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

This policy pertains to Health Home Care Managers (HHCMs), Children and Youth Evaluation Services (C-YES), Children's Single Point of Access (C-SPOA) and HCBS providers providing Home and Community-Based Services (HCBS) under the 1915(c) Children's Waiver.

Purpose

This policy outlines the steps that HHCMs/C-YES/C-SPOA must take to determine eligibility and enroll eligible children/youth in the Children's Waiver.[1]

Scope

HCBS Eligibility Determination procedures vary depending on whether the child/youth is being newly assessed or reassessed for HCBS, whether the child/youth is already enrolled in Medicaid, whether the child/youth is already enrolled in Health Homes Serving Children (HHSC), and the child/youth's qualifying condition, risk factors, and functional limitations.

The individual that conducts the HCBS Eligibility Determination must maintain regular contact with the child/youth/family throughout the HCBS Eligibility Determination process.

[1] See the Children's Waiver Appendix B-6.

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HCBS Eligibility Criteria and Eligibility Determination Process

A. General Criteria

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.

To be eligible for HCBS, children/youth must have a medical condition, developmental disability, and/or serious mental health disorder that is impacting their daily functioning and that places them at imminent risk of hospitalization or institutionalization, or results in the need for supports to return safely home and to their community after discharge from an institutional level of care. Children/youth must be under 21 years of age and enrolled in Medicaid or eligible for Medicaid (either through Community budgeting or Family of One budgeting).

Waiver Enrollment criteria are categorized into Target Populations[2], each with distinct criteria, which must be met for the child to be determined eligible for waiver enrollment:

- Serious Emotional Disturbance
- Medically Fragile
- Developmental Disability and Medically Fragile
- Developmental Disability and in Foster Care.

Children/youth may have more than one qualifying condition; in those instances, care managers should conduct the waiver eligibility assessment based on the condition that puts the child/youth at risk of institutionalization, or for which they are being discharged from an institution.

B. Serious Emotional Disturbance (SED)

1. Qualifying Condition

Serious Emotional Disturbance (SED) is a clinical determination made by a Licensed Practitioner of the Healing Arts (LPHA). It is based on a comprehensive assessment to determine whether the child has a qualifying mental health diagnosis that is both (a) considered serious, and (b) has resulted in moderate to severe functional limitations over the past 12 months on a continuous or intermittent basis.

An SED determination requires that the child/youth have a mental illness diagnosis according to the most current Diagnostic and Statistical Manual of Mental Disorders (DSM) in one of the following diagnostic categories:

a) Schizophrenia Spectrum and Other Psychotic Disorders
b) Bipolar and Related Disorders
c) Depressive Disorders
d) Anxiety Disorders
e) Obsessive-Compulsive and Related Disorders
f) Trauma-and Stressor-Related Disorders
g) Dissociative Disorders
h) Somatic Symptom and Related Disorders

[2] See Children's Waiver, Appendix B-1.

i) Feeding and Eating Disorders
j) Disruptive, Impulse-Control, and Conduct Disorders
k) Personality Disorders
l) Paraphilic Disorders
m) Gender Dysphoria
n) Elimination Disorders
o) Sleep-Wake Disorders
p) Sexual Dysfunctions
q) Medication-Induced Movement Disorders
r) Attention Deficit/Hyperactive Disorders
s) Tic Disorders

In addition, the SED determination requires that the child/youth has experienced functional limitations due to their mental health diagnosis over the past 12 months on a continuous or intermittent basis. The functional limitations must be moderate in at least two of the following areas or severe in at least one of the following areas:

a) Ability to care for self (e.g., personal hygiene; obtaining/eating food; dressing; avoiding injuries);
b) Family life (e.g., capacity to live in a family or family-like environment; relationships with parents or substitute parents, siblings, and other relatives; behavior in family setting);
c) Social relationships (e.g., establishing and maintaining friendships; interpersonal interactions with peers, neighbors, and other adults; social skills; compliance with social norms; play and appropriate use of leisure time);
d) Self-direction/self-control (e.g., ability to sustain focused attention for long enough to permit completion of age-appropriate tasks; behavioral self-control; appropriate judgment and value systems; decision-making ability); or
e) Ability to learn (e.g., school achievement and attendance; receptive and expressive language; relationships with teachers; behavior in school).

2. *Risk Factors*

To qualify for HCBS, the child/youth must be at imminent risk of institutionalization[3]:

a) Risk of Institutionalization: The child/youth, in the absence of HCBS, is at imminent risk of institutionalization due to their mental health needs OR is unable to return to their community due to their mental health needs without HCBS, as determined by an LPHA.

