



Department
of Health

HEALTH HOMES (HH) & COMMUNITY BASED SERVICES (HCBS) NOTICES & FAIR HEARINGS

DECEMBER 16, 2024

AGENDA

- ✓ **Purpose**
- ✓ **Overview**
- ✓ **Notices of Determination/Notices of Decision**
- ✓ **HH and C-YES Responsibilities**
- ✓ **The Fair Hearing Process**
- ✓ **Aid Continuing**
- ✓ **Decision After Fair Hearing**
- ✓ **Training and Quality Management Program**
- ✓ **Q&A**

PURPOSE



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PURPOSE

To inform Health Homes Serving Adults and Children (HHSA / HHSC), Care Management Agencies (CMA), and Children and Youth Evaluation Services (C-YES) of updates made to the Health Home & HCBS Notices and Fair Hearings Policy #HH0004 and associated Notices.

To allow Health Homes, Care Management Agencies, and C-YES to **ask questions** regarding the policies and procedures.

DISCLAIMER

This policy supersedes other versions, guidance, and webinar presentations issued prior to this policy. This policy clarifies the existing Fair Hearing requirements including specific timeframes and due dates associated with issuance of the Notices and documentation requirements. Adherence to these requirements is the responsibility of HHs, CMAs/Care Managers (CM), and 1915(c) Children's Waiver HCBS providers by the implementation date *(November 22, 2024)*.

OVERVIEW



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OVERVIEW

Care managers and providers will **understand and follow the process** for Fair Hearings, including who to contact **in the event the member/potential member is interested in pursuing a Fair Hearing**. Health Homes, Care Management Agencies, or C-YES will **review the process in its entirety**, including Fair Hearing rights within the Notice of Decision/Determination document, with the member and their parent/guardian/legally authorized representative.



NOTICES OF DETERMINATION/NOTICES OF DECISION



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NOTICES USED FOR HHSA_s, HHSC_s & HCBS CHILDREN

[DOH-5234](#), [DOH-5235](#), [DOH-5236](#)

For the Health Home Program

The Department of Health (DOH) has updated these **three (3) Notices of Determination** for HHSA and HHSC, used to advise a HH member/potential member and/or their parent/guardian/legally authorized representative, of the HHs determination on eligibility for **enrollment or continued enrollment** in the Health Home program.

[DOH-5287](#), [DOH-5288](#)

For the Children's Waiver

The Department has updated these **two (2) notices** for HHSCs, CMAs, and C-YES to advise their members or potential members and/or their parent/guardian/legally authorized representative of the determination on **eligibility, continued eligibility, or disenrollment** specifically for Children's Waiver participation.



NOTICES USED FOR HHSA_s, HHSC_s & HCBS CHILDREN

The Notices of Determination/Notices of Decision (NOD) inform the individual of:

- the **decision being made**;
- the **reason for the decision**;
- their **right to a Fair Hearing**;
- how to **request a Fair Hearing**;
- their **right to access their HH or C-YES file** and copies of documents in the case record;
- their **right to Aid Continuing in certain circumstances**; and
- their **right to have an Informal Agency Conference** with the HH or C-YES.

NOTICES OF DETERMINATION: HH PROGRAM

Enrollment into the HH Program – DOH 5234

- The [DOH 5234](#) notifies the member and/or their parent, legal guardian, or authorized representative of their HH enrollment and the commencement of care management services.
- The Notice of Determination (NOD) is mailed to the member along with the HH Welcome Letter within five (5) calendar days from the Determination for Enrollment into the Health Home Program.

NOTICES OF DETERMINATION: HH PROGRAM

Disenrollment from the HH Program – DOH 5235

- If a determination is made to disenroll a HH member or upon a member's successful completion of the HH program, issuance of a **timely and adequate notice Form [DOH 5235](#) is required.**
- Timely notice is one that is mailed at least **ten (10) calendar days** (based on date mailed) before the date upon which the proposed action is to become effective.

Please note: the HH cannot make any programmatic changes until at least ten (10) calendar days after the NOD was mailed.

- If the **ten (10) calendar days** carry over into the following month, then the disenrollment date is identified and written as the last day of that following month. Any Health Home Care Management (HHCM) core services conducted during this time are billable.

