The 3-ADL Minimum Needs Standard for Medicaid Home Care

Starts for NEW applicants Sept. 1, 2025

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Evelyn Frank Legal Resources Program

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About NYLAG

- Founded in 1990, New York Legal Assistance Group (NYLAG) is a leading civil legal services organization combatting economic, racial, and social injustice by advocating for people experiencing poverty or in crisis.
- Our services include comprehensive, free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships.
- NYLAG exists because wealth should not determine who has access to justice. We aim to disrupt systemic racism by serving individuals and families who legal and financial crises are often rooted in racial inequality.
- NYLAG goes where the need is, providing services in more than 150 community sites (e.g. courts, hospitals, libraries) and our Mobile Legal Help Center. NYLAG's staff of 400 impacted the lives of 130,000 people last year.

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About the Evelyn Frank Legal Resources Program

Focuses on fighting for older adults and people with disabilities, ensuring that they have access to health care and home care services they need to age safely in their home and communities. Services include:

- **Counseling and assisting clients with accessing Medicaid, Medicare and Medicaid home care eligibility and services.**
- **Training legal, social services and health care professionals about changes in Public Health Care programs and how to best serve the health and long-term care needs of older adults.**
- **Representing clients in denials and reduction of Medicaid, Medicare Savings Program and Medicaid Home Care benefits.**
- **Advocating for laws, regulations and policies that expand access to Medicaid eligibility and services**

-- Continued --

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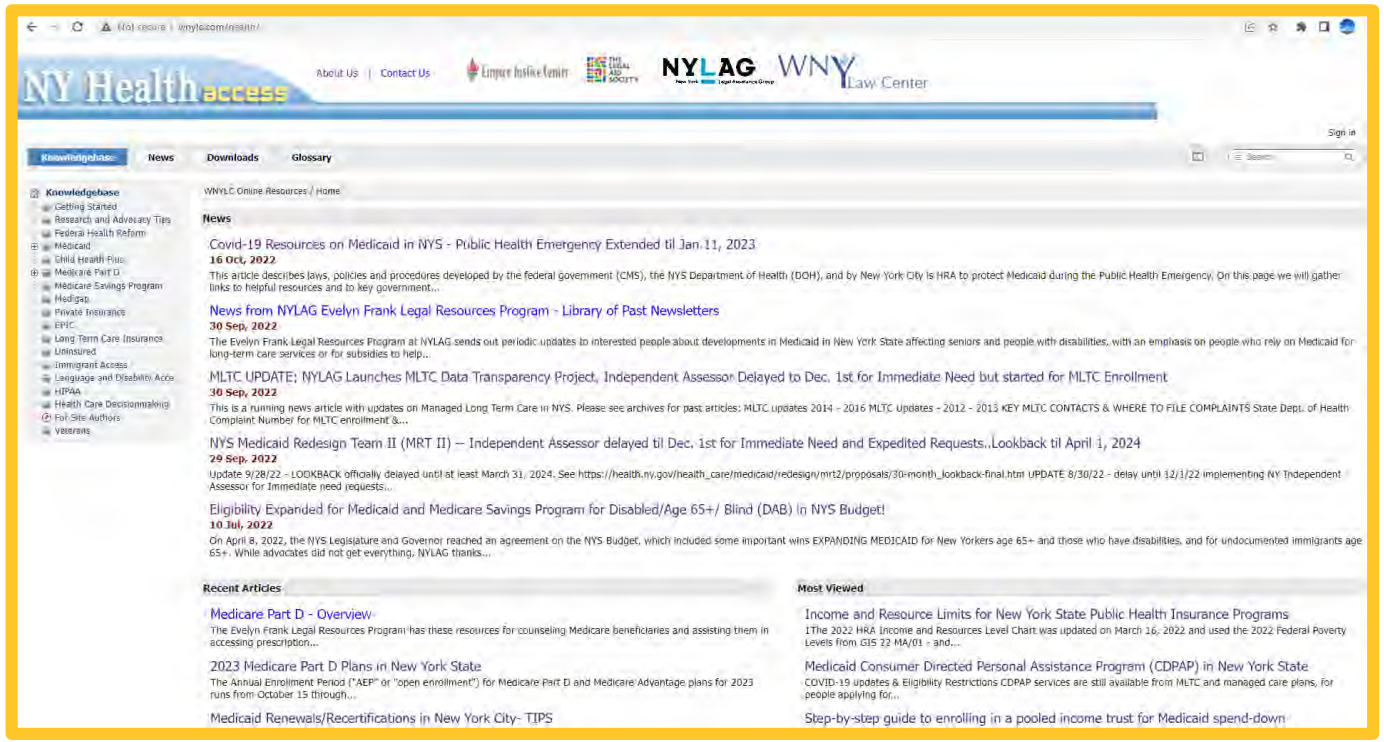
EFLRP Services (continued)

- **Educating the public through the website NYHealthAccess.org**



- **Policy Updates**
- **Consumer Materials**
- **Expansive resources on coverage criteria and eligibility**