The child/youth must also meet one of the following four specific risk criteria:

b) **Current Out-of-Home Placement:** The child/youth is currently in an out-of-home placement, such as a qualified residential treatment program, crisis residence program, children's community residence, residential treatment facility or psychiatric hospital.

c) **Recent Out-of-Home Placement:** The child/youth has been in an out-of-home

[3] i.e., that there is a reasonable indication that the child/youth would otherwise be institutionalized in a month or less, but for the provision of HCBS. *See* 42 CFR § 441.302(c).

placement, such as a qualified residential treatment program, crisis residence program, children's community residence, residential treatment facility, or psychiatric hospital, within the past six months.

d) **Other Risk of Out-of-Home Placement:** The child/youth has applied for an out-of-home placement, such as placement in a qualified residential treatment program, crisis residence, children's community residence, residential treatment facility, or psychiatric hospital or the child/youth has had multiple presentations at a Comprehensive Psychiatric Emergency Program (CPEP) or Emergency Department (ED) and has been assessed for admission for psychiatric inpatient hospitalization due to an acute need, within the past six months.

e) **Multi-System Involvement:** The child/youth is currently receiving mental health services, as well as services from another child-serving system, to support their need for complex services/supports to remain in the community.

The child/youth must be in receipt of a clinically appropriate mental health service(s) designed to reduce the risk of institutionalization from a licensed mental health professional or a mental health professional practicing under the supervision of a licensed mental health professional. This does *not* include Family Peer Support, Youth Peer Support, or Psychosocial Rehabilitative Services. If the child/youth is receiving more than one mental health service, this would only count as involvement with one system. For children/youth who are on a waitlist for mental health services, or who are experiencing other extenuating circumstances, and whom the evaluating LPHA believes are at risk of institutionalization, please contact DOH at BH.transition@health.ny.gov.

Examples of other system involvement include, but are not limited to: child welfare (e.g., Child Protective Services (CPS), foster care); juvenile justice (e.g., probation); Department of Homeless Services; substance use treatment clinics or residential treatment facilities or institutions; developmental disability services or residential facilities or institutions; or having an established school Individualized Education Plan (IEP) or 504 plan *and* in receipt of services through the school district.

System involvement does *not* include systems/services that children commonly receive, such as school or primary care services. It also does not include enrollment in a Medicaid managed care plan or other health insurance program, Health Homes/C-YES, or other care coordination services.

3. *Functional Criteria*

Functional criteria are significant needs resulting from the child's/youth's mental health condition that are disrupting their ability to function successfully in various life domains. These significant needs, which impact the child's functioning, may lead to a high level of care, such as institutionalization and/or result in involvement with other systems, such as juvenile justice, school special education, family court, child welfare, etc.

4. *Procedure and Documentation Requirements*

a. Qualifying Condition

The HH/C-YES care manager must collect documentation from the involved mental health professional who determined that the child/youth has a qualifying mental health diagnosis and has met the SED criteria. The care manager must maintain all supporting documentation of the comprehensive mental health evaluation/assessment and the SED determination in the child/youth's case record. The SED determination can only be made by a mental health professional who is treating the individual or has conducted a comprehensive evaluation/assessment.

b. Risk Factors

Risk of institutionalization and at least one of the four other risk factors listed below must be documented in the member's record. It is the responsibility of the HH/C-YES care manager to ensure that adequate documentation is obtained.

1) **Risk of Institutionalization:** The child/youth, in the absence of HCBS, is at imminent risk of institutionalization due to their mental health needs OR is unable to return to their community due to their mental health needs without HCBS, as determined by an LPHA. An LPHA must complete the LPHA SED Attestation Form (DOH-5275) attesting that the child/youth, in the absence of HCBS, is at risk of institutionalization due to their mental health needs OR is unable to return to their community due to their mental health needs without HCBS.

Examples of appropriate documentation for each of the four risk factors are identified below.

2) **Current Out-of-Home Placement:** The child/youth is currently in an out-of-home placement, such as a qualified residential treatment program, crisis residence program, children's community residence, residential treatment facility or psychiatric hospital. Supporting documentation may include admission paperwork, a letter from the hospital/institution signed and with credentials, a letter from the County Single Point of Access (CSPOA) confirming out-of-home placement, or PSYCKES record of inpatient stay.

3) **Recent Out-of-Home Placement:** The child/youth has been in an out-of-home placement, such as a qualified residential treatment program, crisis residence program, children's community residence, residential treatment facility, or psychiatric hospital, within the past six months. Supporting documentation may include discharge paperwork, a letter from the institution signed by a licensed/credentialed provider employed by the institution, a letter from the County Single Point of Access (CSPOA) confirming out-of-home placement, or a PSYCKES record of inpatient stay for a discharge occurring within the last six months.

