



Minnesota Department of Human Services

Bulletin

NUMBER

#14-25-10

DATE

August 29, 2014

OF INTEREST TO

- NF Administrators
- County Directors
- Social Services Supervisors
- Public Health Supervisors
- Financial Worker Supervisors
- Tribal Health Directors
- Managed Care Organizations
- LTCC Administrative Contacts

ACTION/DUE DATE

Understand changes to NF level of care effective January 1, 2015. Access relocation services and other resources to ensure timely transition services for individuals.

EXPIRATION DATE

August 29, 2016

Nursing Facility Level of Care Criteria Changing January 1, 2015 – Nursing Facilities & Residents

TOPIC

The 2014 Minnesota Legislature revised the nursing facility level of care criteria for Medical Assistance payment of long-term care services, and amended notice and appeal timelines.

PURPOSE

This bulletin provides information about the potential impact of these changes for nursing facilities and residents, including those admitted to a nursing facility on and after October 1, 2014.

CONTACT

dhs.nfloc@state.mn.us

SIGNED

LOREN COLMAN

Assistant Commissioner

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 in sections III and IV 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 (HCBS) provided under the Elderly Waiver (EW), Community Alternatives for Disabled Individuals (CADI) waiver, and Brain Injury-NF (BI-NF) waiver.

This bulletin provides information about the change in NF LOC and the potential impact for nursing facilities and residents. See bulletin 14-25-09 for an overview of the NF LOC criteria and changes, including 2014 legislative changes affecting NF LOC implementation.

II. Nursing Facility Level of Care Criteria and MA

A. "Level of Care" and Eligibility for Long-Term Care under MA

Long-term care eligibility under MA requires that an individual meets an institutional level of care, also referred to as *service eligibility*, in addition to meeting MA *financial eligibility*

requirements. 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 nursing facility level of care, or on other institutional levels of care, including acute hospital, neurobehavioral hospital, or intermediate care facilities for individuals with developmental disabilities (ICF-DD). This bulletin, and the legislative revisions to criteria, focuses on nursing facility level of care only.

NF LOC must be established for MA payment for nursing facility services, or for services provided under the AC, EW, CADI, or BI-NF programs.

B. How NF LOC is Established for Nursing Facility Services

NF LOC is established for purposes of MA payment for nursing facility services through preadmission screening (PAS) or through face-to-face assessment performed by Long Term Care Consultants (LTCC) or MnCHOICES Certified Assessors. See Attachment A for information about the items and scores that establish the NF LOC criteria which are captured during PAS or face-to-face assessments and entered into MMIS.

1. 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 payor source for nursing facility services. PAS, completed by Senior LinkAge Line® (SLL) staff using a web-based tool, includes determination of LOC to establish service eligibility for long-term care and payment of NF services under MA. PAS does NOT establish financial eligibility for long-term care and payment of NF services under MA. For more information about PAS, SLL communication processes, and the online tools, please go to <http://www.mnaging.org>

In some cases, a face-to-face assessment may be needed to establish LOC at preadmission screening, since the criterion related to 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.

2. During a face-to-face LTCC or MnCHOICES assessment completed by a “lead agency” [counties, and tribes and managed care organizations under contract with the Minnesota Department of Human Services (the department)]. 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.

The criterion related to 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.

An individual in any setting may request a LTCC or MnCHOICES visit, assessment and community support plan at any time. This assessment and support plan is available to any individual with long term or chronic care needs, regardless of eligibility for public programs. The information and services to be provided by the consultant/assessor are described in Minnesota Statutes, section 256B.0911.

3. To establish the “qualifying 90-day stay”: In order to continue MA payment for nursing facility 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 online process initiated by the nursing facility, or
- LTCC or MnCHOICES face-to-face assessment performed by a lead agency.

NF LOC determination must be completed through a face-to-face assessment performed by a lead agency when LOC cannot be determined through the MDS quarterly assessment or the online PAS process.

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.

See section IV for detailed information about the “qualifying 90 day stay”.