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AGENDA

A. Intro: 2 MRT-II Cuts from 2020 – 3-Month Lookback & ADLs

B. Focus on the 3-ADL Limits

1. What are the ADL Thresholds and how are they different than current Eligibility Criteria? (slides 8-12)
   - Official guidance implementing changes starting Sept. 1, 2025 (slide 9)
2. Refresher: Pathways to Home care – Which entity will do the new ADL Test? (slides 13 -16)
3. Who is Grandfathered into the old criteria (has Legacy Status) and who can Lose Legacy Status? (Slides 17-24)
4. Steps in the Eligibility Assessment for New applicants without Legacy Status (Slides 25 – 28)
   - Denials based on ADL test and Fair Hearing rights-- "Outcome Notices" from NYIAP denying eligibility (slides 29-33)
5. TIPS on doing NYIAP assessments after Sept. 1, 2025 (34-38)
6. Are the ADL Limits Legal – or Smart? (39-43)
7. Where to go for Help + Please Support us (44-45)

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BACKGROUNDER -- MRT-2 Cuts Enacted in 2020
3-ADL Minimum Needs Thresholds & 30-Month Lookback

- **2 Medicaid cuts were on hold since enacted in 2020 NYS budget:**
  1. **3-ADL Thresholds for MLTC, personal care & CDPAP**
  2. **30-month financial lookback for home care, ALP**
- **Neither could be implemented until CMS approved how NYS spent billions in COVID *American Rescue Plan Act (ARPA)* funds.**
  - **CMS approved the ARPA fund expenditures in early 2025.**
  - **3-ADL Thresholds START 9/1/2025. This is the focus of this webina.**
  - **30-month lookback will take longer – no date set. Not covered here.**
- **Known as Medicaid Redesign Team-2 or MRT-2.**

Most recent info in this news article: http://health.wnylc.com/health/news/85/

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30-Month Lookback for Home Care, ALP

Topic not covered in this PowerPoint

Summary:	**30-month review of financials for MLTC enrollment, new applicants for Personal Care (PCS)/CDPAP, ALP; uncompensated transfer results in a transfer penalty.**
Authority:	**Enacted in the 2020-2021 Executive Budget, amending New York SSL § 366(5)(e)**
Procedural Posture:	**Sec. 1115 Waiver Amendment still pending at CMS since 3/25/21; NYSDOH has not yet submitted a State Plan Amendment (SPA) to CMS or issued instructions (GIS/ADM) for DSS's to apply the lookback**
Proposed Implementation:	**Though CMS has approved spending of ARPA funds, DOH must take many steps to implement the lookback. Not likely before 2026 – but DOH has not announced any date.**

https://www.health.ny.gov/health_care/medicaid/redesign/mrt2/proposals/index.htm;
https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ny-medicaid-rdsgn-team-pa9.pdf

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3-ADL Requirement for MLTC, PCS, CDPAP

Summary:	**Restricts eligibility for Personal Care (PCS) & CDPAP or MLTC or Medicaid Advantage Plus (MAP)* enrollment, requiring either need for:** • ***limited physical assistance* with 3+ ADLs OR** • ***cueing* or supervisory assistance with 2+ ADLS but only if have dementia or Alzheimer's disease;** **Eliminates stand-alone housekeeping service (max 8 hours/week)**
Authority:	**Enacted in the 2020-2021 Executive Budget, amending New York SSL § 365-a and 365-f; PHL § 4403-f**
Implementation:	**Starting 9/1/2025 for NEW applicants – next slides**
Who affected:	**Medicaid recipients who are:** • **newly applying for PCS or CDPAP from local DSS or managed care plan, or** • **seeking enrollment in MLTC or MAP plans (but not PACE)** **Applies to adults and children alike.** **Current recipients and those in pipeline have legacy status (more below). Initial roll-out will be in NYIAP (NY Independent Assessor) initial assessments.**

*** ADL Test does not apply to PACE**

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Guidance implementing ADL Limits 9/1/2025 issued 6/30/25

1. **Directive to local DSS**
   - **25 OHIP/ADM - 03 - New Minimum Needs Requirements for Personal Care Services (PCS) and CDPAP Services**
2. **Directive to MLTC plans**
   - **MLTC Policy 25.04: Minimum Needs Requirement Update to the Eligibility Requirements for Managed Long Term Care Enrollment - 6.30.2025**
3. **Directive to mainstream Medicaid managed care plans that approve PCS & CDPAP for members**
   - **Mainstream Guidance: New Minimum Needs Requirements for Personal Care Services (PCS), CDPAP and Managed Long Term Care (MLTC) Eligibility**
4. **New form -** Alzheimer's Disease or Dementia Form (DOH-5821) (discussed below)

All guidance posted on the NY Independent Assessor documents page
https://www.health.ny.gov/health_care/medicaid/redesign/nyiap/repository/index.htm
Also see NYHealthAccess Article
http://health.wnylc.com/health/news/85/

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Range of ADL Scores Given by Nurse in NYIAP Assessment

The UAS (CHA) instructions define seven degrees of assistance:

1. **Independent**
2. **Independent, setup help only – Article or device placed within reach, no physical assistance or supervision in any episode.**
3. **Supervision – Oversight/cuing.***
4. **Limited assistance – Guided maneuvering of limbs, physical guidance without taking weight. This is minimum amount of need with 3 ADLs. Should include "Contact guarding" (hovering).**
5. **Extensive assistance – Weight-bearing support (including lifting limbs) by one helper where person still performs 50% or more of subtasks.**
6. **Maximal assistance – Weight-bearing support (including lifting limbs) by two or more helpers; or, weight-bearing support for more than 50% of subtasks.**
7. **Total dependence – Full performance by others during all episodes.**