Refer to [Guidance for Use of the Continued Eligibility for Services \(CES\) Tool](#) related to disenrollment of Adult members.



NOTICES OF DETERMINATION: HH PROGRAM

Denial of Enrollment into the HH Program – DOH 5236

- During the enrollment process, the **member's eligibility for HH enrollment is verified**, including proper Medicaid coverage, HH eligibility, and appropriateness criteria.
- If they are found ineligible for enrollment, Health Homes issue form [DOH 5236](#) to the individual found ineligible.
- The notice will be mailed to the individual within five (5) business days from the determination to inform the individual that they did not meet the eligibility criteria for enrollment into the HH program and the reason for denial of enrollment.

Refer to the [Appropriateness Codes and Criteria](#) chart used for initial eligibility (Adults and Children/Youth).



NOTICES OF DETERMINATION: HCBS

Enrollment or Denial of Enrollment from Children's HCBS – DOH 5287

- While eligibility determination for the 1915(c) Children's Waiver is separate and distinct from HH eligibility, the process for issuing a NOD is the same. ***This NOD is required upon initial and annual re-determination eligibility – this is a change to previous practice.**
- Upon signing and finalizing the HCBS Eligibility Determination within the Uniform Assessment System (UAS), the HH/C-YES care manager will be presented with an outcome confirming that the member is HCBS eligible or ineligible for the identified Target Population.
- **Children/Youth found to be ineligible for HCBS (covered on slide 16 under DOH 5288), can remain in Health Home care management if they continue to be eligible.**
- The Notice of Decision Enrollment Form ([DOH 5287](#)) is sent for both enrollment and denial of enrollment and will document the outcome of the HCBS/LOC Eligibility Determination.

NOTICES OF DETERMINATION: HCBS

Enrollment or Denial of Enrollment from Children's HCBS – DOH 5287

- HH/C-YES care managers will send the notice form within five (5) calendar days from the completion of the eligibility determination to the child/family. For members found eligible, the determination is valid for one (1) year/three hundred and sixty-five (365) days from the date of the finalized assessment.
- If the member is determined HCBS eligible but no slot is available, the member will still receive a NOD and will be notified when a slot is available.
- If the member is found not HCBS eligible, the HH/C-YES care manager will send the NOD form to the member and their family/caretaker and will work with them to connect to other needed services as appropriate.

NOTICES OF DETERMINATION: HCBS

Discontinuance from the Children's Waiver HCBS – DOH 5288

- If the member no longer meets the [HCBS Eligibility Criteria](#) or is found ineligible during the annual Children's Waiver HCBS Eligibility Determination, then the HH/C-YES care manager must send a NOD for Discontinuance ([DOH 5288](#)) within five (5) calendar days from the ineligibility determination and ten (10) calendar days (based on date mailed) prior to the action of disenrollment from the Children's Waiver.
- If an annual Children's Waiver HCBS Eligibility Determination cannot be completed due to lack of documentation, a DOH 5288 is sent at least ten (10) calendar days prior to the annual reassessment due date.

HH/C-YES RESPONSIBILITIES



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HH/C-YES RESPONSIBILITIES

1. Ensures that the CMA/C-YES has a procedure in place to immediately notify the member or potential member upon enrollment, denial of enrollment, or disenrollment.

2. Issues an appropriate Notice of Decision/Determination.

3. Maintains a copy of the Notice in the member's record.

4. Holds an Agency Conference upon request of the member.

5. Provides a copy of the evidence packet to the member and/or legally authorized representative upon request, at no cost.

6. Maintains well documented evidence to support enrollment/disenrollment determinations.

7. Attends the Fair Hearing.

8. Complies with the Decision After Fair Hearing.



THE FAIR HEARING PROCESS



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AGENCY CONFERENCE

Pursuant to 18 NYCRR § 358-3.8, at any reasonable time prior to the Fair Hearing, the member can request an informal Agency Conference with the Health Home (HH)/Children and Youth Evaluation Service (C-YES). If the member requests an Agency Conference, the Health Home (HH)/Children and Youth Evaluation Service (C-YES) arranges for a meeting with the member and/or their representative or anyone they choose (friend, family, attorney, neighbor etc.) and allow the member to submit additional information and review the Health Home's (HH)/Children and Youth Evaluation Service(C-YES) determination on enrollment or disenrollment from the Health Home (HH) Program or Children's Waiver HCBS.

