ELIGIBILITY REQUIREMENTS FOR THE INNOVATIONS WAIVER

What is the Innovations Waiver?

The North Carolina Innovations Waiver ("Waiver") is a Home and Community-Based Services Medicaid program that provides services and supports for individuals with intellectual and/or developmental disabilities who are at risk of institutional care in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IDD). The Innovations Waiver is the program that replaced the CAP-MR/DD program. The goal is to provide an array of community-based services and supports to promote choice, control, and community integration as an alternative to institutionalization. These are services that are not otherwise available under the State Medicaid Plan.

The Division of Medical Assistance (DMA) is the NC Medicaid agency that is responsible for operating the Medicaid program in North Carolina. It operates the Waiver by contracting with Local Management Entity/Managed Care Organizations (LME/MCOs) to manage the delivery of services, although DMA is still responsible for oversight of the program. Information from DMA regarding the Waiver can be found at http://www.ncdhhs.gov/dma/lme/Innovations.html and in DMA Clinical Coverage Policy 8P.

Unfortunately, there are only a limited number of Waiver “slots,” so that although an individual may be eligible for the Waiver, there may not be a slot available for them to be able to receive services. However, there is a wait list for the program known as the Registry of Unmet Needs that is kept by the LME/MCO. Because of the high demand for these services, the wait list is extremely long and it could take many years before a slot becomes available to an individual on the wait list. There is no entitlement to services under the Waiver program before a slot becomes available. However, once a person is placed on the Registry/wait list, the LME/MCO should refer that individual to other resources that may be available while they are waiting for a Waiver slot to open up.

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1 The program is called a “Waiver” because North Carolina is permitted to “waive” certain Medicaid requirements in the administration of this program. For example, Medicaid requires that the income of a spouse or parent be considered in determining Medicaid eligibility for a person living with that spouse/parent. Under the Innovations Waiver, this requirement is waived so that only the recipient’s income is considered. The Act also requires states to provide comparable services in amount, duration, and scope to all Medicaid recipients. This requirement is waived to allow Waiver services to be offered only to individuals who receive a Waiver slot.

2 Waiver services are targeted to persons who meet the ICF-DD (formerly ICF-MR) eligibility criteria defined in DMA’s Clinical Coverage Policy No. 8E; Waiver, Appendix B-7: 2 http://www.ncdhhs.gov/dma/lme/Innovations_Amendment_5.pdf

3 DMA Clinical Coverage Policy 8P (NC Innovations) http://www.ncdhhs.gov/dma/mp/8P.pdf

Typically, the Registry of Unmet Needs operates on a first come-first served basis, so the sooner you get on the list, the sooner you may be able to receive services. In certain circumstances, there are also some emergency Waiver slots available.

**How Do I Obtain Innovations Waiver Services?**

Individuals apply for the Waiver by contacting their LME/MCO. The LME/MCO is the local agency that provides behavioral health services for Medicaid-eligible individuals in their specific geographic region. Currently, there are nine LME/MCOs operating across the state. Your county of residence will determine your LME/MCO. Once you identify the correct LME/MCO, you should contact them and request that you (or your child/ward) receive services under the Waiver. The LME/MCO is required to maintain a list of individuals wishing to be considered for participation in the Waiver. Confirm date of placement on the list in writing with the LME/MCO.

**What Should Happen After an Initial Request for Waiver Services?**

After contacting the LME/MCO to let them know that you would like to be considered for Waiver services, an intake/screening process *should* be conducted as a preliminary determination of an individual’s potential eligibility for services. This screening process consists of a comprehensive clinical review, including administration of the Supports Intensity Scale (SIS) and the Risk/Support Needs Assessment to determine if the Waiver can meet the individual’s needs. If health and/or safety risks are noted in these assessments, the LME/MCO’s clinical director will review the assessments and determine whether the individual’s needs can be met by the Waiver. Importantly, the individual is to be notified, in writing, of the outcome of this assessment. Note that this process to determine potential eligibility is not always followed by the LME/MCO.

Currently, some of the LME/MCOs make an initial determination denying *placement* on the wait list (without doing any assessment of eligibility) while others place the individual on the wait list, making a determination of eligibility when that individual’s name gets to the top of the list. For example, an LME/MCO might deny *placement* on the list because the LME/MCO has determined that an individual’s IQ is too high (this is not a permissible reason to refuse to place an individual on the wait list or deny Waiver services). Such a determination is not in compliance with the Waiver. In this circumstance, it is unlikely that an LME/MCO will advise a consumer that they can appeal a preliminary decision not to place them on the list at all.