4) **Other Risk of Out-of-Home Placement:** The child/youth has applied for an out-of-home placement, such as a qualified residential treatment program, crisis residence program, children's community residence, residential treatment facility or psychiatric hospital or the child/youth has had one or more presentations at a Comprehensive Psychiatric Emergency Program (CPEP) or Emergency

Department (ED) and was assessed for admission for psychiatric inpatient hospitalization due to an acute need within the past six months. Supporting documentation may include a letter from the CSPOA that an application/discussion/review occurred, and the child/youth is recommended for an out-of-home placement.

5) **Multi-System Involvement:** The child/youth is currently receiving services from multiple child-serving systems (i.e., two or more systems), as described above in Section B.2.e, demonstrating that the child needs complex services/supports to remain successful in the community. Supporting documentation such as paperwork from each system that identifies the specific needs of the member must be maintained in the member's record.

c. LPHA Attestation

An LPHA must complete the LPHA SED Attestation Form attesting that the child/youth meets the Office of Mental Health (OMH) SED determination criteria and that the child/youth, in the absence of HCBS, is at risk of institutionalization due to their mental health needs OR is unable to return to their community due to their mental health needs without HCBS.

The LPHA Attestation Form must be completed and signed by an LPHA who has the ability to diagnose within their scope of practice under NY State law OR by a Licensed Practitioner who is under the supervision of a LPHA who has the ability to diagnose within their scope of practice under NY State law. Refer to Appendix A for a list of qualified provider types.

The LPHA completing and signing the Attestation Form must:

- Be actively working with/treating the member, or
- Have previously worked with the member in a clinical capacity within the last year (12 months), or
- Have completed a comprehensive evaluation to verify diagnoses and determine the child/youth meets SED criteria. A comprehensive evaluation includes a needs and strengths assessment, an assessment of the child/youth's mental health history and current status, and the child/youth's treatment and rehabilitative goals.

The care manager must complete the HCBS Eligibility Determination based on documentation from the LPHA that demonstrates evidence for the SED determination and the child's risk of institutionalization. If the care manager cannot acquire adequate documentation to verify clinical need and risk factors, as outlined above, the care manager must complete the HCBS Eligibility Determination based on whatever documentation is available and issue a Notice of Decision (NOD).

An LPHA Attestation Form documenting that the child has experienced functional limitations over the last 12 months on a continuous or intermittent basis, due to emotional disturbance, is required for the initial and annual HCBS eligibility determination for children being assessed for enrollment in the Children's Waiver under the SED Target Population. The LPHA Form is valid for 12 months if the child is continuously enrolled in the waiver for that period. If the child is disenrolled from the Waiver for any period since the form was completed, then a new LPHA Form is

needed at the time of reassessment.

d. Functional Criteria

Before a child is deemed eligible for HCBS, the HHCM must complete a CANS-NY assessment to verify whether the child/youth meets functional criteria. This is done by completing a subset of Child and Adolescent Needs and Strengths (CANS-NY) assessment items for the HCBS Eligibility Determination within the Uniform Assessment System (UAS). The CANS-NY evaluates functional limitations using ratings that indicate whether the child/youth's mental health condition is impacting their daily functioning in multiple life domains and is independent of the LPHA SED determination. HH/C-YES care managers must maintain supporting documentation in the case record to support any information entered into the CANS-NY assessment.

C. Medically Fragile (MF)

Criteria described below apply for children/youth enrolled in the Children's Waiver under the Medically Fragile Target Population and the Development Disability/Medically Fragile Target Population.

1. Qualifying Condition

The child/youth must have a medical condition that is physically disabling, causing several functional limitations for at least a year, or is likely to be fatal, as defined by Social Security Income/Social Security Disability or NYS Disability Review.

Such medical conditions may include, but not limited to, low birth weight and failure to thrive, musculoskeletal disorders, special senses and speech, respiratory disorders, cardiovascular system, digestive, system, genitourinary disorders, hematological disorders, skin disorders, endocrine disorders, congenital disorders that affect multiple body systems, neurological disorders, mental disorders, cancer (malignant neoplastic diseases) and immune system disorders. Refer to Listing of Impairments - Child Listings (Part B) (ssa.gov) for additional information.

2. Risk Factors

The child must be at imminent risk of institutionalization, and there is a need for complex supports related to the child's condition.

3. Functional Criteria

The child's/youth's medical/physical condition is negatively affecting and disrupting their ability to complete daily living tasks, which may lead to a high level of care, such as institutionalization and/or nursing home admission.

4. Procedure and Documentation Requirements

The HH/C-YES care manager must collect documentation of physical disability to meet the MF Target Population qualifying condition, risks, and functional limitations criteria. A physical disability can be documented using one of the following:

- Social Security Income (SSI) Certification[4] **or**
- DOH 5144 – "Disability Review Team Certificate" or disability letter from the State Disability Review Team (SDRU)

a. Disability Documentation for Children/Youth without Current SSI Certification or DOH Disability Review Team Certificate

If the child/youth is under age 18 and does not have an active SSI Certification or Department of Health (DOH) Disability Review Team Certificate on file but is in immediate need of HCBS, the following three forms can be completed by the care manager to complete an initial HCBS eligibility determination[5]:

1. DOH 5151 – "Childhood Medical Report" completed by physician, ***and***
2. DOH 5152 – "Questionnaire of School Performance" completed by teacher (if applicable), ***and***
3. DOH 5153 – "Description of Child's Activities Report" completed by parent/guardian or authorized representative.