Need 3 ADLS with these scores unless has dementia or Alzheimer's dx

*** ADL with this level of need counts only if has Dementia/ Alzheimer's diagnosis – then need this or a higher level assistance with 2 ADLs**

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ADLs in CHA Nurse Assessment

State regulation defines ADL as "those activities recognized as activities of daily living by the evidence based validated assessment tool…." 18 N.Y.C.R.R. §505.14(a)(9). These are the ADLs in this tool (unknown yet whether DOH will combine any of these):

1. Bathing (includes transfer in/out of shower/tub, washing body – but not washing back or hair)
2. Personal Hygiene (brush teeth, comb hair, wash face)
3. Upper Body Dressing
4. Lower Body Dressing
5. Walking (on same floor indoors)
6. Locomotion (how moves or wheels between locations on same floor indoors)
7. Transfer on and off toilet
8. Toilet /commode Use: Use, cleanses after use, or changing incontinent pads, adjusting clothes
9. Bed Mobility
10. Eating

NEW CRITERIA starting 9/1/25: Must need "Limited Assistance" with 3 ADLs except those with Alzheimer's or dementia must need "Supervision – Oversight/cueing" with 2 ADLs (previous slide)

OLD CRITERIA before 9/1/25: Any type of help with ONE ADL qualified for PCS/CDPAP/ MLTC

What about help with "Housekeeping" Tasks? (IADL)

- **"Instrumental ADLs" (IADLS) include:**

1. Meal preparation and clean-up	2. Laundry
3. Cleaning/ housework	4. Shopping
5. Stairs	6. Phone Use
7. Travel by public transportation	8. Managing medications

- **IADLs don't count at all for eligibility for services! If you meet the 3-ADL test (2 if dementia), then the aide helps with IADLs you are assessed to need help with.**
  - **But if you don't meet the 3-ADL test, stand-alone IADL help is no longer available.**
- **Until now, since only 1 ADL was required for PCS/CDPAP/MLTC – if you met that test the aide would help with all IADLs you are assessed to need help with.**
  - **Plus – if you needed help with IADLs but not ADLs you could get up to 8 hours/week of PCS/CDPAP through the Housekeeping service. This was from the local DSS or your mainstream managed care plan (not from MLTC).**
  - **THIS Housekeeping program will END for *new applicants*. Current recipients are grandfathered in (have legacy status).**

REFRESHER: PATHWAYS TO ACCESS MEDICAID HOME CARE IN NYS

WHO CONDUCTS THE NEW ADL TEST?

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Steps to Access Medicaid Home Care for **Adults 18+** – Personal Care Services (PCS), CDPAP, & MLTC

1

Financial Eligibility for Medicaid

- Determined either by LDSS/HRA or NYSOH

2

Eligibility for Medicaid Home Care or MLTC

- Determined through NY Independent Assessment Program (NYIAP)

3

Authorization of Home Care Services

- Authorized by either LDSS/HRA or Managed Care Plan or
- Enroll in MLTC, which authorizes home care

If do not have Medicare or other health insurance – enroll in Mainstream Managed Care plan

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Key Role of the NY Independent Assessor (NYIAP)

- NYIAP is the gatekeeper for accessing all personal care & CDPAP services for adults age 18+
  - but not for children under 18. They are assessed by their managed care plan or DSS, which will now apply the 3-ADL test. (Child in OPWDD waiver has choice of enrolling managed care plan or accessing home care through DSS).
- NYIAP is run by Maximus under contract with NYS DOH.
- NYIAP's nurse conducts the main assessment in person or by telehealth. A 2nd "practitioner" assessment is done by a Nurse Practitioner or PA. The "outcome" of these assessments determines eligibility for:
  1. MLTC or Medicaid Advantage Plus plan enrollment
  2. For members of Mainstream managed care (MMC) plans, whether they are eligible for PCS or CDPAP services to be authorized by the plan.
  3. Immediate Need services (PCS or CDPAP) from the local DSS
  4. Eligibility for PCS or CDPAP services from the local DSS for people not enrolled in Mainstream managed care plans and who are excluded from MLTC/MAP plans - See next slide
- Now NYIAP will determine if you pass the new ADL TEST – required for any of the four ways of accessing home care listed above.

For more info. on NYIAP see http://health.wnylc.com/health/entry/253/ and https://nyia.com/en https://www.health.ny.gov/health_care/medicaid/redesign/nyiap/

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Refresher: Which Adults age 18+ Must or May or May not Enroll in MLTC to get Community-Based Long Term Care? (CBLTC)*

	Mandatory – *Must* Enroll in MLTC, MAP or PACE to get CBLTC*	**Voluntary – *May* Enroll in MLTC, MAP or PACE to get CBLTC**
WHO	1. Adult 21+; and 2. Full Medicaid (not just Medicare Savings Program) and 3. Dual Eligible – has Medicaid + Medicare **Exceptions** - ***excluded from MLTC*** if in home hospice or OPWDD, TBI or NHTD waiver → **get services from local DSS**	1. Dual eligible, age 18-20 2. Not a Dual eligible -- Has Medicaid only, not Medicare -- and age 18 and over
CRITERIA for MLTC	1. Need CBLTC for a continuous period of more than 120 days	1. CBLTC for a continuous period of more than 120 days <u>and</u> 2. Need a *nursing home level of care* at time of enrollment. Determined by an "NFLOC" score of "5" on the UAS tool.
Options other than MLTC	MAY NOT get services from local DSS – except short-term through **Immediate Need** or if ***EXCLUDED*** from MLTC. See above.	May get services from local DSS or, mainstream managed care plan in some cases. *Those under 18 get services from DSS or MMC

*** CBLTC includes PCS, CDPAP, private duty nursing, & adult day health care**

WHO IS GRANDFATHERED IN UNDER THE OLD ELIGIBILITY RULES FOR HOME CARE?