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5Waiver, Appendix B-3: 4; DMH-MCO Contracts, Attachment I Scope of Work, para. 7.2.8.
6Waiver, Appendix B-3: 2-5. Note that there are some reserved Waiver slots for individuals aging out of the CAP-C Waiver, Military Transfers, Emergencies, Money Follows the Person and Community Transition for Institutionalized Children under age 18; NC Innovations Technical Guide 6/25/12, p. 60.
7“The LME-MCO shall maintain a list of individuals wishing to be considered for participation in the NC Innovations Waiver and provide it to DHHS upon request.” DMH-MCO Contracts, Attachment 1 Scope of Work, para. 7.2.8.
8NC Innovations Technical Guide 6/25/12, p. 59 (date and time of initial contact with the LME/MCO is recorded on the Registry of Unmet Needs – Waiver Waitlist – and is used to determine the order of entrance to the Waiver).
9Waiver, Appendix B-2: 2, B-3: 4; see also NC Innovations Technical Guide 6/25/12, p. 59.
10Id.
However, Disability Rights North Carolina takes the position that this action triggers appeal rights and an opportunity to access the State Fair Hearing process since the individual is being denied the opportunity to ever receive Waiver services without any type of assessment.\textsuperscript{11}

If denied placement on the wait list, request that the LME/MCO put that denial in writing. If they refuse, you can still appeal the LME/MCO decision to the Office of Administrative Hearings (OAH).

**How Does the an Individual Get a Waiver Slot?**

Once a slot becomes available, an initial **Level of Care** evaluation is required to determine if a person meets the ICF-IDD level of care. An individual can only receive Waiver services if they meet the eligibility criteria to receive services in an ICF-IDD facility. This assessment is done when an individual initially enters the Waiver program, or if there is any question about continued eligibility in the future. The assessment documents a diagnosis of mental retardation (intellectual disability) **OR** a condition closely related to it (other than mental illness) that results in adaptive behavioral functioning that is similar to mentally retarded persons. This Level of Care assessment will be based on information obtained from a psychological evaluation and an adaptive behavior assessment.\textsuperscript{12}

**Evaluation of Eligibility for Waiver Services: LOC Form**

The determination of eligibility is a two-step process. First, there is a clinical assessment like a psychological evaluation that includes both intellectual testing and an adaptive behavioral assessment.\textsuperscript{13} Then, the LME/MCO schedules an appointment for the individual with a clinician\textsuperscript{14} in it’s network who documents the outcome of the Psychological Evaluation on a one page form called the Level of Care Assessment or LOC form/tool. This will occur through a face-to-face meeting between the individual and the clinician that is generally quite short and will consist of the evaluator asking a few questions based on the earlier Psychological Evaluation (which the LME/MCO should have provided to the clinician for review before the meeting). The evaluator will fill out the one page LOC form\textsuperscript{15} based on answers to their questions and any records they might have reviewed prior to the meeting. **The manner in which the LOC form is filled out is crucial to whether or not an individual will qualify for Waiver services.**

\textsuperscript{11} An individual has the opportunity to request a Fair Hearing when denied eligibility, when eligibility is terminated, or when denied a covered benefit or service. NC Innovations Technical Guide, p. 210; 42 CFR §431.200 through §431.246; 42 C.F.R. § 431. 400 (MCO takes an “action” when it denies or gives limited authorization of a requested service, including the type or level of service).

\textsuperscript{12} Waiver, Appendix B-7: 2-3; NC Innovations Technical Guide 6/25/12, p. 65.

\textsuperscript{13} Waiver, Appendix B-7: 3; NC Innovations Technical Guide 6/25/12, p. 65 (Psychologists and Licensed Psychological Associates complete a standardized IQ test and an adaptive behavior assessment to obtain information to assess level of care).

\textsuperscript{14} This clinician does not work for the LME/MCO. These are independent psychologists or licensed psychological associates that have been specifically trained on how to fill out the LOC form by the LME/MCO. NC Innovations Technical Guide 6/25/12, p. 65.

Although this is a fairly cursory meeting (and a very short LOC form), it is enormously important in determining eligibility. Therefore, it is essential that the individual make sure the evaluator receives all records that demonstrate the individual’s eligibility for the Waiver. These documents should be submitted to the LME/MCO prior to the meeting for them to forward to the LOC evaluator. Notwithstanding that, the individual should bring all relevant documents with them to the meeting and request that the clinician review them, before filling out the LOC form (do not assume that the LME/MCO will forward your documents to the LOC evaluator).

Relevant documents include medical records, school records (IEPs), letters from care providers (parents, CAP workers, YMCA counselors, teachers, etc.), or anyone else that interacts with the individual and can document or explain examples of behaviors that affect the individual’s life and those around them. These documents should specifically discuss behaviors that are described in the six major areas of life activities that are detailed in DMA’s Clinical Coverage Policy 8E (discussed below).