For children/youth enrolled in the Children's Waiver based on completion of these three forms, the HHCM/C-YES must maintain all forms and supporting documentation in the child/youth's case record. HHCM/C-YES must initiate the SSI Certification or DOH SDRU disability determination process no later than 120 days after enrollment in the waiver. Refer to sections c. and d. below.

For youth ages 18 – 21, the care manager assists in the completion of the Adult Disability Packet forms, which are then submitted to the DOH Disability Review Team. The Disability Review Team will then follow the same referral process with the LDSS as is followed for children under age 18.

b. Disability Documentation for Children/Youth with Current SSI Certification or DOH Disability Review Team Certificate/Letter

A current SSI Certification or DOH Disability Review Team Certificate or disability letter from the SDRU with valid coverage dates that include the date of the HCBS Eligibility Determination and enrollment is adequate documentation of the child/youth's qualifying condition and risk factors. The HHCM/C-YES must maintain a copy of the SSI Certification or the Disability Review Team Certificate or disability letter from the SDRU in the member's record. The SDRU will only send the Disability Certificate to the child/youth and/or family/caregiver due to the Protected Health Information (PHI) contained within the Disability Certificate. The SDRU will provide a disability letter to LDSS agencies, HHCMs, and C-YES that outlines the disability determination and effective dates, which is all the information necessary to demonstrate proof of Children's Waiver HCBS eligibility[6].

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[4] Any documentation from the Social Security Administration (SSA) that contains the disability determination and valid dates of coverage is acceptable proof/documentation of SSI Certification.
[5] Effective April 1, 2024, an SSI or DOH SDRU determination is required for ongoing Children's Waiver enrollment for Children's Waiver enrollees in Medically Fragile (MF) and Developmentally Disabled and Medically Fragile (DD/MF) Target Populations.
[6] If the child/youth's parent/caregiver consents, the HHCM/C-YES is permitted to become the child/youth's Medicaid Authorized Representative to more easily communicate directly with the SDRU about the child/youth's disability status.

The HHCM/C-YES can request a copy of these forms in the following ways:

1) For SSI Certification: Complete the steps on the SSA website or have the parent/guardian/legally authorized representative make an appointment to visit their local SSA office.

2) For Disability Review Team Letter: Email the SDRU at SDRU@health.ny.gov or contact the Local Department of Social Services (LDSS).

HHCM/C-YES should be mindful of the authorization dates on the SSI Certification or the Disability Review Team Certificate/disability letter and assist the child/youth/family in re-certification prior to the expiration date so that the child/youth can remain in the Children's Waiver, if appropriate. Current disability documentation is also required to complete the HCBS annual reassessment.

c. *Requesting an SSI Eligibility Certification*

This certification is determined by New York State Office of Temporary and Disability Assistance (OTDA) NYS Division of Disability Determinations and the federal Social Security Administration (SSA). SSI must be determined at least once every three years if the child/youth's medical condition is expected to improve and every 5-7 years if improvement is not expected.

- For children under 18: The application and more information can be accessed on the SSA website here.
- For youth 18 and over: The application and more information can be accessed on the SSA website here.

d. *Requesting a Disability Letter from the SDRU*

If the initial HCBS Eligibility Determination is completed without an active SSI Certification or DOH Disability Review Team Certification (i.e., based on the DOH 5151, DOH 5152, and DOH 5153), and an SSI Certificate is not being pursued, the HHCM/C-YES must request a disability letter from the SDRU. The steps to pursue and obtain a Disability Review Team Certificate are as follows:

a) The HHCM/C-YES contacts the child/youth's county LDSS and requests that a referral for a disability determination be sent to New York's State's Disability Review Unit (SDRU)[7]. If the three forms (DOH 5151, 5152, and 5153) have already been completed, then these forms can be submitted to the LDSS with this request.
b) The LDSS will send the referral for a disability determination to the SDRU.
c) The SDRU will reach out to the parent/guardian/legally authorized representative to explain the process and outline the required documents that need to be completed and by whom for the Disability Review to be conducted.
d) The SDRU will request and coordinate the completion of all required

[7] For children/youth in enrolled in the Children's Waiver under the Medically Fragile Target Population and are in foster care, the SDRU will accept disability referrals directly from the HHCM/C-YES.

documents by the appropriate professionals/caregivers.