Known as "LEGACY STATUS"

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Who is Grandfathered in or has "Legacy status"?

One has "Legacy Status" if they are --

1. In an MLTC plan or receiving PCS/CDPAP from MMC/DSS before 9/1/2025:

- **Enrolled in MLTC, or Medicaid Advantage Plus as of 8/1/25 OR**
- **Authorized for homecare by DSS or mainstream plan before 9/1/25**

2. OR are (A) Assessed by NYIAP between 8/31/2024 and 8/31/2025 as eligible for PCS/CDPAP/MLTC enrollment & (B) enroll in MLTC or are authorized by mainstream plan or DSS for services *within one year of assessment*.

- **Issue Spotting: An individual has legacy status even if enrollment or services start after 9/1/25 because a NYIAP assessment is valid for one year.**

Next slide has exceptions – May have Legacy Status even if NYIAP assessment is on Sept. 1, 2025 or after

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"Legacy status" or Grandfathering

Two rare situations with LEGACY STATUS even though NYIA assessment completed after 9/1/25

Consumer assessed before 9/1/25; Plan or DSS requests a variance ("do over"), but do-over occurs after 9/1/25	Consumer would have been assessed before 9/1/25, but:
• Variances are rare! Only Plan/DSS can request a variance and are rare. • Consumer can ask the Plan/DSS to request variance, but Plan/DSS may not follow through • Consumer can request NYIAP for a reassessment but if reassessment is after 9/1/25, we think new ADL restrictions will apply. Then if denied services, may request fair hearing (see later slides).	• Assessment scheduled before 9/1/2025 had to be rescheduled; and • Rescheduling done before date of the initial appointment; and • Need to reschedule is through "no fault" of consumer • "No fault" is not defined in guidance!

Link to official guidance on slide 9

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"Legacy status" --
TIPS to make sure client is grandfathered – if not yet in an MLTC/MAP plan or not receiving PCS/CDPAP from local DSS or mainstream plan

TIPS: Get assessed by NYIAP before 9/1/2025 – whether seeking:

- **MLTC or MAP**
- **Immediate Need PCS/CDPAP**
- **Stand-alone housekeeping from local DSS**
- **PCS/CDPAP from mainstream managed care plan**
- **PCS/CDPAP from local DSS for people exempt or excluded from MLTC (in OPWDD, TBI or NHTD waivers or home hospice) or don't have Medicare and not in a "mainstream" plan**

Remember the NYIAP assessment is good for 1 year.

BUT must have Medicaid approved by Local DSS to schedule NYIAP assessment. **NYIAP: http://health.wnylc.com/health/entry/253/**

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Legacy Status means 1-ADL eligibility rule applied

- **TWO types of legacy status**
  1. **Plan Legacy status (Grandfathered under 1-ADL eligibility rule for MLTC or MAP *plan* enrollment)**
  2. **Service Legacy status (grandfathered under 1-ADL eligibility rules for personal care or CDPAP *services*)**
- **Both types of legacy status:**
  - **Mean you get reassessed each year using the less restrictive criteria 1-ADL eligibility criteria – only need ONE ADL to qualify for MLTC, PCS or CDPAP with ANY level of need (Cueing or Supervisory assistance OK).**
    - **ADLs and level of need tracked in the UAS-NY system**
- **Next 2 slides discuss how to KEEP Plan or Service Legacy Status**

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How long does legacy status or grandfathering last?

(1) PLAN LEGACY STATUS

To keep this must be continuously enrolled in MLTC, MAP, or PACE

- **OK to change plans but there must be no gap in enrollment of one month or more to keep plan legacy status**

Warning: Lose plan Legacy Status if there is a gap in enrollment because Voluntarily or Involuntarily Disenrolled from plan – such as if you:**

- **Move to a different county & there is delay in new MLTC enrollment**
- **Are disenrolled from MLTC plan because in nursing home for more than 3 months http://health.wnylc.com/health/entry/199/.**
- **Did not receive homecare from the MLTC or MAP plan you are enrolled in for the last month (concern for CDPAP consumers who did not switch to PPL!)**
- **Any other gap in enrollment of 1 month or more**

**Can My MLTC Plan Kick Me Out? "Involuntary Disenrollment" from MLTC plans - Changes start Nov. 1, 2024
http://health.wnylc.com/health/entry/238/

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How long does grandfathering/legacy status last?

(2) SERVICE LEGACY STATUS

You have this status if received or were initially authorized PCS/CDPAP before 9/1/2025 or were assessed by NYIAP on or after 8/1/24 and started services within a year.

