

Nursing Facility Level of Care Initiative: Preliminary Report to the Legislature

Aging and Adults Services Division
Disability Services Division

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Minnesota Department of **Human Services**

Legislative Report

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Table of Contents

I.	Executive Summary	4
II.	Legislation	5
III.	Introduction	6
IV.	Nursing Facility Level of Care Implementation.....	7
	A. Transition Population.....	7
	B. Transition Services.....	7
	C. Previous Estimates of Impact.....	8
V.	Requirements of Preliminary Report.....	9
VI.	Preliminary Findings	10
	A. Number of People Losing HCBS Eligibility	10
	B. Explanation of Findings	10
	C. Number of People Losing Eligibility for Medical Assistance	11
	D. Services Before and After Loss of HCBS Program Eligibility.....	12
	E. Living Situation of HCBS Population	12
	F. Nursing Facility Population	13
VII.	Conclusions	14

I. Executive Summary

Minnesota Statutes §144.0724 was enacted in 2009 to revise the criteria required for payment for long-term care services under Medical Assistance (MA), including payment for nursing facility (NF) services and home and community-based (HCBS) program services. While the revised criteria were adopted by the Legislature in 2009, Minnesota could not implement this change until January 1, 2014 for individuals age 21 and older, and until October 1, 2019 for individuals under the age of 21 due to federal requirements included under the Affordable Care Act enacted in March 2010.

Implementation was further delayed until January 1, 2015 by executive order to allow additional time for systems changes needed to fully implement transition services intended to support potentially affected populations. This report describes the preliminary results of the first six months' implementation experience.

- The number of individuals who lost eligibility for EW, AC, BI-NF or CADI as a result of the changes to the nursing facility level of care (NF LOC) criteria is small. Two hundred and sixty-eight (268) or approximately 1.3% of individuals reassessed during the time period were no longer eligible for their HCBS program due to LOC.
- The majority of HCBS individuals who no longer met NF LOC at reassessment in the first six months of 2015 were age 65 and older. This distribution is consistent with previous samples in which the majority of individuals affected by the change in NF LOC criteria were anticipated to be aged 65 and older.
- In comparing the HCBS program sample populations to the actual transition population, differences in how individuals have met LOC are notable, with an increase in acuity the most apparent difference between the actual transition population and previous samples.
- The number of individuals who lost eligibility for MA as a result of the loss of HCBS program eligibility is extremely small (11 people), and is also significantly less than previous estimates. This number necessarily declined as the impact related to service eligibility (LOC) declined.
- Most individuals who lost HCBS program eligibility accessed services through the Essential Community Supports program. The services included in formal service plans prior to and after the loss of eligibility for HCBS programs appear to change little.
- There is no apparent impact on the living or housing situation of individuals who lost eligibility due to NF LOC changes.

II. Legislation

Minnesota Laws 2013, Chapter 108, Article 7, Section 58 as revised under Minnesota Laws 2015, Chapter 78, Article 6, Section 29.

Sec. 58. NURSING HOME LEVEL OF CARE REPORT.

(a) The commissioner of human services shall report on the impact of the modification to the nursing facility level of care to be implemented January 1, 2015nd, including the following:

(1) the number of individuals who lose eligibility for home and community-based services waivers under Minnesota Statutes, sections 256B.0915 and 256B.49, and alternative care under Minnesota Statutes, section 256B.0913;

(2) the number of individuals who lose eligibility for medical assistance; and

(3) for individuals reported under clauses (1) and (2), and to the extent possible:

(i) their living situation before and after nursing facility level of care implementation; and

(ii) (ii) the programs or services they received before and after nursing facility level of care implementation, including, but not limited to, personal care assistant services and essential community supports.

(b) The commissioner of human services shall report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over health and human services policy and finance with the information required under paragraph (a). A preliminary report shall be submitted on October 1, 2015, and a final report shall be submitted February 15, 2016.

III. Introduction

Minnesota Statutes §144.0724 was enacted in 2009 to revise the criteria required for payment for long-term care services under Medical Assistance (MA), including payment for nursing facility (NF) services and home and community-based (HCBS) program services. The nursing facility level of care (NF LOC) initiative was intended to:

- Contribute to sustainability in MA-funded long-term care programs by providing lower cost alternatives to individuals with lower needs;
- Standardize the NF LOC criteria used statewide for both HCBS and NF populations; and
- Create objective NF LOC criteria to support equity in access to HCBS and NF services.