e) The HHCM/C-YES should explain the process to the parent/guardian/legally authorized representative and assist them with filling out any forms.
f) If the HHCM/C-YES would like to assist the parent/guardian/legally authorized representative to complete the required forms in advance of the SDRU request, they can submit the forms (listed below) to the LDSS at the time the disability referral is requested.
    i. DOH 5151 – "Childhood Medical Report" completed by physician, **and**
    ii. DOH 5152 – "Questionnaire of School Performance" completed by teacher (if applicable), **and**
    iii. DOH 5153 – "Description of Child's Activities Report" completed by parent/guardian or authorized representative.
    iv. DOH 5139 – "Disability Questionnaire," **and**
    v. DOH 5173 – "Authorization for Release of Health Information Pursuant to HIPAA

Upon completion of their review, the SDRU will provide a disability letter to the parent/guardian/legally authorized representative, HHCM/C-YES, and LDSS that outlines the disability determination and effective date. If the child is determined disabled, this determination is adequate documentation of the child/youth's qualifying condition and risk factors. The HHCM/C-YES must retain a copy of the disability letter or denial letter in child/youth's case file.

e. Approval of Disability Letter/SSI Certification

If the child/youth is found to meet the disability criteria and obtains an SDRU Disability Letter or SSI Certification, the child/youth can remain in the Children's Waiver.

The disability letter/SSI Certification can be utilized for the annual HCBS Eligibility Determination should the child/youth continue to need HCBS and want to remain in the Waiver, if the disability determination is still active at the time of reassessment.

The HHCM/C-YES should note the expiration on the SDRU Disability Letter/SSI Certification to ensure follow up as needed well in advance of the annual HCBS Eligibility Determination being required.

f. Denial of SDRU Disability Letter /SSI Certification

Effective April 1, 2024, if the child/youth is found to **not** meet the disability criteria and receives a denial from the SDRU/SSI, then the child/youth no longer meets the HCBS MF Target Population criteria and must be disenrolled from the Children's Waiver within 30 days from the date of the denial.

The HH/C-YES care manager must send out the Notice of Decision (NOD) to the child/youth/family.

The HH/C-YES care manager must send a copy of the SSI/SDRU denial letter to the county LDSS.

The HH/C-YES care manager must notify DOH capacity management requiring a

removal of the K-codes due to disenrollment. As with all disenrollment, the HHCM/C-YES should notify all care team providers, especially HCBS providers and Medicaid Managed Care Plans, of the disenrollment.

g. Risk Factors

There are no additional forms or documentation required to identify Risk Factors. Risk factors are captured during the disability determination process, or documented on the DOH 5151, DOH 5152 and DOH 5153 and supporting documentation.

h. Functional Limitations

The functional criteria are determined by answering a subset of Child and Adolescent Needs and Strengths (CANS-NY) assessment items for the HCBS Eligibility Determination that is completed within the Uniform Assessment System (UAS). The MF functional limitations and risk of institutionalization are determined when the ratings indicate that the child/youth's medical condition is impacting their daily functioning in multiple life domains. The HH/C-YES care manager must maintain supporting documentation in the case record to support any information entered into the CANS-NY assessment.

D. Developmental Disability (DD)

To be enrolled in the Children's Waiver under the Developmental Disability and Medically Fragile (DD/MF) Target Population, the child/youth must meet the criteria for both Developmental Disability, described in this section, and Medically Fragile, which is described in Section C, above.

To be enrolled in the Children's Waiver under the Developmental Disability and in Foster Care (DD/FC) Target Population, the child/youth must meet the criteria for both Developmental Disability, described in this section, and Foster Care, which is described in Section E, below.

1. Qualifying Condition

A developmental disability is defined by the Office for People with Developmental Disabilities (OPWDD) as a condition which meets one of the criteria a-c as well as criteria d, e, and f:

a) is attributable to intellectual disability, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, Prader-Willi syndrome or autism; **or**
b) is attributable to any other condition of a child/youth found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior of a child/youth with intellectual disability or requires treatment and services similar to those required for such children/youth; **or**
c) is attributable to dyslexia resulting from a disability described above; **and**
d) originates before such child/youth attains age 22; **and**
e) has continued or can be expected to continue indefinitely; **and**
f) results in substantial functional impairment

2. *Risk Factors*

   As described above under the qualifying conditions, the child/youth's developmental disability must result in substantial functional impairment. The child/youth must also be at imminent risk of institutionalization.

3. *Functional Criteria*

   As described above under the qualifying conditions, the child/youth's developmental disability must result in substantial functional impairment.

4. *Procedure and Documentation Requirements*

   To be enrolled in the Children's Waiver under the DD/MF Target Population, the child/youth must meet the criteria for both Developmental Disability and Medically Fragile, which is described in Section B, above.