- **Service legacy remains intact even if you lose Plan legacy status because of gap in MLTC/MAP plan disenrollment. See guidance slide 9.**
- **If you were in an MLTC plan before 9/1/25 authorized for PCS/CDPAP, and are disenrolled from MLTC plan,* you lose *Plan Legacy* status but still have *Service Legacy* Status. This implies you still qualify for PCS/CDPAP under the old standards but DOH has not said how you receive it.**
  - **Could you receive PCS/CDPAP from local DSS? DOH has not said.**
- **Mainstream consumers receiving CDPAP/PCS who must transition to MLTC when they enroll in Medicare SHOULD have Service Legacy status.**
  - **But are they eligible to enroll in MLTC after 9/1/25 if they fail the ADL test? Or will they receive services from the local DSS? DOH has not said.**
  - **What if Mainstream plan fails to track consumer receiving home care before Sept. 1, 2025?**

*Can My MLTC Plan Kick Me Out? "Involuntary Disenrollment" from MLTC plans - Changes start Nov. 1, 2024 http://health.wnylc.com/health/entry/238/

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NEW APPLICATIONS FOR MLTC/PCS/CDPAP AFTER SEPT. 1, 2025

Navigating the new 3-ADL TEST for People who do not have Legacy Status

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Consumers Who Request PCS/CDPAP or MLTC/MAP after 9/1/25 (no Legacy Status)

- 3-ADL restrictions apply to all Medicaid recipients, adult and children under age 21 who do not have Legacy Status.
- New ADL Limits applied after 9/1/25 in:
  1. NYIAP assessments and initial determinations of eligibility for PCS, CDPAS and MLTC/MAP enrollment
  2. DSS and MMC initial determinations of eligibility for PCS and CDPAS
  3. Reassessments for non-legacy consumers
- Children under age 18 do not go through NYIAP when seeking PCA/CDPAS services, but the ADL restrictions will still apply to those newly seeking PCS/CDPAS who are -
  1. In mainstream managed care – plan will screen for ADL test
  2. Applying at the DSS – DSS will screen for ADL test
- Guidance is unclear what notice and procedures are followed if non-legacy individuals are found ineligible at reassessment. Due Process!

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Sequence of Applying ADL Criteria

1. **Does individual have Legacy status? If so, less restrictive 1-ADL criteria applies and cueing/prompting is enough**
   - **If not in MLTC plan or receiving home care, were they assessed for home care since 9/1/24, and can they enroll in an MLTC/MAP plan or start home care from DSS or managed care plan within 1 year of assessment?)**
2. **If not, does applicant need "limited" assistance with 3 ADLs? (see slide 10-11) If so → eligible.**
3. **If not, will doctor certify that applicant as dementia or Alzheimer's disease?**
   - A. **If YES, does applicant need Supervisory or cueing assistance with 2 ADLs? If NO → Not eligible.**
   - B. **If YES, is Diagnosis documented by new Alzheimer's Disease or Dementia Form (DOH-5821) https://www.health.ny.gov/forms/doh-5821.pdf signed by MD or DO (need not be a Medicaid provider)**
     - **Unclear how and when to submit form if Telehealth assessment with nurse.**
     - **Form must be submitted with each REASSESSMENT! Apparently DOH thinks there is a cure for Alzheimer's disease and dementia! Will plan/DSS give adequate notice that form required?**
   - C. **IF NO → NOT ELIGIBLE. If YES → ELIGIBLE.**

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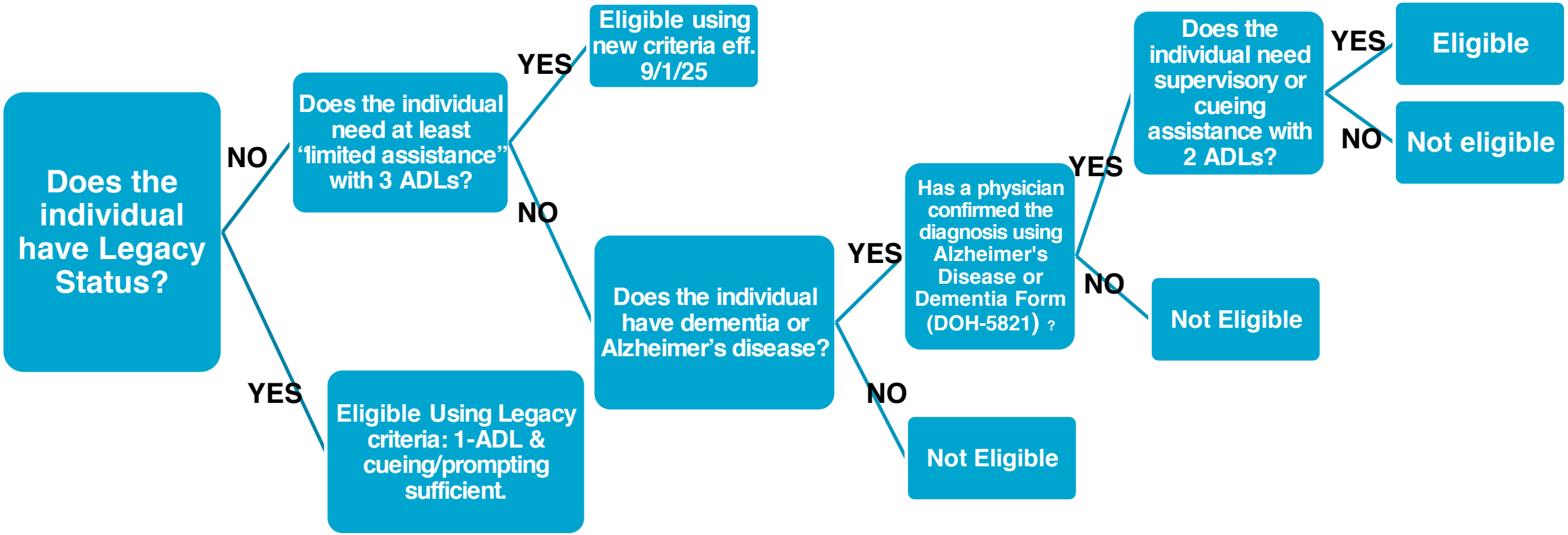
Sequence of Applying ADL Criteria eff. 9/1/2025



