

Long Term Care Ombudsman Comments on Highest Need Eligibility Draft Criteria

Hello Joan,

Here are some thoughts on the proposed criteria:

1. Step 1

Generally, Step 1 seems quite confusing. By referring to the Home and Community - Based Pre-Eligibility Screen, it seems that there are special criteria you must meet if you want services in the community. For example, you must have a physical disability (See Question #2). If you do not meet these criteria, the screening process ends and you are not eligible for long term care services. It was my understanding that the Department was developing a criteria that applied to all long term care services whether you received them in a nursing home or in the community. The separate screening tool for home based services is inconsistent with this goal.

If someone is interested in home- and community-based services, it is important to ask the addition questions, e.g. is he/she already participating in another waiver program and intending to stay on that program? The purpose of the tool is to obtain the necessary clarifying information – not to screen people out. In addition, there is no PASARR screening in the community.

In addition, the language in Step 1 is confusing. At the end of section one it says "continue to Step 1". I assume it is supposed to be Step 2. The double negative in Step 1 B. and the added reference to the screen, which also states some of the criteria in the negative, is quite hard to follow.

We agree and have tried to remove the double negatives and confusing language.

Furthermore, if the goal is to have one criteria to determine eligibility for all long term care services, one process should be used to screen individuals with mental illness and to assess their need for specialized services. Someone with mental illness who is in need of long term care should be able to receive that care either in a nursing home or in the community and they should receive specialized services in either setting. Under the Home and community Based Pre-Eligibility Screen, it is not clear that individuals who answer "no" under Question #4 would be eligible for long term care services. This proposed screening mechanism and eligibility criteria seem to deny individuals with mental illness access to long term care services in the community.

Again, the purpose of the Home- and Community-Based Pre-Eligibility Screen is to help determine whether the individual is already receiving services under another waiver program and if there is a program that is better able to meet that individual's needs.

2. Step 2

Even though the Department intends to develop "operational definitions", the criteria itself should state that cueing equals total assistance. There was much discussion about this in the workgroup and since it is an area of such concern, it should be set out clearly in the criteria.

The definition for “total assistance” will be taken from the Minimum Data Set (MDS)2.0 definitions. “Full staff performance of the activity during entire seven-day period. There is complete non-participation by the resident in all aspects of the ADL definition task.”

3. Step 3

The Department should omit the language "that is not easily altered" from this criteria. Many of these behaviors may be easily altered, but only in a controlled and supervised setting. Instead of the "not easily altered" language, the Department should continue to use the current criteria which finds individuals eligible if they have a listed behavior that "requires controlled environment to maintain safety".

The Department has considered this and has decided to leave the language as is.

4. Steps 4 & 5

Under this criteria it appears that someone who needs skilled nursing services would only be eligible for long term care services if the skilled services were related to a particular condition or treatment. This is too restrictive a criteria and it discriminates on the basis of medical condition. Someone who needs skilled nursing care should be eligible regardless of the underlying condition.

Step 4 lists those conditions that are usually covered for Medicare-paid stays. We did not want to discriminate based on payer source and wanted to ensure that individuals who needed this care could continue to receive it if they exhausted their Medicare benefits

Step 5 contains an extensive, but not exhaustive list of medical conditions. Please note the language that we have added that states “...related to conditions and treatments including but not limited to the following”.

5. Additional Provisions

The proposed criteria should contain these additional provisions:

- a. An individual who is eligible for skilled nursing care under the Medicare criteria should automatically be eligible for long term care services under the new 1115 waiver. Under no circumstances should nursing home residents who still meet the Medicare

criteria, but who exhaust their Medicare days, not qualify for long term care services under the new waiver. It is not clear the criteria set out in Steps 4 & 5 protect these Medicare beneficiaries. For example, replacement and irrigation of catheters is a skilled nursing service under Medicare, yet it is not included in Steps 4 & 5.

Please see the answer to comment #4 above.

b. Individuals who now receive long term care services in nursing homes or through the existing HCBWS program should continue to receive services as long as they meet either the existing criteria or the new 1115 criteria.

We agree and that is the intent. Individuals who are in nursing homes or participating on the home-and community-based waivers at the time the 1115 waiver goes into effect will be “grandfathered” into the program.

Thank you for the opportunity to comment.

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