   To be enrolled in the Children's Waiver under the DD/FC Target Population, the child/youth must meet the criteria for both Developmental Disability and Foster Care, which is described in Section E, below.

   a. *Establishing Developmental Disability as a Qualifying Condition*

      The OPWDD DDRO, in collaboration with the HHCM/C-YES, will complete the HCBS Eligibility Determination for children/youth with developmental disabilities. The HHCM/C-YES will work with the family and other involved providers to gather the necessary documentation needed for the child/youth's record and HCBS Eligibility Determination. Further information regarding this process is located in the OPWDD DDRO Manual Eligibility Process for Children's Waiver.

      The Intermediate Care Facilities for Individuals with Intellectual Disabilities Level of Care Eligibility Determination (ICF/IDD LCED) must be completed annually to be utilized for the HCBS Eligibility Determination. HHCM/C-YES must follow the outlined process required to maintain LCED in a timely manner to have the needed information for the annual HCBS reassessment. These processes can be found here Initiating and Maintaining OPWDD ICF/IID LCED Policy #CW0010.

      The ICF-IDD LCED and any related documentation, including correspondence with OPWDD, must be maintained in the child's/youth's record.

      For additional information on the ICF-IDD LCED process see ADM #2020-02 Revised Intermediate Care Facilities for Individuals with Intellectual Disabilities ICF/IDD Level of Care Eligibility Determination (LCED) | Office for People With Developmental Disabilities (ny.gov).

   b. *Risk Factors*

      Risk factors, including the risk of institutionalization, are identified and documented during the ICF-IDD LCED process.

c. Functional Criteria:

The ICF/IDD LCED includes functional limitation considerations; therefore, once a child/youth is found to meet the OPWDD LCED, no additional functional limitations are required to be identified related to the developmental disability.

E. Foster Care

1. Qualifying Condition

There are no qualifying conditions for Foster Care. This category is determined based on the child/youth's foster care status. To be enrolled in the Children's Waiver under the Developmental Disability and in Foster Care (DD/FC) Target Population, the child/youth must meet the criteria for both Developmental Disability, described in Section D above, and Foster Care, which is described in this section.

2. Risk Factors

Child/youth currently placed in foster care or was in foster care placement at the time of HCBS enrollment, without a break in HCBS. If the child/youth was previously in foster care and was discharged from foster care prior to receiving HCBS, then the risk factor would not be met.

3. Functional Criteria

The ICF/IDD Level of Care Eligibility Determination (LCED) conducted by OPWDD includes the functional limitation considerations for the DD/FC Target Population. A separate CANS-NY assessment is not required.

4. Procedure and Documentation Requirements

To be enrolled in the Children's Waiver under the DD/FC Target Population, the child/youth must meet the criteria for both Developmental Disability described in Section D, above, and Foster Care, described in this section.

The HHCM/C-YES must obtain documentation that the child/youth was in foster care when the initial HCBS Eligibility Determination is conducted. Upon the annual HCBS reassessment, the HHCM/C-YES must verify and maintain documentation that the child/youth is currently in foster care. If the child/youth was discharged from foster care at the time of the annual HCBS reassessment, they must have continuous enrollment in HCBS without any breaks in service since they were discharged from foster care, to maintain HCBS eligibility.

There is no separate functional limitation requirement for foster care. However, the HHCM/C-YES must complete the eligibility questions in the UAS for HCBS eligibility to be determined under this category.

F. HCBS Eligibility Determination Procedures Applicable to All Children

1. Frequency of HCBS Eligibility Determinations

The HCBS Eligibility Determination remains active for one year, once completed and signed in the UAS by the HHCM/C-YES. If the child experiences a significant change in condition that would likely lead them to lose their HCBS eligibility due to a substantial change in disability status, risk factors or functioning, possibly because of a significant life event, they must be reevaluated for waiver eligibility.

Significant life events are specific experiences or changes in medical and/or behavioral health or social needs that directly impact/alter the member's life, resulting in the need to change the Plan of Care (POC) and may include, but are not limited to, the following:

- Significant change in child's functioning (including increase or decrease of symptoms or new diagnosis);
- service plan or treatment goals were achieved;
- child/youth discharged, or transferred from hospital/detox, residential placement, or foster care;
- child has been seriously injured or in a serious accident; etc.

If a child/youth is found ineligible, a new assessment can be completed whenever there is a change in the child/youth's circumstances; there is no wait period between assessments.

2. *For Children/Youth With Active Medicaid Coverage*

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

3. *For Children/Youth Without Active Medicaid Coverage*

- The HCBS Eligibility Determination must be performed by C-YES.
- If determined HCBS eligible, C-YES will work with the family to complete a Medicaid application (and Supplement A for a certified disabled child/youth or a child/youth in a Medically Fragile diagnostic group), including supporting documentation and any associated disability forms for a child/youth in a Medically Fragile diagnostic group.
- Once the assessment is finalized, DOH Capacity Management will receive a system notification that an HCBS Eligibility Determination is complete and if the child/youth does not already have Medicaid, a waiver slot will be placed on hold pending Medicaid enrollment or if no slots are available, the child/youth will be placed on a waitlist.
- C-YES will send the Medicaid application with the HCBS Eligibility Cover Letter to

the LDSS.