The LOC evaluator forwards the completed LOC form to the LME/MCO, which reviews the information and verifies the level of care. The LME/MCO completes the final determination of the authorization of Level of Care. If the Psychologist (LOC evaluator) and the LME/MCO disagree about the Level of care, the Medical Director for the LME/MCO makes the final determination.

Note that a new LOC form is not needed for any individual on the Waiver that is transferring from one LME/MCO to another. Additionally, if an individual on the wait list transfers to another LME/MCO, the date and time listed on the original LME/MCO’s Registry of Unmet Needs should be transferred to the new LME/MCO’s registry of unmet needs.

**Waiver Eligibility Requirements**

In order to meet the criteria required to receive Innovations Waiver Services, an individual must:

1. have a diagnosis of mental retardation or a condition that is closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons (an Autism Spectrum Disorder or Cerebral Palsy are examples of conditions that might negatively impact adaptive behavior or functioning, irrespective of IQ or cognitive ability)

2. have a condition that is manifested before age 22,

3. have a condition that is likely to continue indefinitely and

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16 Waiver, Appendix B-7; 3; NC Innovations Technical Guide 6/25/12, pp. 65 (the LME/MCO completes the final determination and authorization of Level of Care and Medical Necessity).

17 Note that ANY determination that the individual does not meet the ICF-IDD eligibility criteria must include a review by and approval of the decision by the LME/MCO Director. NC Innovations Technical Guide, pp. 65, 66.

18 NC Innovations Technical Guide 6/25/12, pp. 64, 196.

have a condition that **results in substantial functional limitations in three or more areas of major life activity** in the six categories of self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living.\(^2^0\)

Importantly, “substantial functional limitation” is not clearly defined. However, DMA Clinical Coverage Policy 8E lists the 6 areas of major life activity that are considered in determining whether an individual qualifies for Waiver services and explains what a “substantial functional limitation” is for each of the categories. Additionally, 8E also notes that reports by physicians, psychologists, and other appropriate disciplines are evaluated to determine whether an individual has a substantial functional limitation in a major life activity.

There is nothing about IQ in the Waiver eligibility criteria although the LME/MCOs may try to use IQ as a kind of litmus test or single indicator for eligibility purposes. The individual must have an intellectual disability **OR** a developmental disability that manifests itself as a **substantial functional limitation in 3 of the 6 major life activities below:**

**Clinical Coverage Policy 8E\(^2^1\)**

**Attachment B: Functional Limitations As Defined By The Developmental Disabilities Assistance and Bill of Rights Act of 2000**

The federal government has defined developmental disabilities as disabilities that are chronic and attributable to mental and/or physical impairments, which are evident prior to age twenty-two. Such disabilities tend to be lifelong and result in substantial limitations in three or more of the following major life activities:

**a. Self Care:** Daily activities that enable a person to meet basic life needs for eating, hygiene, grooming, health and personal safety. A substantial limitation occurs when a person needs assistance at least one-half the time for one activity, or needs some assistance in more than one half of all activities normally required for self-care. Assistance is usually in the form of the intervention of another person directly or indirectly by prompts, reminding and/or supervising someone.

**b. Receptive and Expressive Language:** Communication involving both verbal and nonverbal behaviors that enable the person both to understand others and to express ideas and information to others. The concept of language includes reading, writing, listening and speaking as well as the cognitive skills necessary for receptive language. A substantial limitation occurs when a person is unable to effectively communicate with another person without the aid of a third person, a person with a special skill, or a mechanical device, or is unable to articulate thoughts and/or to make ideas and wants known.

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c. Learning: General cognitive competence and ability to acquire new behaviors, perceptions and information and to apply previous experience in new situations. When a person requires special intervention or special programs to assist that person in learning a substantial limitation occurs. Children who meet the eligibility standard for infant/toddler or special education services or need significant special interventions such as assistive devices or special testing procedures in regular education programs in order to learn would have a functional limitation in learning.

d. Mobility: Motor development and ability to use fine and gross motor skills. A substantial limitation occurs when the ability to use motor skills requires assistance of another person and/or a mechanical device in order for the person to perform age appropriate skills in two skill areas, or to move from place to place inside and/or outside the home.

e. Self-Direction: Ability to make independent decisions regarding and to manage and control one’s social and individual activities and/or in handling personal finances and or protecting one’s own self interest. A substantial functional limitation occurs when a child is unable, at an age appropriate level, to make decisions and exercise judgment, behave in a socially acceptable manner, and/or act in his/her own interest. An adult may require direct or indirect assistance such as supervision by another person or counseling to successfully utilize these skills.

f. Capacity for Independent Living: Maintain a full and varied life in one’s own home and community. A child who is unable, at an age appropriate level, to assist with household chores, maintain appropriate roles and relationships with the family, use money, and/or use community resources has a substantial functional limitation in this area. The child requires more assistance to perform these activities than a typical child of the same chronological age. An adult displays a significant functional limitation when he or she requires assistance in the activities more than half the time.  