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DENIALS OF MLTC OR HOME CARE BASED ON ADL'S - AND FAIR HEARINGS

For adults age 18+ – NYIAP is the entity that will deny MLTC enrollment or the request for home care – if if finds do not pass the ADL test.

- **Request Fair Hearing against NYIAP**

For children under 18 –

- **If child in a Managed care plan -- appeal is against plan. Must first request an internal Plan Appeal and then if that is denied, request a Fair Hearing.**
- **If child not in managed care and requested home care from Local DSS -- fair hearing is against the local DSS**

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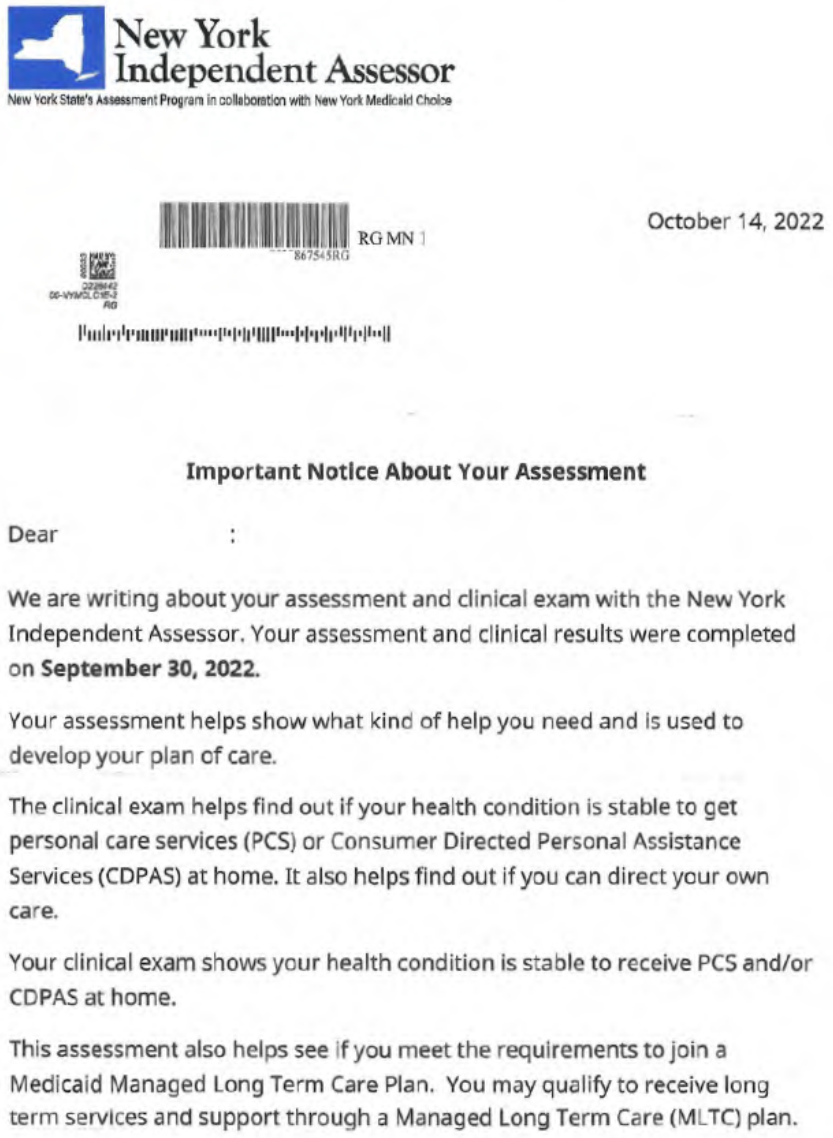
Denial MLTC/MAP Enrollment: Outcome Notice



New York Independent Assessor
New York State's Assessment Program in collaboration with New York Medicaid Choice

RG MN 1

October 14, 2022

Important Notice About Your Assessment

Dear :

We are writing about your assessment and clinical exam with the New York Independent Assessor. Your assessment and clinical results were completed on **September 30, 2022.**

Your assessment helps show what kind of help you need and is used to develop your plan of care.

The clinical exam helps find out if your health condition is stable to get personal care services (PCS) or Consumer Directed Personal Assistance Services (CDPAS) at home. It also helps find out if you can direct your own care.