- The LDSS will review the Medicaid application and determine Community Medicaid eligibility or Family of One Medicaid eligibility. If the child/youth is found Medicaid eligible, the LDSS will enter appropriate eligibility R/RE K-codes on the child/youth's file in the eMedNY system.
- Once Medicaid enrolled, C-YES will assist in the selection of and referral to a HHSC if child/youth choses.

4. *Capacity Management Verification and HCBS Enrollment*

When the child/youth is found eligible, and the HHCM/C-YES has confirmed that the child/youth/family wants to continue with HCBS, then it is necessary for the child/youth's Medicaid member file to have the proper R/RE K-codes added to indicate HCBS eligibility and enrollment by Target Population (see Appendix B for the list of K-codes). DOH Capacity Management manages the HCBS slots based on the CMS-approved 1915(c) Children's Waiver, which establishes the number of slots available per year.

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

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

If a child/youth enrolled in the Children's Waiver loses Medicaid coverage, DOH Capacity Management will not release that slot to a new child/youth for 90 days, so that the HHCM/C-YES can assist the child/youth to re-establish Medicaid eligibility, if possible. If Medicaid coverage is re-established within the 90 days, the child/youth can resume participation in the Children's Waiver immediately.

If the child/youth enrolled in the Children's Waiver becomes institutionalized (hospitalization, nursing home, residential placement, etc.), the child/youth can remain enrolled for up to 90 days while receiving treatment in one of these settings. If the child/youth requires institutional care for more than 90 days, the child/youth must be discharged from the Children's Waiver. Notify Capacity Management to remove the R/RE K-codes.

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

5. *Notice of Decision/Determination*

a. *Initial Assessment*

Upon the HHCM/C-YES signing and finalizing the HCBS Level of Care (LOC) Eligibility Determination, the UAS will generate the eligibility determination outcome. The HHCMs/C-YES must notify the child/youth of the HCBS/LOC Eligibility Determination within 5 business days.

If the child/youth is determined eligible and there is a Children's Waiver slot available, the HHCM/C-YES will send the child/youth a *Notice of Decision (NOD) Enrollment (DOH5287) form*.

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

If the child/youth is not found eligible for HCBS, the HHCM/C-YES will send the NOD to the child/family and will work with the child/family to connect to other needed services, as appropriate.

The NOD documents the outcome of the HCBS/LOC Eligibility Determination and provides information on State Fair Hearing rights available to the child/family, if they do not agree with the Determination.

The member has 60 calendar days from the date of the NOD to request a Fair Hearing from the Office of Temporary and Disability Assistance (OTDA). Fair Hearing rights are located on page 2 of NOD DOH-5287 form. HHCMs/C-YES staff must review the entire form with the child/family. Care managers and providers should know the process for Fair Hearings and whom to contact in the event the family requests a Fair Hearing.

Further information regarding the Fair Hearing process is outlined in the Health Home Notices of Determination and Fair Hearing Process policy.

b. Reassessment

An HCBS eligibility determination is valid for one year. If the child/youth HCBS eligibility determination period ends and a new assessment is not completed, the child must be disenrolled from the waiver and the HHCM/C-YES must send a Notice of Decision (NOD) for Discontinuance in the New York State 1915(c) Children's Waiver (DOH588) within five business days of the end of the eligibility period.

If the child/youth no longer meets the Children's Waiver eligibility criteria and is disenrolled, or is found ineligible during an annual HCBS Eligibility Determination, the HHCM/C-YES must send a Notice of Decision (NOD) for Discontinuance in the New York State 1915(c) Children's Waiver (DOH588) to the child/family within five business days of the determination. The notice date must match the date on which the envelope is stamped and the notice is sent.

The member has 60 calendar days from the date of the NOD to request a Fair Hearing from the Office of Temporary and Disability Assistance (OTDA). Fair Hearing rights are located on page 2 of DOH-5288 form. HHCMs/C-YES staff must review the entire form with the child/ family. Care managers and providers should know the process for Fair Hearings and whom to contact in the event the family in interested in pursuing a Fair Hearing.

c. HCBS Eligibility Extensions

HCBS Eligibility Extensions are not permitted under federal regulations[8]; therefore, care managers are required to initiate the reassessment process two months prior to the reassessment due date. As noted in the section above, if a reassessment cannot be completed by the reassessment due date, the member must be disenrolled from the Children's Waiver. The HHCM/C-YES must send a Notice of Decision (NOD) for Discontinuance in the New York State 1915(c) Children's Waiver (DOH588) to the child/family within five business days of the determination.

