



TO: DDSO Directors
Voluntary Executive Directors
Provider Association Members

FROM: Suzanne Zafonte Sennett 
Deputy Commissioner
Policy & Enterprise Solutions

Jill A. Pettinger, Psy.D. 
Associate Commissioner
Service Delivery & Integrated Solutions

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RE: Home and Community Based Services Waiver (HCBS) and HCBS Waiver Services

SUGGESTED DISTRIBUTION: Article 16 Clinic Administrators
MSC Vendors
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The purpose of this correspondence is to clarify OPWDD requirements for ongoing evaluations needed to maintain eligibility for the Home and Community Based Services (HCBS) Waiver and HCBS Waiver Services.

It has come to our attention that some providers require individuals enrolled in the HCBS Waiver to obtain an annual physical examination, and/or an annually updated psychological or social evaluation or assessment to retain waiver eligibility and to continue receiving waiver services. The interpretation that this is a requirement to maintain waiver eligibility is not accurate. OPWDD *does not require* that HCBS Waiver enrollees must have an annual physical examination, or an updated psychological or social evaluation or assessment at specified intervals of time.

The need for additional evaluations is determined on an individualized basis. More frequent evaluations may be indicated if there is a significant change in any area of the person's functioning. For children who are provisionally eligible for HCBS Waiver, updated evaluations may be warranted based on clinical need.

It is important to distinguish between assessments that are specifically required to assist in the determination of Level of Care from other reasons why additional evaluations and assessments may be necessary. For example, continued Medicaid and SSI eligibility may require updated evaluations on a more frequent basis than those required by OPWDD. There is nothing in these guidelines prohibiting additional evaluations if they are required to maintain or recertify eligibility for other state or federal agency services, or if they are needed due to medical necessity.

Requirements for Initial Waiver Eligibility

A person must have a current medical, social evaluation or assessment, and psychological evaluation for the initial Level of Care Eligibility Determination (LCED) as part of the HCBS Waiver application. A current medical evaluation or social evaluation or assessment is an evaluation that has been completed within twelve months prior to the submission of the initial LCED to the DDSO. For psychological evaluations, an updated evaluation is not needed if there has not been a significant change in functioning, and if there is sufficient information in the individual's record to complete the diagnosis and adaptive behavior deficit/learning portions of the LCED form.

Requirements for LCED Redeterminations

Once the initial LCED has been completed and eligibility for the HCBS Waiver has been established, there is no ongoing schedule for subsequent evaluations. The need for new or updated evaluations depends on the needs and circumstances of the person, and is not based on a predetermined schedule. Providers should not interrupt services or require an update to an evaluation when there is no clinical indication that such an update is needed.

The qualified person completing the annual LCED redetermination is expected to review the most recent evaluations when completing the redetermination, but there are no requirements as to how often these evaluations must be updated in order to maintain waiver eligibility and complete the annual level of care. If at any time it appears to the qualified person completing the annual LCED redetermination that the needs and circumstances of the person being reviewed have changed considerably, a referral for an updated evaluation(s) should be made.

Requirements for OPWDD-Certified Residences

Individuals residing in OPWDD-certified residences **only**: Part 633 of NYS regulations require that a person living in an OPWDD-certified residence must be evaluated annually to determine his/her need for a medical examination. This is **not** a requirement for continued HCBS Waiver enrollment or for completion of the annual LCED redetermination; instead, this is a regulatory requirement for the residential provider that operates the OPWDD-certified residence.

Requirements for General DD Eligibility Determinations

Individuals whose basic eligibility for OPWDD funded services has been confirmed (by a formal review of documents necessary to confirm that a developmental disability exists), and is not deemed "Provisional," are not routinely required to have general DD eligibility reviewed or re-determined. There is no requirement that those whose status is "Provisional" must have annual re-evaluations to maintain Provisional eligibility for services. The 2001 Advisory Guidelines state that eligibility review and redetermination for those whose status is Provisional must occur no later than seven years of age. The "identified time period" for Provisional eligibility status indicates the upper age limit, not a requirement for multiple repeated/annual re-evaluations prior to age eight. The only requirement for a non-Provisional eligibility determination is sufficient documented evidence of the elements for a developmental disability, as defined in Mental Hygiene Law 1.03(22).

Questions:

If you have any additional programmatic questions regarding this guidance document, please contact the Waiver Unit at 518-474-5647 or Behavioral and Clinical Solutions at 518-474-3558.

Cc: Jim Moran
Jay Kiyonaga
Jill Gentile
Helene DeSanto
Karen DeRuyter
Eric Pasternak
Jenny Haneman
Lynda Baum-Jakubiak
Tricia Downes
Ann Troy
Karla Smith
Lisa Kennedy
Carol Metevia