III. Effective Dates Related to Revised NF LOC and Nursing Facility Residents

The change in NF LOC criteria is effective January 1, 2015. This change in criteria does not affect any individual under age 21. For nursing facility services, the change only applies to nursing facility residents admitted on or after October 1, 2014.

A. Admission Prior to October 1, 2014

There is *no* impact on nursing facility residents admitted prior to October 1, 2014 throughout a continued nursing facility stay for the individual.

This includes individuals admitted prior to October 1, 2014 who subsequently spend down and apply for MA at a later time during a continued nursing facility stay.

For purposes of implementing the changes in NF LOC criteria, a continued nursing facility stay is defined as a stay beginning from the admission date to a MA-certified nursing facility in Minnesota, and ending with the date of formal discharge from a MA-certified nursing facility back to the community.

The continued nursing facility stay for an individual includes transfers from the MA-certified admitting facility in Minnesota to another MA-certified nursing facility in Minnesota. The continued nursing facility stay for an individual includes transfers from a MA-certified NF in Minnesota to an acute hospital back to the same or different MA-certified NF in Minnesota.

The “**qualifying 90-day stay**” described in sections IV and V **does not apply to individuals admitted prior to October 1, 2014** throughout a continued nursing facility stay.

B. Admission On or After October 1, 2014

Nursing facility residents admitted on or after October 1, 2014 may be affected by the change in the NF LOC criteria.

There is potential impact for NF residents admitted on or after October 1, 2014, aged 21 and older, related to the changes in NF LOC. This potential impact is related to the establishment of a “qualifying 90-day stay” required to continue MA payment. More information is provided below in sections IV and V about the “qualifying 90-day stay” and how this requirement can be satisfied.

C. Admission On or After January 1, 2015

The revised NF LOC criteria will be applied during 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 in order to establish a “qualifying 90-day stay” for purposes of continuing MA payment as outlined in sections IV and V.

IV. Qualifying 90-Day Stay

There is an additional criterion included in statute that is relevant ONLY for nursing facility payment under MA. This criterion, referred to as a “qualifying 90-day stay”, requires that, for purposes of MA eligibility for and payment of NF services, an individual must meet LOC at admission AND again at 90 days after admission in order to continue MA payments for NF services.

Reassessment of an individual admitted to a NF after 90 days will also assist in identifying individuals who may benefit from relocation assistance, and redirect individuals with lower needs to other types of support.

Once a qualifying 90-day stay is established through one of the methods described in this section, no further demonstration of level of care criteria is required for the remainder of a continuous nursing facility stay.

A. How LOC Will Be Established for Qualifying 90-Day Stay

Level of care (LOC) will be established to meet the qualifying 90-day stay criteria for individuals admitted on or after October 1, 2014 in one of three ways:

1. MDS Assessment and the Qualifying 90-Day Stay: The primary method to establish LOC to satisfy the qualifying 90-day stay requirement will be the use of the MDS quarterly assessment and resulting Resource Utilization Groups (RUGs) classification. The determination of NF LOC using the MDS assessment is possible because much of the information about care needs that is used to establish LOC is also contained in the MDS assessment tool used by nursing facilities.

The MDS quarterly assessment establishes LOC for all resulting RUGS classifications except PA1 and PA2. Many individuals with PA1 and PA2 RUGS classifications *do* meet NF LOC criteria. The PA1 and PA2 classifications simply do not provide enough information about care needs to determine NF LOC without further assessment.

2. Qualifying 90-Day Stay Established by the Facility: A nursing facility will submit information through the online PAS referral tool to establish that an individual meets LOC criteria. This process is only necessary for individuals who have received a PA1 or PA2 classification using the relevant MDS assessment, and who were admitted on or after October 1, 2014. (As noted in section IV.B below, the relevant MDS quarterly assessment may be different for individuals participating in MA and individuals applying for MA after admission.)

The facility should attempt to establish the qualifying 90-day stay within three business days of receipt of the PA1 or PA2 classification in order to determine LOC using this method as soon as possible, or, when needed, to ensure timely referral for a face-to-face assessment as described in section IV.A.3 below.

