

BAAS POLICY RELEASE (PR)	
PR NUMBER:	24-18
TO:	Division of Long Term Support Staff (DLTSS); Choices for Independence (CFI) Providers and Case Managers; and Nursing Facilities (NF)
FROM THE OFFICE OF:	Division Director of Long Term Supports and Services (DLTSS), Melissa Hardy and Bureau Chief of Adult and Aging Services (BAAS), Wendi Aultman
SIGNATURE:	
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SUBJECT:	Provider Notice for Guidance On Clinical Eligibility for Choices For Independence (CFI) and Nursing Facility (NF) Services
EFFECTIVE DATE:	Upon Release

SUMMARY

The purpose of this memo is to provide guidance on clinical eligibility for Choices for Independence (CFI) and Nursing Facility (NF) services , pursuant to RSA 151-E:3 through the attached Provider Notice #24-18, which details the following:

- Delivery of 24-hour, hands-on continuous care, 7 days a week is not required to be clinically eligible for CFI or NF services;
- Update On Minimum Nursing Facility Staffing Standard;
- The role of Skilled Professional Medical Personnel; and
- Assessments allowed for determining clinical eligibility and waiver level of care (Medical Eligibility Assessment (MEA), Minimum Data Set (MDS), and Outcome and Assessment Information Set (OASIS))

DISTRIBUTION

This PR will be distributed according to the electronic distribution list for BAAS policy releases and will be available internally on the DHHS (N:) drive, in the BEAS(BAAS) folder for staff to access.

This PR will also be available on DHHS website at [Bureau of Adult and Aging Services \(BAAS\) General Memos \(GM\) and Policy Releases \(PR\) | New Hampshire Department of Health and Human Services \(nh.gov\)](#) for public access.

Provider Notice Title: Guidance For Clinical Eligibility for Choices For Independence (CFI) and Nursing Facility (NF) services	Number: 24-18
	Effective Date: Upon Release
	Reviewed By: Wendi Aultman and Kristina Ickes

Purpose: The purpose of this Provider Notice is to provide guidance for Nursing Facility Level of Care determinations, related to the following:

- Delivery of 24-hour, hands-on continuous care, 7 days a week is not required for clinical eligibility for CFI or NF services;
- Update On Minimum Nursing Facility Staffing Standard;
- Skilled Professional Medical Personnel; and
- Assessments allowed: Medical Eligibility Assessment (MEA), Minimum Data Set (MDS), and Outcome and Assessment Information Set (OASIS).

Definitions

- (a) “Administer” means an act whereby one or more doses of a medication is instilled into the body, applied to the body of, or otherwise given to a person for immediate consumption or use by an individual authorized by law, including NH RSA 318-B and RSA 326-B.
- (b) “Nursing Facility Level of Care (NFLOC or LOC)” means the level of care needed for an individual to be clinically eligible for Choices For Independence (CFI) or Nursing Facility (NF) pursuant to RSA 151-E:3, namely an individual must need services at a level typically provided at a 24/7 facility such as a nursing facility.

Nursing Facility (NF) Level of Care

Nursing facility (NF) care is not a one-on-one delivery of services or care that provides consistent hands-on support or care 24 hours a day, 7 days a week. NFs are operated 24 hours a day/7 days a week; this does not mean that each individual receives or is required to receive continuous 24-hour care.

In 2023, the average number hours received for hands-on support or care in a NF was 3.77. Pursuant to 42 CFR 483.35, Centers for Medicare and Medicaid Services (CMS) will require NFs to provide a minimum of 3.48 hours per resident per day for total nurse staffing (hands on support or care), including but not limited to:

- A minimum of .55 hours per resident per day for registered nurses; and
- A minimum of 2.45 hours per resident per day for nurse aids.

This new minimum staffing standard must be fully implemented within NFs by May 10, 2027.

The level of support and care provided is based on an individuals need and may be integrated with other therapies to determine the level of care needed. Certain factors are taken into consideration which include complexity, frequency and/or nature of interventions, safety, and supervision.

Example: Continuous care is reflected when an individual requires consistent hands-on support with daily needs such as eating, toileting, transferring or medication administration. Continuous care can also be determined when an individual requires night care for assistance with tasks such as toileting or medication administration.

When an individual is being reviewed for long term care eligibility under NH RSA 151- E:3, the individual must meet **at least one** of the following criteria:

1. Medical monitoring and nursing care, when the skills of a licensed medical professional are needed to provide safe and effective services:

Example: An individual has a condition that requires regular assessments and interventions by a nurse or other licensed professional to provide care (within their area of practice), such as managing

diabetes with frequent blood sugar checks and insulin adjustments.

2. Restorative nursing or rehabilitative care aimed at achieving the individual's specific goals and improving or maintaining the persons functionality.

Example: An individual is recovering from a stroke and needs daily physical therapy to regain function or mobility, and tasks associated with daily living in the community are not possible alone or fully executable without consistent support of care.

3. Medication administration by oral, topical, intravenous, intramuscular, or subcutaneous injection, or intravenous feeding for treatment of recent or unstable conditions requiring a medical or nursing intervention.

Example: An individual's medication(s) must be '*administered*' as defined in NH administrative rule He-P 803, by a licensed professional due to the complexity or critical nature of the condition(s).

4. Assistance with two or more activities of daily living involving eating, toileting, transferring, bathing, dressing, and continence.

Example: An individual needs help with the above tasks that are typically required multiple times a day and may require additional assistance to ensure safety.

An applicant or participant does not need to meet the highest possible need for NFLOC for NH Long Term Care programs; but must meet at least the minimum standard pursuant to NH RSA 151 E:3. The same standard is applied to home and community-based care.