Second Opinion and Appeal Rights

The above six categories are summarized on the one page LOC form. Three of the six boxes on the LOC form MUST be checked by the evaluator in order to qualify for Waiver services. If you believe that the evaluator erred in filling out this form, you may request that the LME/MCO provide you with another LOC evaluation. Additional documentation demonstrating a developmental disability may also be submitted at this time. If the evaluator still does not check the boxes for at least three of the above categories, and Waiver services are denied, you have the right to appeal the LME/MCO denial to the Office of Administrative Hearings.

22Id.
The LME/MCO is required to give Notice of their action denying services after an assessment or denying placement on the wait list.\(^24\) If Waiver services or placement on the wait list are denied, the LME/MCO should respond in writing and advise of appeal rights without the individual having to request it. However, in some circumstances, the LME/MCO may not issue a written denial with appeal rights. In that case, the individual should request that the LME/MCO provide a written response documenting the rationale for the denial. At a minimum, the Notice should include the reasons for the denial and your right to file an appeal.\(^25\)

Disability Rights NC takes the position that the federal regulations and constitutional due process protections\(^26\) require that the LME/MCO notify the individual applicant of a denial and issue appeal rights. Even if the LME/MCO fails to issue appeal rights, you may still appeal the denial of Waiver services to the Office of Administrative Hearings.

**You Have Qualified for the Waiver, Now What?**

A Care Coordinator from the LME/MCO will be assigned to you if you do not already have one. The Care Coordinator is available to answer any questions about the Waiver and the availability of services. They will work with the participant/family to develop an Individual Support Plan (ISP). This is the person-centered plan that acts as a road map supporting the participant’s request for various Waiver services in order to reach their goals.\(^27\) The ISP documents the services and supports to be provided, their frequency and the type of provider who will furnish each service.

Once completed, the initial ISP will be submitted to the LME/MCO utilization management department for approval. The ISP will be updated annually (prior to the participant’s birth month) and can be amended during the course of the year if the recipient’s needs change.

**Annual Re-evaluation of Level of Care**

Once a Waiver recipient has been deemed eligible through the initial Level of Care process, the LME/MCO Care Coordinator will complete the annual re-evaluation. Recipients of Waiver services are not required to repeat the LOC process. However, if the Care Coordinator determines that the Waiver recipient no longer meets the Waiver criteria, the participant will have to go back through the full LOC evaluation process to verify level of care and medical necessity.\(^28\)

\(^{24}\) 42 C.F.R. § 438.400- § 438.404.

\(^{25}\) 42 C.F.R. § 438.404.


\(^{27}\) Waiver, Appendix D (Participant-Centered Planning and Service Delivery).

\(^{28}\) NC Innovations Technical Guide 6/25/12, p. 66.
**Other Assessments - What is the Supports Intensity Scale?**

All Waiver participants must have their support needs evaluated through the SIS. This is a nationally recognized evaluation tool that measures the level of supports needed by people with disabilities to lead normal, independent, quality lives in their home community. It assesses general, medical and behavioral areas, including home and community living, lifelong learning, employment, health and wellness, social activities, protection and advocacy, as well as medical and behavioral support needs. The supports that are needed are rated for frequency (how often support is needed), daily support time (number of hours of support needed) and type of support (verbal, gesturing, physical assistance, etc.). Rather than determining what is wrong or deficient, the SIS helps determine the kind, amount and intensity of supports that are needed for the individual to succeed in the important areas of their life. The SIS is done at the time an individual enters the Waiver program and is administered by a trained and certified SIS interviewer.

Participants who are new to the Waiver will receive a SIS prior to their initial Waiver plan. Re-evaluation will occur every two years for participants between the ages of 5-15 and every three years for beneficiaries 16 years of age and older.

**What is the Risk/Needs Support Assessment?**

This assessment helps the participant and the ISP team identify significant risks to the individual’s health, safety, financial security and the safety of others around them. The assessment identifies needed professional and material supports to ensure the participant’s health and safety. Risks identified in this assessment include circumstances that could bring great harm, result in hospitalization or result in incarceration if needed supports are not in place. The care coordinator is supposed to work with the participant, family and other team members to complete the assessment.

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This document contains general information for educational purposes and should not be construed as legal advice. It is not intended to be a comprehensive statement of the law and may not reflect recent legal developments.

If you have specific questions concerning any matter contained in this document or need legal advice, you are encouraged to consult with an attorney.

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31 Waiver, Appendix D-2: 3.