The facility will be able to establish LOC using the online PAS tool for many individuals with PA1 or PA2 RUGS classifications. For example, an individual may have a dependency in toileting, and will meet NF LOC. NF LOC can be determined in this manner when the information provided by the NF establishes LOC using the online submittal process.

Facilities will use the information contained in the relevant MDS assessment to establish LOC using the online tool, as well as additional information contained in the online tool that is *not* part of the MDS assessment.

The online tool will support NF staff in translating the MDS assessment information into the assessment items contained in the online PAS referral tool to ensure efficient, accurate and consistent documentation of resident care needs between the two assessment tools.

3. Qualifying 90-Day Stay: Face-to-Face Assessment: When the information

Qualifying 90-Day Stay – cont.

provided by the facility in completing the online PAS referral cannot determine LOC for an individual with a PA1 or PA2 classification, a referral for an in-person LTCC or MnCHOICES assessment must be made. This referral for a face-to-face assessment will be made by SLL after the facility has attempted to establish NF LOC via the online tool.

*It is very important to note that a face-to-face LTCC or MnCHOICES assessment **must be used to make a final determination that an individual does not meet any criteria for NF LOC. It cannot be concluded by anyone other than a Long Term Care Consultant or MnCHOICES Certified Assessor that an individual does not meet any NF LOC criteria.***

B. When the Qualifying 90-Day Stay Must Be Established

A qualifying 90-day stay is defined in two different ways for purposes of MA payment for NF services:

1. MA Participants: For an individual admitted on or after October 1, 2014 who is participating in MA, a qualifying 90-day stay means the individual meets level of care criteria at both PAS AND at least 90 days after admission to continue MA payment for facility-based services.

The primary method that will be used to establish LOC to satisfy the qualifying 90-day stay requirement for MA payment will be the **first Minimum Data Set (MDS) quarterly assessment completed by the NF approximately 90 days after admission.**

2. Individuals who spend down to MA: The qualifying 90-day stay for an individual who was admitted to a facility on or after October 1, 2014 and who subsequently spends down to MA means the individual must meet LOC based on the **most recent MDS quarterly assessment completed prior to their effective date of MA eligibility.**

Examples: The examples here clarify the timelines related to admission dates and the need to establish NF LOC to meet the qualifying 90-day stay criteria. It is assumed in all examples that individuals received preadmission screening as required, and that LOC was established at PAS (whether under the current LOC criteria or under the revised criteria for admissions occurring on or after January 1, 2015).

#1: Mr. Jones was admitted on August 15, 2014 as a private paying resident. He continues his stay in the nursing home and becomes Medicaid eligible on January 15, 2015.

Because he was admitted prior to October 1, 2014 and has had a continuous stay, there is no need to re-establish LOC.

#2: Mrs. Green was *admitted on August 15, 2014* with MA eligibility for NF services based on PAS at admission. She *remains in the facility* through April, 2015.

Because she was admitted prior to October 1, 2014 and has remained in the facility, there is no need to re-establish LOC.

#3: Ms. Smith was *admitted on October 24, 2014* with MA eligibility for NF services based on PAS at admission.

Because she was admitted after October 1, 2014, and participating in MA, LOC will be re-established based on *her first MDS quarterly* assessment occurring in January, 2015 or, if needed, through the online tool or through face-to-face assessment as described in section IV.A.

#4: Mr. Gray was *admitted January 10, 2015* as a private pay individual. He became financially *eligible for MA in November 2015*.

His LOC will be re-established using his *last MDS quarterly* assessment completed prior to November 2015 (typically occurring in or around October 2015 in this example) or, if needed, through the online tool or through face-to-face assessment as described in section IV.A.

C. Inter-facility Transfers and the Qualifying 90-Day Stay

An inter-facility transfer is the transfer of a resident between one MA-certified nursing facility in Minnesota to another MA-certified nursing facility in Minnesota. An inter-facility transfer may also include a transfer between one MA-certified nursing facility in Minnesota to an acute care hospital and then to another (or the same) MA-certified nursing facility in Minnesota.