While the revised criteria were adopted by the Legislature in 2009, Minnesota could not implement this change until January 1, 2014 for individuals age 21 and older, and until October 1, 2019 for individuals under the age of 21 due to federal requirements included under the Affordable Care Act enacted in March 2010.

Implementation was further delayed until January 1, 2015 by executive order to allow additional time for systems changes needed to fully implement transition services intended to support potentially affected populations.

Institutional Level of Care and Eligibility for Publicly-Funded Long Term Care

The establishment of an institutional level of care, including nursing facility level of care, is required as part of eligibility determination for public payment of long term care, including institutional services and the HCBS services developed as alternatives to those services. Level of care determination is referred to as establishing service eligibility for long term care under MA.

Changes to the NF LOC criteria affect the service eligibility determination for MA payment of NF services, as well as for the Alternative Care (AC) program, Brain Injury–Nursing Facility (BI-NF) waiver, Community Alternatives for Disability Inclusion (CADI) waiver, and the Elderly Waiver (EW).

In addition, MA financial eligibility is determined using different income and asset calculations and/or thresholds for individuals who have been determined to require an institutional level of care. These differences can result in eligibility for MA for some individuals who would not otherwise be eligible under state plan or “basic” MA financial eligibility rules.

Changing institutional level of care criteria can also then have an impact on MA financial eligibility for some people.

IV. Nursing Facility Level of Care Implementation

A. Transition Population

In planning for implementation of the changes to the NF LOC criteria, potential “transition” populations were defined. These populations included:

- Individuals participating in one of the previously listed HCBS programs on January 1, 2015, and who no longer meet the revised NF LOC criteria at their next annual reassessment occurring on or after January 1, 2015.
- MA-eligible individuals admitted to a certified nursing facility between October 1 and December 31, 2014, who no longer meet the revised NF LOC criteria 90 days after admission.

B. Transition Services

In addition to defining the transition populations potentially affected by this change, transition services were identified that can support transition individuals with alternative resources to assist in meeting their functional needs. These services can provide needed support to help people remain in their own communities until higher intensity services are required.

- **Personal Care Assistant (PCA) Service** - Individuals who do not meet the revised NF LOC criteria and who have need for assistance with activities of daily living are able to access PCA services and other home care services under MA state plan benefits.
- **Essential Community Supports (ECS)** - Minnesota Statutes §256B.0922 established the Essential Community Supports (ECS) program for people that do not meet the revised NF LOC criteria. This program was also implemented January 1, 2015. ECS services are not available to individuals who can access MA state plan PCA services.

ECS was established to provide a modest budget and benefit set of services to provide support to people affected by the NF LOC criteria changes. ECS services are available to individuals in both the HCBS and NF transition populations who meet the ECS program eligibility criteria. Services available under the ECS program include:

- Homemaker
- Chore
- Personal Emergency Response
- Home-delivered Meals,
- Caregiver Supports (Training, Education and Counseling), and
- Community Living Assistance.

- Adult Day Service was added to the service menu during the 2013 legislative session.
- Required case management

These particular services were selected for transition support in ECS because these were the services typically received by individuals in sample populations who were used to estimate the impact of changes to the NF LOC criteria, and who no longer met NF LOC in the sample analysis.

C. Previous Estimates of Impact

Previous samples of both NF and HCBS program populations have been used to estimate the potential impact of changing the NF LOC criteria. As noted, this change could also affect some individuals' financial eligibility for MA. The potential impact on service eligibility has been estimated by comparing information available in the Medicaid Management Information System (MMIS) about assessed needs to the assessed level and type of need necessary to meet the revised criteria.

The estimated impact on HCBS populations has varied from sample to sample, with sampling completed over the course of time since initial adoption of the revision in statute in 2009 through October 2014.

For example, using a sample from October 2013, the estimated impact across all HCBS programs was approximately 7%. This means it was estimated that about 7% of the HCBS program participants would not meet the revised LOC criteria. The impact on given programs ranged from 0% for BI-NF (all individuals in this program would meet the revised LOC criteria) to 15.4% of EW participants. Using a sample from October 2014, the estimated impact across all HCBS populations was approximately 6.35%, again with a range between programs.¹

The estimated impact on the NF population has remained relatively stable across samples at less than 2%.