Skilled Professional Medical Personnel

The Department of Health and Human Services (DHHS) employs staff and holds contracts with an outside agency, KEPRO/Acentra, for the performance of clinical assessment reviews for NF's and the CFI program eligibility who meet the criteria of skilled professional medical personnel.

KEPRO/Acentra staff that conduct the assessment are known as assessors and are required to meet the criteria of skilled professional medical personnel. Occasionally, DHHS will certify other skilled professional medical personnel to perform medical eligibility assessments (e.g. hospital personnel). DHHS certifies an individual seeking to be designated as an assessor meets the education or certification requirements to be skilled professional medical personnel and passes a testing requirement.

NH RSA 151-E:3 delineates that skilled professional medical personnel employed by or designated to act on behalf of DHHS shall determine clinical eligibility. 42 CFR 432.50 outlines the criteria and qualifications for a skilled medical professional.

DHHS personnel with the function of skilled professional medical personnel have their credentials certified/reviewed by DHHS Human Resources prior to being sent to the hiring manager for consideration. Their credentials are also reviewed directly by the hiring manager and legal counsel to determine whether the applicant possesses the proper credentials or education necessary to ensure the integrity of the hiring process.

Assessments

Clinical eligibility for NFLOC for CFI applicants and participants is established by reviewing the results of standardized assessments such as the Medical Eligibility Assessment (MEA), current Minimum Data Set (MDS) or current Outcome and Assessment Information Set (OASIS) and additional medical records, if needed. Eligibility determinations also rely on the professional judgement and discretion of assessors and reviewers.

Medical Eligibility Assessment (MEA)

The MEA allows assessors to document various health domains such as physical functioning, cognitive ability, medical conditions, and the need for assistance to complete activities of daily living. MEA has a specific algorithm that drives the scoring of each health domain to evaluate a patient's medical and functional status. Each domain is scored based on specific criteria and these scores are aggregated to generate an overall score reflecting the patient's level of need.

The algorithm **does not** make the decisions regarding eligibility. Instead, it generates a score that can assist in

the eligibility decision. Scores rely on the accuracy of the assessment, data entry, and professional analysis. Case managers who believe an individual is no longer eligible for the program are encouraged to request another assessment. A MEA can be performed as frequently as needed but is required to be conducted at a minimum of once annually. The performance of a MEA annually may reveal several cases for whom eligibility can no longer be established; these individuals may still be served by other programs such as the Older Americans Act or Social Services Block Grant.

MEA Scoring

The overall scoring system provides a quantitative measure of the individuals potential eligibility for NFLOC. Higher scores indicate there may be a greater need and lower scores may indicate a lesser need for intensive medical and personal care services, however the score alone is not the basis for an eligibility determination.

During the MEA, notes and comments that are captured and the individual needs that have been identified do not contribute to the scoring. Additional medical records are requested when the MEA data and additional information does not indicate eligibility for CFI and when needed for skilled professional medical personnel to make an eligibility determination.

Example: The MEA score may result in a low rating of 1 or zero. This could be because the applicant or participant has not fully reflected their needs or seeks to conceal their diminished physical or mental functioning. The reviewer will recognize that this low score might not be fully reflective of the need and medical records may be requested.

Example: Another individual has a score of 9 due to a recent automobile accident with a traumatic brain injury. Their assessment might be performed in a hospital setting while their application for medical assistance is processed. They are in an acute care setting for several months after the MEA is performed; and move to a rehabilitation setting where they have periodic MDS assessments. Their underlying medical eligibility has already been noted during the initial MEA however their condition has the potential to improve. In this example, the individual may be in the facility for 11 months and is considering being discharged into the community. Eligibility is then reviewed with consideration to the MDS assessment that has been performed routinely at the NF.

Minimum Data Set (MDS)

The MDS is a requirement of The Omnibus Budget Reconciliation Act of 1987 and a federally mandated process for Medicare and Medicaid certified facilities. Prior to admission to a NF, an individual either meets or is assessed to ensure they meet NFLOC. An MDS is regularly performed in 90 day intervals while in a NF.

Example: At the time of discharge, a person who meets NFLOC on an MDS may continue to meet NFLOC and may wish to receive NFLOC services in the community via CFI; or they may no longer meet NFLOC. If the MDS is used to determine an applicant for CFI meets NFLOC, their MDS eligibility would continue at the discharge. If they no longer meet the NFLOC when a new MEA is performed, they may no longer meet the medical requirements for NFLOC required for CFI eligibility.

The Outcome and Assessment Information Set (OASIS)

The OASIS is a group of standard data elements home health agencies (HHAs) integrate into their comprehensive assessment, to collect and report quality data to CMS. The OASIS was introduced as an additional eligibility assessment for CFI in 2017.

MEA and OASIS Reviews

Regardless of the MEA or OASIS score, the ultimate decision is based on the judgement of skilled professional medical personnel. Their clinical judgement may confirm eligibility or result in a denial of eligibility based on **all** the information presented. If additional medical records are requested and supplied, the skilled professional will carefully evaluate the records alongside the OASIS or MEA. The supplemental information that may be provided in medical records is incorporated to form a holistic view of the individual's healthcare and personal needs.

When cases are being considered for a denial, two skilled professional medical personnel are required to review the information and recommend the denial. Cases will be reviewed prior to finalizing denials to ensure all timelines were met and appropriate steps were taken. In other words, it takes one person to find a person

eligible; but at least two people to deny a case. A supervisor will review cases subject to denial before denials are finalized to ensure that DHHS procedures were followed.

Responsibility: Nursing Facilities Licensed by DHHS; BAAS Contracted Preadmissions Residential Reviews & Medical Eligibility Assessment Contractors

Resources: RSA 151- E:3; RSA 318-B; RSA 326-B; and 42 CFR 483.3542 CFR 432.50, He – E 802.03; He – E 801.03; He – E 801.04