When a person transfers between facilities as described in the paragraph above, preadmission screening is not required to be completed again (i.e. the admission occurring as a transfer does not require PAS). However, if the person transfers before a qualifying 90-day stay has been established (i.e. the transfer occurs before the completion of the first quarterly MDS assessment), the facility admitting the transferring individual will be required to establish the qualifying 90-day stay for purposes of continuing MA payment for NF services.

For a MA-eligible individual admitted to a nursing facility on or after October 1, 2014 and who subsequently transfers to a different facility prior to the completion of their first quarterly MDS assessment at the first facility, the qualifying 90-day stay will be determined upon their first quarterly MDS assessment completed on or after January 1, 2015 at the *new facility*, or, if needed, through the online tool or through face-to-face assessment as described in section IV.A.

Qualifying 90-Day Stay – cont.

For an individual who transfers and subsequently spends down to MA, the qualifying 90-day stay will be based on the last quarterly assessment completed by *either* facility, based on the assessment completed most recently before the person's effective date of MA eligibility, or, if needed, through the online tool or through face-to-face assessment as described in section IV.A.

Examples: The examples here clarify the timelines related to inter-facility transfers and the qualifying 90-day stay. It is assumed in all examples that individuals received preadmission screening as required, and that LOC was established at PAS (whether under the current LOC criteria or under the revised criteria for admissions occurring on or after January 1, 2015).

#1: *A MA-eligible person enters NF-A* for rehab post hospital stay on or after October 1, 2014. The individual is transferred 30 days later to NF-B.

While preadmission screening is not required for the transfer to NF-B, NF-B would need to establish the qualifying 90-day stay using the resident's first quarterly assessment completed on or after January 1, 2015 by NF-B, or, if needed, through the online tool or through face-to-face assessment as described in section IV.A.

#2: *A private pay individual enters NF-A* for rehab post hospital stay on or after October 1, 2014. The individual is transferred 45 days later to NF-B.

Preadmission screening is not required for the transfer to NF-B. The individual spends down and applies for MA in 2015. NF-B would need to establish the qualifying 90-day stay using the resident's last quarterly assessment completed by NF-B prior to the person's effective date of MA eligibility, or, if needed, through the online tool or through face-to-face assessment as described in section IV.A.

#3: *An individual is admitted August 20, 2014 to NF-A* and subsequently transfers to NF-B in January 2015.

There is no need to establish a qualifying 90-day stay by either facility because the person was admitted to NF-A prior to October 1, 2014 and has had a continuous nursing facility stay, including the transfer to NF-B.

#4: *An individual is admitted November 15, 2014 to NF-A* and subsequently transfers to NF-B in March, 2015.

There is no need to establish a qualifying 90-day stay by NF-B because, in this example, it is assumed that the qualifying 90-day stay was established by NF-A prior to the transfer date, since the transfer is occurring four months after admission to NF-A.

D. “Significant Change” MDS and the Qualifying 90-Day Stay

All MDS assessments, including significant change assessments and quarterly assessments, continue to be completed by nursing facilities in the manner, and according to the timelines and criteria, established by the Case Mix Classification Division at the Minnesota Department of Health.

If an individual experiences a significant change that requires completion and submission of another MDS assessment after admission but prior to the completion of the first quarterly MDS assessment, the submission of the “significant change” MDS will delay the date when the first quarterly MDS assessment is due.

In this case, **for MA-eligible individuals**, the first quarterly MDS assessment submitted after the submission of the “significant change” MDS will still be used for purposes of re-establishing LOC to satisfy the qualifying 90-day stay, or, if needed, through the online tool or through face-to-face assessment as described in section IV.A.

For individuals who spend down to MA, the last MDS quarterly assessment completed prior to their MA eligibility begin date will be used, or, if needed, through the online tool or through face-to-face assessment as described in section IV.A, regardless of other MDS assessments completed for the person over time.

E. Individuals Who Apply for MA After Admission

While the revised NF LOC criteria does not affect any other payer criteria, such as Medicare, long-term care insurance, or private payment, an individual admitted on or after October 1st, 2014 who later 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**.

Facilities will only need to re-establish LOC for these individuals who, at the last MDS quarterly assessment prior to their MA effective date, were classified as PA1 or PA2. The processes to establish LOC outlined in section IV.A will be applied to individuals who were classified as PA1 or PA2 at their last MDS quarterly assessment completed prior to their MA eligibility start date.