Your clinical exam shows your health condition is stable to receive PCS and/or CDPAS at home.

This assessment also helps see if you meet the requirements to join a Medicaid Managed Long Term Care Plan. You may qualify to receive long term services and support through a Managed Long Term Care (MLTC) plan.

Until now, unfavorable Outcome notice states --

Not qualified to enroll in MLTC.

- **Until now, for adult dual eligibles, this means only "does not need ADL assistance for** *more than 120 days.*"
- **Starting Sept. 1, 2025, to be eligible for MLTC must also pass the ADL test.**
- **Will the notice break down which test consumer failed, and how many ADLs short they are?**

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Unfavorable NYIAP Notice MLTC Enrollment

Outcome notices also say:

1. **Whether consumer is "Medically stable"**
   - **MLTC Policy 25-04 (slide 6) says *Plans may not deny enrollment* if NYIA finds NOT medically stable, unless the plan is unable to provide any other CBLTSS the consumer is eligible for (e.g. private duty nursing)**
2. **For voluntary MLTC enrollees (age 18-21 and adults without Medicare), whether consumer was determined to have a *Nursing Facility Level of Care*. (slide 19).**
   - **MLTC enrollment requires NFLOC score of 5 – located under *Assessment Outcomes* near end of the assessment tool**

If Outcome Notice says MLTC enrollment is denied:

- **Consumer has Fair hearing rights to appeal against NYIAP.**
- **Consumer may NO LONGER seek stand-alone Housekeeping services from Local DSS, if fail to pass the ADL test – unless they have *service legacy status*.**
- **May one seek *short term* PCS/CDPAP from the DSS, if you pass the ADL test but do not need CBLTC for more than 120 days? Unclear! (would be rare)**

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NYIAP Outcome Notices starting 9/1/25 if seeking services at DSS or mainstream plan

- **If seeking PCS/CDPAP from a managed care plan or from local DSS, including Immediate Need, NYIAP Outcome Notice should say whether:**
  1. **Applicant meets the new minimum ADL criteria**
  2. **Is Medically stable**
  3. **NOTE – there is NO requirement that need CBLTC for > 120 days – this is only for MLTC/MAP.**
  4. **TIP: Consumer is responsible for informing MMC/DSS of the Outcome Notice; DSS or MMC may disagree and request a variance ("do over" assessment by NYIAP).**

  Both criteria 1 + 2 above must be met for PCS/CDPAP
- **If Outcome Notice says not eligible for PCS/CDPAP, consumer may request a Fair Hearing against NYIAP**
  - **Unclear if Outcome Notice will specify WHICH criteria are not met (1 and/or 2)**

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Requesting a Fair Hearing against NYIA

Ways to request a hearing

- By telephone: (800) 342-333
- By fax: (518) 473-6735 - Fair Hearing Request Form
- Online: www.otda.state.ny.us/oah/forms.asp
- By mail to:

NYS Office of Temporary and Disability Assistance
Office of Administrative Hearings
Managed Care Hearing Unit
P.O. Box 22023
Albany, New York 12201-2023

May request that hearing be EXPEDITED*

*22-03 Fair Hearings Transmittal Expedited Medicaid Hearings explains how to request and standards for expediting

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POLL 2

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TIPS FOR NEW NYIAP ASSESSMENTS AFTER SEPT. 1, 2025

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Tips for NYIAP Assessments After Sept. 1, 2025

- **Even before the ADL test starts, beware that NYIAP assessments routinely and improperly DENY MLTC or PCS/CDPAP eligibility because of systemic problems.**
- **Be prepared for the problems listed on the following slides.**
- **In part, the problems stem from policies in the official NYS DOH "UAS-NY" Reference Guide for nurse assessors.***

***Latest version on file with NYLAG is UAS-NY Reference Manual, Aug. 2022 edition, available at http://health.wnylc.com/health/download/902/**

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Tips for NYIA Assessments after 9/1/2025

TIP 1 -- Prepare for the assessment – review all of the ADLs (see list on slide 11) and identify those for which consumer needs "limited assistance – guided maneuvering of limbs, physical guidance without taking weight." This is more help than "supervision/cueing" but less than "weight bearing support."

- **If you count THREE or more ADLs meeting this threshold, be sure to counsel the consumer to point each ADL out to the assessor.**
- **If consumer does not meet the THREE ADL test, and has dementia or Alzheimer's disease, identify whether she needs "supervision/cueing" or "limited assistance" with TWO or more ADLs. Counsel consumer to point this out to assessor.**
  - **Have doctor complete and sign the *Alzheimer's Disease or Dementia Form (DOH-5821) form* prior to assessment. (https://www.health.ny.gov/forms/doh-5821.pdf)**
  - **There are many types of dementia! Vascular, Lewy body, Huntington's, Parkinson's, etc.***
- **There may be ADLs that are borderline – be prepared to point out why consumer meets the threshold and see tips on next slides.**

*https://www.alzheimers.org.uk/about-dementia/types-dementia

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Tip 2: The 3-Day Rule for Assessments

3-day rule – Assessor must record the person's *actual* level of self-care and support *actually* received during the *last 3 days only.

