



**Department
of Health**

Nursing Home Transition and Diversion (NHTD) Waiver Program

Medicaid Waiver Orientation Training: Unit 6

Privacy

Recommended Content

Privacy

- Waiver service providers must adhere to all Medicaid confidentiality and Health Information Portability and Accountability Act (HIPAA) requirements and ensure the privacy of the waiver participant.
- The HIPAA Privacy Rule requires taking reasonable steps to limit the use or disclosure of, and requests for information to the minimum necessary to accomplish the intended purpose
- All waiver service providers must maintain policies and procedures that ensure the appropriate safeguarding of all records containing any identifiable information regarding waiver applicants and participants. These policies and procedures must be disseminated to all staff
- Participant determines and gives approval as to what personal information is shared as well as to whom.

Grievances, NODS, Informal Conferences and Fair Hearings

Recommended Content

Grievances/Complaints

Grievance: A real or imagined wrong or other cause for complaint or protest, especially unfair treatment, or something believed to be wrong or unfair.

Each provider must have established procedures and specific requirements related to the receipt and investigation of grievances/complaints.

A participant can make a complaint about such things as:

- A specific service provider
- A waiver service not being provided
- A waiver service staff
- Their Regional Resource Development Center (RRDC)
- Any concerns about their person-centered plan, provider selection and/or freedom of choice
- Any unfair action or alleged mistreatment

Filing a Grievance/Complaint

- A participant may make a grievance/complaint at any time without fear of reprisal.
- The RRDC will review and investigate all complaints.
 - If the complaint is directed at the RRDC, then NYSDOH will investigate the complaint.
- All approved NHTD waiver service providers are required to accept and investigate all incoming complaints.

Filing a Grievance/Complaint continued

If the applicant/participant wants to file a complaint about a service provider, staff person and/or their waiver services:

- Identify their RRDC from the NHTD Complaint Contact Sheet and call the number provided. The number should be posted in your home along with other important contact information.
- The RRDC will review and/or investigate all complaints received.
- The NHTD Complaint Contact Sheet also contains the mailing address, phone number and email of each of the RRDCs in New York.

If the applicant/participant wants to file a complaint about the RRDC and/or other Medicaid waiver services:

- They may contact NYSDOH at 518-474-5271 to report their issue to NHTD waiver staff or via email at:
 - NHTD Email: nhtdwaiver@health.ny.gov

Notice of Decision (NOD)

- A Notice of Decision (NOD) is a written document that notifies an applicant/participant of an action being taken by the waiver program, including an explanation of the reasons for the action.
- The RRDS is responsible for ensuring that the correct NOD is completed and sent to each applicant/participant, Legal Guardian (if applicable), Authorized Representative (if applicable), Service Coordinator, NHTD Waiver Management staff, and LDSS as specified on the bottom of each form.
- The Service Coordinator provides follow-up in this process by ensuring the Participant's understanding of the right to request an Informal Conference and/or Fair Hearing (with Aid Continuing, if appropriate).

Notice of Decision (NOD) continued

- Individuals receiving a Notice of Decision (NOD) for issues related to the waiver are eligible for an Informal Conference and/or a Fair Hearing.
- All NODs must include information regarding:
 - An individual's Informal Conference and Fair Hearing rights
 - How to apply for an Informal Conference and/or Fair Hearing
 - How to maintain their benefits throughout the Fair Hearing process, and Aid Continuing, if appropriate.

Types of NODs

- **Authorization** is sent to an applicant when they have been approved to participate in the waiver program. This NOD includes the effective date of services.
- **Denial of Waiver Program** is sent when an applicant will not become a NHTD waiver participant for the following reasons.
- **Discontinuance** is sent when a participant is no longer eligible to receive NHTD waiver services.
- **Increase or Addition of Waiver Service** is sent when the RRDC approves an increase or addition of a waiver service
- **Reduction or Discontinuation of Waiver Service** is sent when the RRDC reduces or discontinues a waiver service
- **Death**

Informal Conference

- An Informal Conference may be conducted prior to or while pursuing a formal Medicaid Fair Hearing. Requesting an Informal Conference does not affect the participant's ability or right to request a Fair Hearing.
- A review by the RRDS may be requested by the applicant/participant, legal guardian, advocate, Service Coordinator or anyone involved in the development of the Service Plan.
- The Informal Conference is an opportunity for the applicant/participant and/or Legal Guardian to review with the RRDS the reasons for the NOD and address information they feel is not properly represented.
 - Through discussion and negotiation, it may be possible to resolve issues without a Fair Hearing.

Fair Hearing

- A Fair Hearing is a hearing held in the presence of a Hearing Officer, a specially trained administrative law judge (ALJ) from the New York State Office of Temporary and Disability Assistance (OTDA). The judge hears arguments from the Applicant/Participant or Legal Guardian who wishes to appeal a NOD issued by the RRDS. In addition, providers may assist in clarifying issues and attend the hearing upon the request of the RRDS or DOH.
- An individual has the right to seek a Fair Hearing for many reasons including issues related to the NHTD waiver. Decisions regarding Medicaid eligibility are addressed through the Fair Hearing process with the Local Department of Social Services.

Aid Continuing

At the time of requesting a Fair Hearing, the participant may request Aid Continuing. This request must be made prior to the effective date on the NOD.

Aid Continuing

- Benefits must continue unchanged pending the outcome of the hearing
- Request must be made before the effective date on the NOD
- Participants and providers should be notified by the RRDC that service provision will continue throughout the hearing process.

Recouping Aid Continuing

- If agency prevails in the fair hearing, MA agency may try to recover the cost of services provided during the hearing period
- Recovery requests are uncommon

What is Subject to a Fair Hearing?

- Fair hearings are authorized for various public assistance programs, including Medical Assistance, which includes the waivers.
- Appellant must request fair hearing on appealable action:
 - Denial
 - Termination
 - Reduction
 - Limitation of coverage

What is Not Subject to Fair Hearing?

- The NHTD housing subsidy program
 - Not a waiver service – not part of Medical Assistance
- An action resulting from a change in law that impacts multiple applicant/participants

Adequate Notice

Medicaid agency must give adequate notice through an NOD, which contains:

- A clear description of the action
- The reason for the action
- Supportive law

Notice must be sent at least 10 days before proposed action unless:

- Individual is admitted to an institution
- Individual is ineligible for Medicaid

Fair Hearing Presentation

- The following may present at a fair hearing:
 - Appellant
 - Appellant's representative
 - Counsel or representative of the agency
 - Witnesses
 - Interpreter
- Media admission to a fair hearing
 - Media may be admitted with a specific waiver signed by the appellant
 - ALJ determines the extent of the access

After the Hearing

Generally, one of two things will happen:

1. A *Decision After Fair Hearing* is issued containing the following sections:
 - Fair Hearing Issue
 - Findings of Fact
 - Applicable Law
 - Discussion
 - Decision and Order
2. A stipulation of settlement is provided
 - Agency withdraws their notice formally on the record