependent on waiver eligibility.

How are people connected to the services they need if their eligibility changes? All individuals who have been HCBS participants or nursing facility residents in the transition population will be offered alternative services, including MA state plan home care or Essential Community Support (ECS) services as described above during the LTCC or MnCHOICES assessment required for a final NF LOC determination.

Assessors will be familiar 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 the NF LOC/ECS implementation plan.

Case management for those receiving ECS services as part of transition support will continue to be provided by their county, tribe, or health plan. Case managers and care coordinators are responsible for periodic monitoring of each individual's service plan and for requesting reassessment if needs change. Case managers must also ensure access to needed services and will assist the individual to re-enter AC, EW, CADI or BI-NF if their needs increase.

Persons who are 60 and older are also eligible for Federal Older Americans Act Title III services. Individuals may also meet eligibility requirements for other health care coverage, such as Minnesota Care.

B. Nursing Facility Residents

How will changes to the NF LOC be applied in preadmission screening (PAS)? The preadmission screening tools used to determine NF LOC include the revised criteria to be applied on or after January 1, 2015 in order to establish MA eligibility for long-term care payments to a nursing facility.

Is there any impact on individuals in NFs who are not on MA? While the revised NF LOC criteria does not affect any other payer criteria, such as Medicare or long term care insurance, or private payment, for examples, an individual admitted on or after October 1st, 2014 who subsequently applies for MA payment of nursing facility services will be assessed for NF LOC using their last MDS quarterly assessment that occurred prior to their MA eligibility start date (or, if needed, through additional face-to-face assessments as described in the bulletin).

What is a “qualifying 90-day stay”? A qualifying 90-day stay is one of the NF LOC criteria in statute that applies *only to continuing MA payment of NF services*. An individual must meet NF LOC through PAS, and must re-establish LOC in order to continuing MA payment of NF services. Once the qualifying 90-day stay is established, the individual is considered to meet LOC criteria throughout any additional continued stay for that admission.

The second bulletin in this series will provide extensive information about the process and tools that can be used to establish the qualifying 90-day stay criteria for ongoing MA payment of nursing facility services.

How will the more immediate needs of residents affected by changes in NF LOC be met? There are several support options in place for nursing facility residents who may not meet the new criteria. NF residents whose eligibility for MA payment of long-term care will be ending because they no longer meet LOC criteria will have transition support available through:

- Discharge planning carried out by the NF
- Support provided under the Return to Community Initiative
- The provision of Relocation Services Coordination
- Care coordination provided to managed care enrollees or
- If eligible, through the Moving Home Minnesota (Money Follows the Person) initiative.

Some individuals may also be served with Essential Community Supports (ECS) if they meet the ECS criteria described in section V. Persons who are 60 and older are also eligible for Federal Older Americans Act Title III services. Individuals may also meet eligibility requirements for other health care coverage, such as Minnesota Care.

IX. Additional Resources

All DHS Forms can be found at http://www.dhs.state.mn.us/main/id_000100

More information about the “First Contact” initiative can be found at <http://www.mnaging.net/en/News/PASRR.aspx>

All DHS bulletins can be found at http://www.dhs.state.mn.us/main/id_000305

The **NF LOC initiative** has a web site where additional materials can be found at www.dhs.state.mn.us/nfloc, including updated information about additional training opportunities.

See Minnesota Statutes, section 144.0724, subdivision 11, for the **statutory criteria** at <https://www.revisor.mn.gov/statutes/?id=144.0724> and section 256B.0911 for more information about the **role of Long Term Care Consultants** and MnCHOICES Certified Assessors at <https://www.revisor.mn.gov/statutes/?id=256B.0911>

More **information about the Long Term Care Consultation program**, and community alternatives to facility-based services, can be found at http://www.dhs.state.mn.us/id_005990

A listing of statewide **LTCC Administrative Contacts for all counties** can be found at http://www.dhs.state.mn.us/id_006098. **Contact information for each MCO** can be found at <https://edocs.dhs.state.mn.us/lfservlet/Public/DHS-6581A-ENG>

X. Americans with Disabilities Act (ADA) Advisory

This information is available in accessible formats for people with disabilities by calling (651) 431-2590 (voice) or toll free at (800) 882-6262 or by using your preferred relay service. For other information on disability rights and protections, contact the agency's ADA coordinator.