A nursing facility should submit the online PAS referral form, using the appropriate, most recent quarterly MDS assessment, upon a resident’s application for MA, only for individuals classified as PA1 or PA2 at their most recent MDS quarterly assessment. There is no need to establish NF LOC through the online process or, when indicated, a face-to-face assessment, for any other RUGs classification as part of MA application by a resident.

V. Notifications and Appeals

A. Notice of Action

For purposes of information provided in this section related to NF LOC determinations, a “notice of action” is a communication between a lead agency 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 whose 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 that deliver Long Term Care Consultation services defined in Minnesota Statutes, section 256B.0911. Long Term Care Consultants will 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 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 section V.B below.
- Managed care enrollees receive this notice using a “DTR” (denial, termination, reduction) template approved by 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 reflects 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 V.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

Minnesota Statutes, section 144.0724, subdivision 12, was amended during the 2014 Legislative Session.

1. 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. Extends the timeline from 10 to 30 days from the receipt of the notice of action by an individual in which a person can file an appeal of an adverse action resulting from a NF LOC determination that includes a request for continuation of services. 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 nursing facility “transition” population is defined in section VII.B.

VI. Communication with Financial Workers, Assessors, Nursing Facilities and Residents

A. Assessor Communication with a Nursing Facility Resident

When a lead agency assessor has completed a face-to-face visit with a NF resident for purposes of determining NF LOC, the lead agency will provide a resident with:

- Information including the results of the NF LOC determination, and the meaning of the LOC determination for purposes of MA payment of NF services;
- Information that the resident will receive a notification from their financial worker about their MA *financial eligibility* for long-term care payment, including any changes to their MA eligibility status under long-term care for current MA participants.

An individual can only be informed that they do NOT meet NF LOC by a Long Term Care Consultant or MnCHOICES Certified Assessor.

- When an adverse notice of action is required, the lead agency will provide the resident with:
 - Information explaining why the individual was not determined to meet NF LOC criteria;
 - The meaning of the LOC determination for purposes of MA payment of NF services;
 - The right to appeal the LOC determination and timelines associated with filing an appeal;
 - The right to request continuation of NF services during an appeal, and the 30 day timeline for this request;
 - Information that the resident will receive a notification from their financial worker about their MA *financial eligibility* for long-term care payment, including any changes to their MA eligibility status;
 - **Information that the notification from their financial worker will include a date when payment for NF services will be discontinued.**
 - The notice provided by the lead agency assessor to the individual will include a “no sooner than” date that meets the required 30 day advance notice from the date the notice is sent to the resident.
 - This “no sooner than” date will also be provided on the **Assessor/Case Manager/Financial Worker Communication Form (DHS 5181)** forwarded by the assessor to the financial worker.
 - Financial workers will determine the date when NF payment discontinues based on the “no sooner than” date indicated by the assessor as well as financial eligibility notification requirements and timelines.
- Information about alternative supports available, including housing supports, the availability of relocation services coordination to assist in returning the community from the nursing facility, and the availability of Essential Community Supports (ECS) for individuals who qualify for ECS as described in section VII.B;
- A Community Support Plan as required under Minnesota Statutes, section 256B.0911.

B. Communication with Financial Workers

Lead agency assessors currently use the **Assessor/Case Manager/Financial Worker Communication Form (DHS 5181)** to communicate about *service eligibility*, including level of care, to a financial worker when a person has been assessed for home and community-

based programs, or has received a face-to-face assessment and chooses facility-based services.

This same communication process and DHS-5181 will be used by lead agency assessors to inform financial workers about LOC as it relates to eligibility for MA payment of long-term care services for nursing facility residents, when a face-to-face assessment is required to establish LOC. This communication may occur either at preadmission screening as noted in section II.B.1, or to establish the qualifying 90-day stay as described in section IV.A.

This communication notifies the financial worker about the need to determine *financial eligibility* for MA long-term care. In turn, the financial worker also uses DHS Form 5181 to communicate back to the assessor that the person does, or does not, meet financial eligibility for MA long-term care. It is only when both service and financial eligibility have been determined that MA payment of HCBS program services or nursing facility services can begin.