The analysis of potential impact on financial eligibility was based on information available about sample individuals related to income and assets, and by applying assumptions about individual decision-making related to estimated spend down or other participant contribution amounts that might be incurred.²

¹ These estimates were anticipated to be somewhat high, since application of the new criteria depended on new data elements created to support the revised criteria in MMIS that was not available for analysis in previous samples

² The potential impact for NF populations is based on two points in time when LOC must be established: at preadmission screening (PAS), and again at approximately 90 days after admission to meet the "qualifying 90 day stay" criteria included in statute. The majority of individuals in the NF population met and continue to meet NF LOC criteria at admission; the estimated impact for this population has rested primarily on individuals who would not meet the "qualifying 90 day stay" criteria.

V. Requirements of Preliminary Report

The report on the impact of the NF LOC criteria changes that were implemented January 1, 2015, must include:

1. The number of individuals who lose eligibility for home and community-based services waivers under Minnesota Statutes, sections 256B.0915 and 256B.49, and alternative care under Minnesota Statutes, section 256B.0913;
2. The number of individuals who lose eligibility for medical assistance; and
3. For individuals identified under 1. and 2., to the extent possible:
 - (i) Their living situation before and after nursing facility level of care implementation; and
 - (ii) The programs or services they received before and after nursing facility level of care implementation, including, but not limited to, personal care assistant services and essential community supports.

Period Covered in the Report

This report includes an analysis of the impact of the NF LOC changes on individuals participating in the HCBS programs listed above who were reassessed between January 1 and June 30, 2015. While not required to be addressed here, this report also includes a very brief discussion related to individuals admitted to a nursing facility during the same six month period.

VI. Preliminary Findings

A. Number of People Losing HCBS Eligibility

The number of individuals who lost eligibility for EW, AC, BI-NF or CADI as a result of the changes to the NF LOC criteria is small.

- Of 21,235 in-person reassessments performed for individuals in these programs between January 1 and June 30, 2015, 20,978 or slightly more than 98.7% remained eligible for their HCBS program.
- 268 individuals were no longer eligible at their reassessment because they no longer met the NF LOC requirement. This represents approximately 1.3% of individuals reassessed during the time period.

The majority of HCBS individuals who no longer met NF LOC at reassessment in the first six months of 2015 were in EW or AC.

- Of the 268 individuals who lost eligibility for their HCBS waiver program, 207 were on EW, 20 were on AC, and 43 individuals were on the CADI waiver program. No individuals lost eligibility for the BI-NF waiver program during this time period.
- This distribution of loss of HCBS program eligibility is consistent with previous samples in which the majority of individuals affected by the change in NF LOC criteria were anticipated to be aged 65 and older, and that no individuals in the BI-NF program would be affected.

B. Explanation of Findings

In comparing the HCBS program sample populations to the actual transition population, differences in how individuals have met LOC are notable. The differences provide some insight into why the actual impact of the change in NF LOC criteria is significantly less than previously estimated.

Acuity appears to have increased in the current population as signified by changes in case mix distribution.

- Case mix classification is based on many of the same assessment items used to determine NF LOC. It is therefore possible to use certain case mix classifications as a proxy for NF LOC. Among the HCBS populations, all but two of the thirteen case mixes automatically meet NF LOC (A and L).

- 70.3% of all individuals in 2015 who remained eligible for their HCBS program met the LOC criteria via case mix classification, compared to 65% of all individuals in the October 2014 sample population.
- This change alone accounts for nearly all of the difference between previous estimates and the impact seen on the 2015 HCBS population up to this point.

More individuals meet LOC criteria based on cognitive or behavioral needs or clinical monitoring in 2015.

- This criterion is based on assessed need in behavior, clinical monitoring, self-preservation, orientation, or the possible presence of dementia based on a screening tool imbedded in the assessment.
- 18.3% of individuals in 2015 who remained eligible for their HCBS program met LOC under this criterion, compared to 15.3% in the October 2014 sample population.

Adoption of additional LOC criteria has revealed additional individuals who meet LOC.

- One of the NF LOC criteria in statute links the person's living arrangement to other specific limitations or risks, including the risk of maltreatment. This criteria reflects the understanding that a person who lives alone or is homeless may be more vulnerable because of lack of social or informal supports.
- This criteria was amended in 2013 to allow consideration of how the potential loss of housing, regardless of who the person lives with, can result in increased vulnerabilities as well. Information contained in MMIS to signify this consideration was not available in previous samples.
- While 6.1% of the 2015 population met LOC based on living alone plus another risk, and 5.2% of the October 2014 sample population met this same criteria, the additional criteria of potential loss of housing paired with another risk resulted in an additional 1.8% of the 2015 HCBS population who met LOC. This group was not visible in the October 2014 sample.