Attachment A- NF LOC Criteria Effective January 1, 2015

The revised nursing facility level of care criteria are described in Minnesota Statutes, 144.0724, subdivision 11. There are five general categories of need that will satisfy the revised level of care criteria requirements. A person will meet NF LOC criteria through assessment of need at any *one* of these levels.

The same criteria, and same assessment items and scores described below and taken from the Minnesota LTCC Services Assessment Form (DHS 3428, 5-14) are used in determining NF LOC as part of preadmission screening, as well as in determining NF LOC through the LTCC or MnCHOICES assessment process. For individuals age 21 and older, and effective January 1, 2015:

1. **The person does or would live alone, or be homeless without their current housing type AND has another assessed risk:** "Living Alone": Assessors capture information about others an individual lives with. Individuals coded as living alone, homeless, or would be homeless without current housing type meet this part of this criteria, **and** meets one the following risk criteria. This is item Ba.18 in the assessment tool. One of the following risks must be paired with "living alone":

A. The person has a sensory impairment based on hearing and vision, when an individual has no useful hearing or vision, or can hear only loud sounds, or has difficulty seeing obstacles in the environment. These levels of impairment are described in the LTCC assessment items related to hearing and vision at G.10 and G.11. OR

B. The assessment item related to falls indicates a fall in the last 12 months that resulted in a fracture (Item I.5). OR

C. The person is at risk of maltreatment or self-neglect. Only LTCC staff can make NF LOC determinations that rely on risk of maltreatment or self-neglect. These circumstances are assessed at I.7 and I.8 and coded as "Y/N" in the face-to-face assessment at J.3 and in MMIS.

2. **The person has significant difficulty with memory, using information, daily decision making, or behavioral needs that require intervention.** The items as included below include the *minimum* score (reflecting a level of need) that is required to meet NF LOC using this criterion. An individual may meet NF LOC through any *one* of these items as follows:

A. Self-preservation: This assessment item is related to an individual's judgment and physical ability to cope, make appropriate decisions and take action in a changing environment or a potentially harmful situation. An individual will meet NF LOC if they are mentally or physically unable or both (score greater than 01 in item G.15)

B. Orientation: Orientation to person, place and time. An individual will meet NF LOC if they have partial or intermittent periods of disorientation (score greater than 01 in item G.12).

C. Behavioral intervention: An individual who needs occasional staff intervention or support (score of 01 or greater in item G.13) meets NF LOC. "Occasional" is defined as less than four times per week.

D. Mental Status Evaluation (MSE) (a screening tool indicating memory issues): A score of 10 or greater (which indicates the possible presence of dementia) and less than 29 (scores higher than 29 are used to indicate not applicable or refused) indicates NF LOC. The MSE is at H.10 in the assessment tool.

3. A single dependency in toileting, positioning, or transferring.

A. For toileting, a score of 1 or greater indicates some level of incontinence. An individual must need assistance from another or constant supervision in the definition in statute related to this criterion, and level of care is not based solely on the experience of incontinence.

B. An individual who manages continence needs independently is not considered to be dependent. For clarification and consistency in assessing this need, this item has been updated in the PAS tools and in the face-to-face assessment tools (DHS 3428 and MnCHOICES), to ask: "Does the person need constant supervision or the assistance of another to complete toileting?" Yes or no. A "yes" response coded in the face-to-face assessment at J.3 and in MMIS will meet LOC criteria.

C. Positioning (bed mobility) or transferring (mobility): For each of these ADLs, a score of 2 (which indicates needs help from another) or greater indicates a dependency. This need is assessed in items G.5 and G.6.

4. NF LOC based on 4 ADL dependencies: "Dependency" is indicated by the following scores in each ADL.

A. Dressing, grooming, eating, walking: For each of these ADLs, a score of 2 (which indicates needs help from another) or greater indicates a dependency. These are items G.1, G.2, G.4 and G.7 respectively.

B. For bathing, a score of 4 (needs help washing/drying body) or greater is considered a dependency. This need is assessed at G.3

5. NF LOC related to clinical monitoring, the individual must require clinical monitoring at least once every 24 hours to meet NF LOC on this basis. Clinical monitoring is described in the AC, BI, CADI, EW Case Mix Classification Worksheet (DHS 3428B). Clinical monitoring must meet the definition in 3428B. The frequency of clinical monitoring is captured at G.17