The following communication processes and tools will be used by financial workers as they relate to eligibility for MA payment of long-term care services for nursing facility residents.

- A financial worker relies on the **Physician Certification Form (DHS-1503)** forwarded by the NF to verify LOC at preadmission screening and other information. Upon receipt of this information and verification that a person meets the financial eligibility requirements for MA payment of long-term care services, eligibility for MA payment of long-term care services is recorded in MMIS.
- A financial worker will not terminate MA payment of long-term care services based on LOC unless and until DHS-5181 is received from a lead agency assessor indicating that an individual does not or no longer meets LOC.
- Financial workers will continue to communicate financial eligibility determinations to facility residents using the **Medical Assistance (MA) Payment of Long-Term Care Services (DHS-4915)** when a MAXIS notice is not generated. This form includes information about long-term care eligibility, effective dates of changes to long-term care and MA eligibility, and dates related to termination (or begin dates) of MA payment for long-term care services.
- Financial workers will continue to communicate with nursing facilities using the **Minnesota Health Care Programs Long-Term Care/County Communication Form (DHS-3050)**.

C. Provider Communication with Residents

Provider requirements related to discharge notices and discharge planning requirements, including the requirement to assist in coordinating transfer to other services, remain in

place. Nursing facility residents that do not meet level of care retain all applicable transfer and discharge rights pursuant to 42 C.F.R. §483.12.

VII. Transition Support for NF Residents

Nursing facility residents that do not meet level of care retain all applicable transfer and discharge rights pursuant to 42 C.F.R. §483.12. Information provided here is to assist NF providers in identifying options to support individuals when appropriate discharge takes place.

A. Transition Resources

All nursing facility residents have transition support available through:

- Discharge planning carried out by the NF
- All residents can also receive transition support by contacting the Senior LinkAge Line® at 1-800-333-2433 to access support provided under the Return to Community Initiative (RTCI)
- The provision of Relocation Services Coordination (RSC) for MA participants
- Care coordination provided to managed care enrollees
- If eligible, through the Moving Home Minnesota (Money Follows the Person) initiative
- If the resident is under age 60, the Disability LinkAge Line® can also provide assistance and can be contacted at 1-866-333-2466.

B. Essential Community Supports

There will be several support options in place for nursing facility residents who may not meet the qualifying 90-day stay requirement because they do not meet the new NF LOC criteria. These options include Essential Community Supports (ECS) for a “transition” population, including individuals who, as a result of loss of long-term care eligibility, may become ineligible for MA.

1. **Eligibility for ECS:** Essential Community Supports is a new program intended to provide services to two populations:
 - Individuals of all ages affected by the change in NF LOC at its implementation to assist in transition;

- Individuals age 65 and older with emerging long-term care needs, who do not meet NF LOC criteria, and who are not financially eligible for Medical Assistance but who meet financial eligibility criteria for AC.

For nursing facility residents, the “transition” population is defined as:

- Individuals admitted to a Minnesota-certified nursing facility between October 1 and December 31, 2014, *and*
- Who were or became eligible for MA before January 1, 2015 and whose MA long-term care eligibility span includes at least one day in the facility, *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 would live in a congregate setting (foster care, board and lodge, non-certified boarding care, or residential care settings) at discharge from the NF would not be 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.*

2. 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)

Essential Community Supports – cont.

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 maximum monthly budget
- Required service coordination and ongoing 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.

VIII. 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 will be published as a series.

Videoconferences are scheduled, with the first occurring July 31, 2014, with a focus on the NF LOC changes and nursing facilities. *Pre-registration is required for these sessions.* 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: DHS 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.

All public materials will be posted at www.dhs.state.mn.us/nfloc Lead agencies will be notified when materials are posted.

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.

IX. Additional Resources

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

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>

See Minnesota Statutes, 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/lfserver/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 in this Attachment as 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 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 DHS Form 3428B. Clinical monitoring must meet the definition in 3428B. The frequency of clinical monitoring is captured at G.17.