C. Number of People Losing Eligibility for Medical Assistance

The number of individuals who lost eligibility for Medical Assistance as a result of the loss of HCBS program eligibility is extremely small.

Of the 268 individuals who lost HCBS eligibility due to NF LOC changes, it appears that only 11 individuals also lost eligibility for MA at or near the same time of loss of HCBS.³ This number is also less than previous estimates of the number of individuals at risk for loss of MA financial eligibility under the NF LOC initiative.

D. Services Before and After Loss of HCBS Program Eligibility

Most individuals who lost HCBS program eligibility between January 1 and June 30, 2015 accessed HCBS services through the Essential Community Supports program.

- 237 or 88.4% of the 268 individual who lost HCBS program eligibility were immediately opened to the ECS program upon exiting. This includes individuals in managed care.
- Some of the remaining 31 individuals will access state plan home care, while others chose to receive no services as indicated in case manager notes in MMIS.

The services included in formal service plans prior to and after the loss of eligibility for EW, AC or CADI appear to change little.

- Little difference is seen in the services authorized under the previous HCBS program and ECS for individuals in fee-for-service.
- For many individuals in managed care, information about services is provided via encounter claims, which are submitted periodically. For this reason, there is a lag in the information available to the department for individuals in managed care for this preliminary report. However, information contained in the service plan screens in MMIS show little difference before and after loss of HCBS program eligibility.
- This is to be expected, since the services included in the ECS program are based on an analysis of services in place for previous sample populations who did not meet the revised LOC criteria.

E. Living Situation of HCBS Population

There was no impact on the living situation of individuals who lost HCBS eligibility when comparing planned living arrangement information in MMIS.

³ Individuals may lose MA for a variety of reasons such as a change in financial situation, failure to complete and return redetermination forms, or failing to meet LOC.

F. Nursing Facility Population

Level of Care at Admission - Of the 32,141 preadmission screenings conducted between January 1 and June 30, 2015, 32,037 or 99.7% met NF LOC at admission. The remaining 104 individuals were referred for face-to-face assessment for final determination.⁴

Qualifying 90 Day Stay - Nursing facilities are required to submit a quarterly assessment to the Minnesota Department of Health approximately 90 days after admission using the Minimum Data Set (MDS) assessment tool. The MDS assessment is used to establish the Resource Utilization Group or RUGs category for an individual based on information contained in the MDS assessment. Like case mix classification used in HCBS programs, the RUGs classifications also include information about the type and level of need used to determine LOC. Thus, it can thus be used as a proxy for LOC. Because of this “crosswalk” between MDS and LOC, nursing facilities only have to re-establish LOC for a very small percentage of the resident population.

Of the 98 individuals requiring re-establishment of LOC to meet the qualifying stay criteria, 78 or 79.6% met LOC without additional evaluation. The remaining 20 individuals were referred for face-to-face assessment for final determination.⁵

⁴ Complete information about the outcome of these referrals is not available at the time of this report and will be included in the final report to be submitted in February 2016.

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VII. Conclusions

The observable impact resulting from the revision to NF LOC criteria is significantly less than previously estimated. In examining how individuals retained their eligibility, it is apparent that the HCBS population has experienced an increase in acuity since the original adoption of the revised criteria in 2009.

Investments in strategies such as Transitional Consultation and Live Well at Home, as well as expansion of community services available under the Older Americans Act may have contributed to a change in the needs of individuals who eventually seek assistance through publicly funded long term care programs.

The availability of the Essential Community Supports program for people aged 65 and older who are not yet eligible for MA and do not yet meet LOC criteria may support older people with emerging needs for support, further delaying more intense services and assistance in the future.

Other investments such as Return to Community and the expansion of Transitional Consultation have perhaps played a similar role in the changing profile of NF residents. Additional relocation services and sources of assistance, continuing efforts to relocate identified populations, as well as changes in rate setting and NF payment policy will likely yield continuing higher acuity in the NF population as well.

It is important to note that the figures included in this preliminary report do not reflect the entirety of people that will be reassessed over the course of the first year of implementation. More complete assessment of the impact, and additional follow up analysis of the transition population will be included in the February 2016 report to the Legislature.