The Health Home (HH)/Children and Youth Evaluation Service (C-YES) can withdraw its determination and enroll or re-enroll the member. If the Health Home (HH)/Children and Youth Evaluation Service (C-YES) decides to uphold its initial determination, the member will still be entitled to have the initial determination reviewed through the Fair Hearing process.



FAIR HEARING PROCESS

The member has sixty (60) calendar days from the date of the Notice to request a Fair Hearing from the OTDA.

1 OTDH Office of Administrative Hearing (OAH) issues form Acknowledgement of Fair Hearing Request (OAH-4220), the Fair Hearing number assigned, and Confirmation of Aid Status.

2 OTDA OAH will then issue form Notice of Fair Hearing ([OAH 457](#)) to the member and the New York DOH's Health Home Team who sends the Fair Hearing notice to the HH and/or C-YES as applicable. This notice provides the Fair Hearing number that has been assigned by OTDA, as well as the date, time, and location of the hearing.

3 At the hearing, the member, their attorney, or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. The member also has a right to bring witnesses to speak in their favor.

4 The HH/C-YES ensures that an appropriate representative of their agency to serve on their behalf is present at the Fair Hearing, as warranted, on the scheduled date, time, and location directed on the Notice of Fair Hearing (Form OAH-457) form.

Fair Hearings may be expedited, usually at the request of the member, depending on the urgency of the issue(s), and may be held within three days or sooner.

PROVIDING DOCUMENTATION PRIOR TO FAIR HEARING

At any reasonable time prior to the Fair Hearing, the member and/or the member's authorized representative has the right to examine the contents of the member's case record.

HHs/C-YES provides **complete copies of its documentary evidence** to the Administrative Law Judge (ALJ). Evidence Packets are sent via the **secure portal** at Office of Temporary Disability Assistance (OTDA) through [Upload.NY.gov](https://upload.ny.gov).

Upon request of the member and/or the member's parent/guardian/legally authorized representative, a copy of the Evidence Packet sent to OTDA is provided to the member and/or the member's parent/guardian/legally authorized representative, at no cost.



PROVIDING DOCUMENTATION PRIOR TO FAIR HEARING

To support enrollment/disenrollment determinations made by the HH/C-YES for success in defending its actions, documentation supporting enrollment/disenrollment determinations can include and is not limited to:


- signed consent form;
- updated Plan of Care (POC);
- care record notes;
- appropriateness;
- eligibility assessments,
- documentation and medical documentation;
- written summary of the case;
- applicable Health Home policy(s) governing the program; and,
- a copy of the notice being challenged.

Additionally, the Children's Waiver Eligibility Determination or attempts to complete such Eligibility Determination is included for children under Home and Community Based Services (HCBS).




PROVIDING DOCUMENTATION PRIOR TO FAIR HEARING


If the member/authorized representative* requests additional documentation to prepare for the Fair Hearing, the HH/C-YES will provide the requested documentation **within a reasonable time prior to the Fair Hearing date.**




Documents are provided without charge to the member and/or their parent/guardian/legally authorized representative.



Case file documents should be mailed only if the member specifically asks that they be mailed.



If there is insufficient time for such documents to be mailed and received before the scheduled date of the Fair Hearing, the documents may be presented at the hearing instead of being mailed.



If the member's request is made less than five (5) business days before the hearing, the HH/C-YES provides such copies no later than at the time of the hearing.

*A person or agency authorized by state, tribal, military or other applicable law, court order or consent to act on behalf of a person for the release of medical information as defined [here](#).

WAIVER OF APPEARANCE

The HH may choose to request a **waiver of appearance**:

Under certain circumstances and no later than five (5) calendar days before the hearing date, the HH/C-YES may request a waiver of appearance from OTDA.

If granted this request, the HH can submit a written evidence packet instead of appearing at the hearing location.

Waiver requests will be reviewed and granted on a case-by-case basis.