- **Assessor does NOT record what they think consumer SHOULD receive or what they think ADLs consumer COULD do for themselves.**
- *Only a consumer who had help – paid or by family – during 1 or more of the 3 days before assessment is found to need ADL assistance!*
- **EX. 1: Jose's daughter visits to help him bathe twice a week by physically helping him get into and out of the shower. When the NYIAP assessor visited on Monday, the last time the daughter helped him bathe was the previous Thursday. Since this was not within the last 3 days, the assessor would mark "activity did not occur" and the ADL would not be counted toward the minimum.**
- **EX. 2: Maria bathes by herself but it is extremely risky. The nurse marks her as "independent" with bathing. A***t least one fair hearing rejected characterizing such consumers as "independent". FH* **8477309M. The decision states, "any task that was completed …without assistance in the 3 days prior to the assessment … gets marked …[as] independent…, regardless of how difficult, insufficient, time consuming, or dangerous the task was .... For example, … labeled as "1ndependent" when bathing …even if it was extremely difficult or dangerous for him to do by himself.**

TIP: Consumer should have help with ADLs in at least one of the 3 days before the NYIAP nurse assessment. This can be informal help by a family member or paid help.

***UAS-NY Reference Manual, Aug. 2022 edition pp. 28-33, available at http://health.wnylc.com/health/download/902/.**

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More TIPS for NYIAP assessments after Sept. 1, 2025

3. **Nurse often mislabels as "independent" with ADL.**
   - **If has dementia/Alzheimer's disease, point out need for reminding to use walker, cueing on post-elimination hygiene after toileting, cueing to feed self, dress, wash, brush teeth, etc.**
   - **If does not have dementia, "contact guarding" should count as "limited assistance." It is OK that it is non-weight bearing.***
4. **Telehealth assessments inevitably miss nuances. Though it can cause delay, ask for in-person assessment and make sure someone is there to point out needs. If must use Telehealth, have someone participate and point out needs.**

*UAS-NY Reference Manual, Aug. 2022 edition pp. 30-32. http://health.wnylc.com/health/download/902/.

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ARE THE ADL LIMITS LEGAL – OR SMART?

And Where to Go for Help

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Is 3-ADL Minimum Requirement Legal?

- **Discriminates against visually impaired, those with Intellectual & Developmental Disabilities (IDD), Traumatic Brain Injuries, etc. who need "cueing & supervision" with 2 ADLs, just like those with dementia, and may not need physical assistance with 3 ADLs.**
  - **Discrimination based on diagnosis violates the Americans with Disabilities Act (ADA) and Medicaid.**
  - **Denial of home care services to those with diagnoses listed above will force them into or prevent them from leaving nursing homes, in violation of *Olmstead* that requires least restrictive setting.**
- **Violates Community First Choice Act (CFCO), which requires cueing as well as physical assistance with ADLs and IADLs for those with a *nursing home level of care*.**
  - **Many who will fail the ADL test will likely have an NFLOC score of 5 – meaning they have a nursing home level of care. They will be illegally denied CFCO services when denied MLTC/PCS/CDPAP.**

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Is 3-ADL Minimum Requirement Legal?

- **For children, the rigid ADL test violates the Medicaid for Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements. EPSDT does not allow hard limits on services for children, requiring an individualized determination.**

- **Legislative fix? Senate Bill S358 (Gustavo Rivera)/ A1198(Amy Paulin)* to repeal not passed so far; big lift because projected significant savings (as much as $250 million).**

*https://nyassembly.gov/leg/?bn=S00358&term=2025

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CMS Permission to Impose ADL Thresholds

1. State Plan Amendment – CMS said NYS didn't need to amend the State plan – could change definition of "medical necessity" for services
2. State requested amendment of the 1115 Waiver that governs the MLTC program – to restrict who is eligible to enroll.*
   - CMS approved by letter of 10/31/2024,** stating CMS does not require states to specify medical necessity or level of care requirements in Medicaid State Plans
   - CMS also said that state must "ensure eligibility standards do not discriminate based on disability under CMS and other federal nondiscrimination regulations

*Waiver amendment request - https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ny-medicaid-rdsgn-team-pa7.pdf ; view NYLAG's and other comments at https://1115publiccomments.medicaid.gov/jfe/form/SV_1YbhGzdijrBxCId (Summary of responses)

** https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ny-medicaid-rdsgn-team-mltc-ltr.pdf

Is 3 ADL Minimum Requirement Smart?

- Does not consider need for Housekeeping services (Instrumental ADLs) for eligibility – commonly needed for those with IDD, TBI, Vision impairments – in order to remain independent and safe.
  - Eliminates Medicaid's Housekeeping program as important preventive service (8 hours max/Level 1 PCS for those who need IADL help but not ADL assistance)
- Denial of services will cause falls and other accidents, lapses in taking vital medication – leading to hospitalizations and nursing home stays – or the need for MORE home care.
- The EISEP Program run by the NYS Office of the Aging already has long waiting lists – and those with full Medicaid aren't eligible for EISEP at all.

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For more info and help

- **Check for updates at http://health.wnylc.com/health/news/85/.**
- **If NYIAP denies MLTC enrollment or PCS or CDPAP services from Local DSS or managed care plan based on the new ADL test– contact NYLAG at eflrp@nylag.org.**
- **For other help with Medicaid home care issues please see this contact list: Getting Help with Managed Long Term Care at http://health.wnylc.com/health/entry/234/.**

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