[8] 42 CFR §441.303(c)(4) requires that the state specify its procedures to ensure that the level of care re-evaluations is performed on a timely basis. Timely re-evaluation means that the re-evaluation is completed prior to the end date of the previous evaluation to prevent a break in the continuity of a participant's services.

Appendix A –Licensed Practitioners of the Healing Arts (LPHA) permitted to sign the LPHA Attestation Form for the Serious Emotional Disturbance Determination

A Licensed Practitioner of the Healing Arts is an individual professional with the ability to diagnose and is practicing within the scope of their state license.

a. **Psychiatrist** is an individual who is licensed and currently registered to practice medicine in New York State, who (i) is a diplomat of the American Board of Psychiatry and Neurology or is eligible to be certified by that Board, or (ii) is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be certified by that Board.
b. **Licensed Clinical Social Worker (LCSW)** is an individual who is currently licensed and registered as a Clinical Social Worker by the New York State Education Department.
c. **Nurse Practitioner** is an individual who is currently certified and currently registered as a nurse practitioner by the New York State Education Department.
d. **Physician** is an individual who is licensed and currently registered as a physician by the New York State Education Department.
e. **Physician Assistant** is an individual who is currently licensed and registered as a physician assistant by the New York State Education Department.
f. **Licensed Psychologist** is an individual who is currently licensed and currently registered as a psychologist by the New York State Education Department from the New York State Education Department and who possesses a doctoral degree in psychology.

Licensed Practitioner who is under the supervision of a LPHA:

a. **Licensed Psychoanalyst** is an individual who is currently licensed and currently registered as a psychoanalyst by the New York State Education Department.
b. **Licensed Marriage & Family Therapist (LMFT)** is an individual who is licensed and currently registered as a marriage and family therapist by the New York State Education Department.
c. **Licensed Mental Health Counselor (LMHC)** is an individual who is licensed and currently registered as a mental health counselor by the New York State Education Department.
d. **Licensed Creative Arts Therapist (LCAT)** is an individual who is licensed and currently registered as a Creative Arts Therapist by the New York State Education Department possesses a creative arts therapist permit from the New York State Education Department.
e. **Registered Professional Nurse** is an individual who is licensed and currently registered as a registered professional nurse by the New York State Education Department.
f. **Licensed Master Social Worker (LMSW)** is an individual who is either currently registered as a Licensed Master Social Worker (LMSW) by the New York State Education Department.

Appendix B – Recipient Restriction/Exemption (R/RE) K-codes for the Children's Waiver

RR/E code	R/RE Code Description
K1	HCBS LOC
K3	HCBS Serious Emotional Disturbance (SED)
K4	HCBS Medically Fragile (MF)
K5	HCBS Developmentally Disabled and Foster Care (DD & FC)
K6	HCBS Developmentally Disabled and Medically Fragile (DD & MF)
KK	Family of One
A1	Children's Health Home: indicates the member is in outreach or enrolled with a Care Management Agency (CMA)
A2	Children's Health Home: indicates the member is in outreach or enrolled with a Health Home (HH)

Appendix C – Summary of Children's Waiver Eligibility Criteria by Target Population

Target Population	Qualifying Condition Criteria	Risk Factor Criteria	Functional Limitations Criteria
SED	LPHA determined the child meets SED criteria a) *Designated Mental Illness* b) *Severe or Moderate Functional Limitations (last 12 months)*	Need for complex supports related to the mental health condition and imminent risk of institutionalization. LPHA determines the child meets Risk Factor criteria.	CANS assessment by the HHCM determines the child meets functional limitations criteria, which are consistent with the SED determination
MF	Child has a physical disability, as documented by the SSI Certification or by a physician on the DOH 5144. Initial determination can be documented by a physician on the DOH 5151.	Need for complex supports related to the child's condition and risk of institutionalization. No additional documentation required.	Child has functional limitations, as documented by the SSI Certification or by a physician on the DOH 5144. Initial determination can be documented by a physician on the DOH 5151, a teacher on the DOH 5152 AND a parent/guardian on the DOH 5153.
DD/MF	Child has an indefinite developmental disability attributable to certain conditions, as determined by OPWDD.	Need for complex supports related to the child's condition and risk of institutionalization, as determined by the ICF/IDD LCED.	DD results in substantial impairment to function in society as determined by OPWDD. CANS assessment by the HHCM determines the child meets functional limitations criteria, which are consistent with the ICF/IDD LCED determination.
DD/FC	Child has an indefinite developmental disability attributable to certain conditions, as determined by OPWDD.	Need for complex supports related to the child's condition and risk of institutionalization, as determined by the ICF/IDD LCED and active Foster Care placement or was in foster care placement when previously enrolled in HCBS (without a break in HCBS).	DD results in substantial impairment to function in society as determined by OPWDD.