Blanket waivers of appearance will not be granted; however, if the agency contact does not receive a telephone call from the OAH prior to the hearing date indicating otherwise, it will be presumed that a waiver has been granted.

The waiver request contains the primary and back-up **contact person's names and telephone number/s**.

The waiver request also contains the **fair hearing number, date of hearing, and a summary** of the specific facts relevant to the issue under review at the hearing. For proper inclusion in the fair hearing record, the waiver request and evidence packet should be **submitted immediately upon notification** of the hearing request.

RECOVERY/HIV SPECIAL NEEDS PLANS – HCBS FOR ADULTS

The Health and Recovery Plans (HARP) or Special Needs Plans (SNP) are **responsible for issuing the determination regarding eligibility** for HCBS (Adults). HHs are to comply with requests from HARP or SNP to participate in the Fair Hearing.

AID CONTINUING



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AID CONTINUING

When a Notice of Determination/Decision is issued to the member they have the **right to determine whether they want to request a Fair Hearing** and whether the **selection of Aid Continuing is right for them.**

If the Department receives notification from the Office of Temporary and Disability Assistance (OTDA) granting the member's request for a Fair Hearing with Aid Continuing, Health Home Care Management services and/or Children's Waiver Home and Community Based Services must be provided until the Decision of the Fair Hearing is determined, the Fair Hearing is denied, or the Fair Hearing is withdrawn.

Children/youth enrolled in the Children's Waiver must have care management through the HH or C-YES. Therefore, if a child/youth has a pending Fair Hearing with Aid Continuing for the Children's Waiver, HH/C-YES care management cannot be closed until such time a Fair Hearing determination is made, or the Fair Hearing is withdrawn.

SEGMENT MANAGEMENT AND POST- DECISION ACTIONS



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IMPROVING CURRENT PROCESS FOR TRACKING FAIR HEARINGS

- The Medicaid Analytics Provider Portal (MAPP HHTS) will track the Fair Hearing status for every Health Home and HCBS member.
- In addition, member requests for Aid Continuing will be captured for continued Health Home and/or HCBS services.

IMPROVING CURRENT PROCESS FOR TRACKING FAIR HEARINGS

- Presently, when DOH receives notification from the Office of Temporary and Disability Assistance (OTDA), DOH distributes the notification to the Health Home which is then responsible for tracking and managing the member's Fair Hearing status throughout the Fair Hearing process.
- DOH has built into the MAPP HHTS a mechanism whereby the Fair Hearing status will be embedded into the MAPP system for HH or HCBS Fair Hearings.

IMPROVING CURRENT PROCESS FOR TRACKING FAIR HEARINGS

Once MAPP HHTS improvement is implemented on 12/28/2024:

- Upon receiving notification from OTDA for a Fair Hearing with Aid Continuing, notification will be distributed to the Health Home.
- At the same time, DOH will change the segment type in MAPP HHTS to “Pended for HH Fair Hearing Aid Continuing” effective the first day of the month following the date on which the order was received. Only DOH can modify this pend status.
- This will allow the Health Home to continue serving the member and to continue billing for appropriate core services provided to the member.

DECISION AFTER FAIR HEARING: IN FAVOR OF MEMBER

When the Decision After Fair Hearing is issued, it is binding upon the HH to comply in accordance with 18 NYCRR § 358-6.4

If the *Decision After Fair Hearing* is in favor of the Member:

With Aid Continuing

HH care management services continue to be provided to the member and the HH/C-YES continues to follow program policies.

The Department creates a new “*Pended for Approved Fair Hearing*” segment in MAPP HHTS (pend date = 1st day of month in which Decision was received) and notifies the HH.

The HH creates a new active enrollment segment which triggers MAPP HHTS to end the *Pended for Approved Fair Hearing* segment (begin date = 1st of month after the month the Decision is received)

- If the Health Home is unable to identify an applicable Initial Appropriateness criterion, the Health Home is to contact the Department for guidance via the Fair Hearing Bureau Mail Log.

DECISION AFTER FAIR HEARING: IN FAVOR OF MEMBER

When the Decision After Fair Hearing is issued, it is binding upon the HH to comply in accordance with 18 NYCRR § 358-6.4

If the Decision After Fair Hearing is in favor of the Member:

Without Aid Continuing

(Member has been disenrolled) The Department notifies the HH to **open a new enrolled segment** effective the first day of the month after which the Decision After Fair Hearing is received, and to **resume serving the member**.

- In these instances, the existing consent remains valid.
- If the previous Plan of Care was completed within the last three hundred and sixty-five (365) days, it is still active.
- Initial appropriateness must be recorded within twenty-eight calendar (28) days of the new active segment (adults and children/youth).
- A new CES Tool (Adults) is required three hundred and sixty-five (365) days after opening the new segment.
- For children/youth, annual appropriateness must be documented in the member's record.
- For the Children's Waiver HCBS, the Eligibility Determination must be completed within three-hundred and sixty-five (365) days from the previous Children's Waiver HCBS Eligibility Determination, regardless of whether it was an ineligible determination.



DECISION AFTER FAIR HEARING: IN FAVOR OF HH PROGRAM

If the Decision After Fair Hearing is in favor of the Health Home Program:

With Aid Continuing

The HH/C-YES care manager **notifies all involved professionals of the disenrollment** from the HH program and Children’s Waiver HCBS, as applicable. Since the final decision was made by OTDA, a new Notice of Determination/Decision would **not** be issued. (Refer to the [Member Disenrollment From the HH Program Policy HH0007](#) for any additional steps).

- The Department creates a new “Pended for Denied Fair Hearing’ segment. Pend start date = 1st of month during which the Decision was received.
- The Department notifies the HH of the change in the segment.
- The HH ends this segment on the last day of the month in which the Decision was received.

If the Decision is in favor of the Health Home Program because the member withdrew their Fair Hearing request, the Department creates a new “Pended for Withdrawn Fair Hearing” segment, and follows the same steps outlined above for ‘Pended for Denied Fair Hearing’.



DECISION AFTER FAIR HEARING: IN FAVOR OF HH PROGRAM

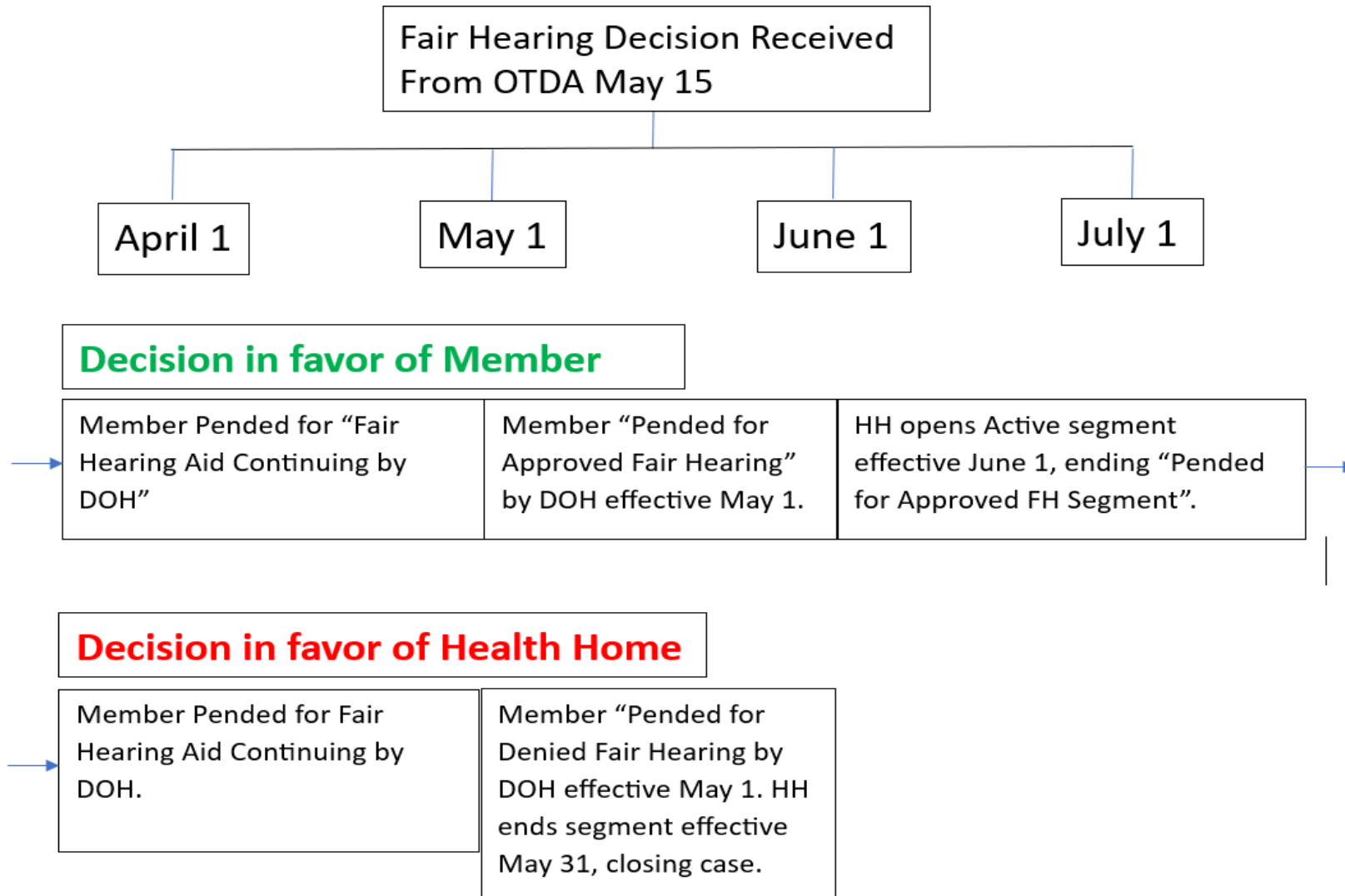
If the Decision After Fair Hearing is in favor of the Health Home Program:

Without Aid Continuing

- The case remains closed.
- The Decision After Fair Hearing is documented in the member's record.



Visual Representation of Segments



COMPLIANCE AND RECONSIDERATION

- If the member does not feel the HH/C-YES has complied with the Fair Hearing decision within a reasonable time after receiving the decision, the member may submit a Compliance Complaint to OTDA for an investigation.
- Either party may request that OTDA reconsider the Decision After Fair Hearing if the party feels there has been an error in law or fact. A request for reconsideration is sent to the OTDA Litigation Mailbox at: litigationmail.hearings@OTDA.NY.GOV or faxed to (518) 473-6735.
- While the reconsideration is under review, the Decision After Fair Hearing remains in effect.
- OTDA will notify the party of the result of its review, and if applicable, that it is correcting an error of law or fact in the decision, and/or reopening the hearing.

TRAINING AND QUALITY MANAGEMENT PROGRAM



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TRAINING

HHs provide training to CMAs/CMs on the Fair Hearing process, to include but not limited to:

HH CMA/Manager
roles and
responsibilities in the
Fair Hearing Process

Notices of Decision/
Determination issued

Agency Conferences

Fair Hearing Requests

Aid Continuing

Disenrollment/
Continued Enrollment
Procedures

Documentation
Needed to Support
Enrollment/
Disenrollment
Determinations

Decision After Fair
Hearing

QUALITY MANAGEMENT PROGRAM

HHs have a quality assurance process in place to ensure that HHCMs and CMAs comply with HH policies and procedures. Quality indicators are to include, but are not limited to:

The HH issued a **correct and complete, timely and adequate notice** to the member.

The HH **followed protocol** regarding member **disenrollment or continued enrollment** determinations.

The HH provided the **Evidence Packet** to the member and/or their authorized representative, upon their request.

The HH **tracks and monitors Fair Hearings requests** filed against the HH/CMA:

- Fair Hearing Requests with Aid Continuing
- Fair Hearing Requests without Aid Continuing

The HH provided **additional information** to the member and/or their authorized representative, upon their request.

The HH **tracks the number of decisions after Fair Hearings:**

- In favor of the HH/CMA
- In favor of the member (reason for unfavorable decision & are there similar issues that prompt a Fair Hearing that require technical assistance to the CMA?)

QUESTIONS?

CONTACT US AT:

HEALTH HOME BML – HEALTHHOMES@HEALTH.NY.GOV – SUBJECT: POLICY

OR

HCBS QUESTIONS CONTAINING PHI: LOG INTO HCS SFT AND THE "TO" CAPACITY
MANAGEMENT SHARED MAILBOX

HCBS QUESTIONS WITHOUT PHI: CAPACITYMANAGEMENT@HEALTH.NY.GOV

THANK YOU!



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Q&A



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DEFINITIONS



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Definitions

- **Adequate Notice** - Notice issued that meets the specifications of 18 NYCRR § 358-2.22; adequate notice is given when an application for HH or Children's Waiver enrollment is accepted or denied.
- **Aid Continuing (AC)** - The right of a HH or Children's Waiver enrollee to have services continue until the Decision After Fair Hearing is issued; Aid Continuing directives are issued by the OTDA.
- **Agency Conference** – An informal meeting that may be requested by the member in addition to requesting a Fair Hearing in which the member may submit additional information and review the HH/C-YES determination on enrollment or continued enrollment in the NYS Health Home (HH) Program or the Children's Waiver HCBS.
- **1915(c) Children's Waiver Home and Community Based Services (HCBS)** – HCBS are community-based services to prevent the need for institutional care such as psychiatric hospitalization, residential treatment, or nursing home admission, or to assist the child/youth to return to their home and community after discharge from an institutional level of care. These services serve children/youth from birth up to age of 21 who are found eligible through an HCBS Eligibility Determination. For more information on the Children's Waiver, please visit the Department's Children's Waiver overview page [here](#). For the purposes of this policy, 1915(c) Children's Waiver Home and Community Based Services and Children's Waiver HCBS are used interchangeably.

Definitions

- **Children and Youth Evaluation Service (C-YES)** - The State-designated Independent Entity that conducts the Home and Community Based Services (HCBS) Eligibility Determination for children/youth who need or want HCBS and are not enrolled in Medicaid. The C-YES develops and manages the HCBS plan of care for children/youth enrolled in the 1915(c) Children's Waiver Home and Community Based Services who also elect to opt out of comprehensive HH care management and will only receive HCBS care management services.
- **Effective Date** - the date in which the Health Home will take action as described in the Notice of Decision/Determination (see Definition for *Timely Notice*).
- **Evidence Packet** – Documentation supporting enrollment/disenrollment determinations including, but not limited to, the signed consent form; the updated Plan of Care (POC); care record notes; appropriateness, eligibility assessments and documentation, and medical documentation.
- **Fair Hearing** – A proceeding before an Administrative Law Judge that provides an opportunity for a member and the agency to present evidence in support of a determination that the member does not agree with.
- **Fair Hearing Notice** – Notifications sent from OTDA to the Department which identify when a HH or Children's Waiver member requests a Fair Hearing and all subsequent activities to include date Fair Hearing is scheduled for, request for reschedule of the Fair Hearing date, Decision After Fair Hearing, etc.

Definitions

- **Member** - The individual (both adults and children/youths) enrolled in the Health Home program or with the C-YES for enrollment in the Children's Waiver. The term includes the parent, guardian, legal authorized representative of the member, as applicable.
- **Notice Date** – The date the Notice of Determination is issued.
- **Notice of Determination/Notice of Decision (NOD)** – A written notice to a member or potential member of the Health Home's (HH) or Children's Waiver determination of eligibility for enrollment in or disenrollment from the NYS Health Home Program or the Children's Waiver.
- **Quality Management Program (QMP)** - a proactive approach that evaluates the ability of Health Homes and Care Management Agencies to provide services to member and its impact and drives improvement in quality and effectiveness of these services. The key elements of a QMP are Quality Assurance and /Performance Improvement, processes undertaken by a Health Home to assesses its performance in assuring care is maintained at acceptable levels in relation to specifications of standards for service quality and outcomes. Through continuous study, any problems are identified, and corrections can be made to improve processes in care management service delivery to support member quality of life.

Definitions

- **Successful Completion** – Occurs when a member has met all of the goals in the Plan of Care (POC) and no longer meets the appropriateness criteria for continued participation in the HH or 1915(c) Children's Waiver HCBS.
- **Timely Notice** – Per 18 NYCRR § 358-2.23, a timely notice is one that is mailed at least ten (10) calendar days before the date upon which the proposed negative action is to become effective.