

POLICY AND PROCEDURE

Title: Notice of Determination and Fair Hearing Policy

Intended Population: Health Home Serving Adults and Children

Department: Health Home

Effective Date: 4/1/2019

Date Revised: 5/14/2019, 10/1/2021;11/1/2022; 1/1/2023; 2/1/2024

DOH Policy: [HH0004](#)

DOH Policy: [CW0009](#)

Purpose of Policy

To inform Health Home Service Providers the policy regarding issuing of notices and disseminating the Notice of Determination forms and the Fair Hearing process.

Scope

1. This policy must be distributed to all AHI Health Home Program staff and all subcontracting Health Home Service Providers.
2. All recipients of this policy must acknowledge their receipt and understanding of the policy by referring any questions, problems, or compliance issues with the policy within ten days of the issue date to the AHI's Health Home Assistant Director.
3. All questions regarding this policy or its implementation may be directed to the AHI Health Home Director.

Statement of Policy

AHI shall develop, disseminate, and review at least annually a Notice of Determination and Fair Hearing Policy that addresses purpose, scope, roles and responsibilities, management commitment, coordination among organization entities, and compliance. AHI shall formalize documented procedures to facilitate the implementation of the Notice of Determination and Fair Hearing Policy.



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Definitions

AHIHH: AHI Health Home, a designated lead Health Home by the New York State Department of Health

Health Home Service Provider: An organization that has a fully executed contract (the “Health Home Services Provider Agreement”) with the Adirondack Health Institute to provide health home outreach and/or care management services.

Care Management Record System: A structured information system, maintained by the Adirondack Health Institute Health Home (AHIHH), and made available for Health Home Service Providers and Health Home Network Partners to utilize, as applicable and appropriate to their role in the Health Home.

Health Home Candidate: a person who is potentially eligible to become a Health Home Participant and is assigned by an MCO or NYSDOH to AHI or is referred by an organization.

Health Home Enrollee: a person who meets the eligibility criteria for Health Home and has agreed to enroll, or whose parent/guardian has consented for him/her to enroll.

OTDA: Office of Temporary Disability Assistance

Aid Continuing: The right of a Health Home enrollee to have services continue unchanged until the Decision After Fair Hearing is issued; Aid Continuing directives are issued by OTDA.

Agency Conference: An informal meeting that may be requested by the member in addition to requesting a Fair Hearing in which the member may submit additional information in support of their disagreement with the determination on enrollment or continued enrollment in the NYS Health Home Program.

Evidence Packet: Documentation supporting enrollment/disenrollment determinations including, but not limited to, the signed DOH-5055 consent form; the updated Plan of Care; care record notes; and medical documentation.

Fair Hearing: A proceeding before an Administrative Law Judge that provides an opportunity for a member and the agency to present evidence in support of a determination that the member does not agree with.

Successful Completion: Occurs when a member has met all of the goals in the Plan of Care and no longer meets the appropriateness criteria for participation in a Health Home.

Notice Date: The date the Notice of Determination is issued.

Notice of Determination: A written notice to a member or potential member of the Health Home’s determination of eligibility for enrollment or continued enrollment in the NYS Health Home Program.

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Timely Notice: Per 18 NYCRR § 358-2.23, a timely notice is one that is mailed at least ten days before the date upon which the proposed action is to become effective.

HARP: Health and Recovery Plan

SNP: Special Needs Plan

HCBS: Home and Community Based Services

Home and Community Based Services (HCBS)/Level of Care (LOC) Eligibility Determination: A tiered assessment where multiple factors must be met for child's HCBS/LOC eligibility to be determined. To access Children's HCBS, a child must meet target population, risk factors, and functional criteria as described in the Children's Waiver. The HCBS/LOC Eligibility Determination is housed within the Uniform Assessment System (UAS).

Background

The Notice of Determination and Fair Hearing Program Policy at AHI is intended to facilitate the effective implementation of the processes necessary to meet Health Home Program standards and requirements as stipulated by the NYS DOH, federal regulations, and best practices. This policy directs that AHI meet these requirements.

POLICY

AHIHH requires that the Health Home Service Providers notify Health Home Enrollees and/or Health Home Candidates of their Fair Hearing rights and participate in the Fair Hearing process should it be requested by the Health Home Enrollee or Health Home Candidate.

The New York State Department of Health has developed three types of Notice of Determination forms to be used to notify Health Home Candidates of their Enrollment in Health Home, Denial of Enrollment in Health Home, or their Disenrollment from Health Home. The forms also notify the Candidate's rights to a Fair Hearing should they disagree with their Enrollment, Denial of Health Home, or their involuntary Disenrollment from Health Home.

Upon enrollment, Health Home participants, parents, Legal authorized Representatives, or guardians will be provided with a Member Rights and Responsibilities document as well as a document outlining the Health Home Service Provider's complaint procedure that outlines information on how to request a fair hearing. This must be updated annually and documented in the member's Care Management Record.

Please see AHIHH Complaint Policy for more information.



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Notice of Determination:

Health Home Services Providers are responsible for issuing the below documentation to the Health Home Candidate or Enrollee within the specified timeframes listed in the Policy.

Notice of Determination DOH 5236 – Notice of Denial of Enrollment in Health Home

Health Home eligibility must be verified before enrolling in the program., including proper Medicaid coverage, diagnostic, and appropriateness criteria. If a Health Home Candidate is determined to be ineligible for Health Home during the Outreach and Engagement process due to not meeting the Health Home Eligibility criteria the referral source must be contacted and notified of the denial. The Health Home Service Provider is responsible for issuing the DOH 5236 to the Health Home Candidate, Legal Guardian, or Legal Authorized Representative within 5 days of determination. A copy of the notice must be uploaded in the AHIHH care management record. Possible reasons for denial of enrollment or disenrollment from the Health Home Program include:

- Ineligible for Medicaid – Medicaid is required for enrollment in Health Homes
- Member has Medicaid coverage that is not compatible with Health Home (Emergency Coverage only, Family Planning only, Essential Plan etc.)
- Member does not meet diagnostic criteria
- Member does not meet the appropriateness criteria
- Member currently resides in an excluded setting (Residential Treatment Facility, Nursing Home, Incarceration etc.)
- Member is concurrently enrolled in another Health Home

If the Health Home Candidate, Legal Guardian, or Legal Authorized Representative, is not in agreement they may contact the Health Home to request a conference regarding the denial. The Health Home will request to review any additional information to re-determine eligibility; the Health Home candidate, Legal Guardian, or Legal Authorized Representative will be notified by the Health Home within 10 days following in the conference. If the Health Home finds the denial valid the Health Home Candidate, Legal Guardian, or Legal Authorized Representative can request a Fair Hearing within 60 days.

Notice of Determination DOH 5234 – Notice of Enrollment in Health Home

If the Health Home Candidate meets the eligibility criteria for Health Home and has consented to enroll the Health Home Service Provider is responsible for issuing the DOH 5234 and uploading a copy of the notice in the AHIHH care management record system within 5 days of enrollment. The notice must clearly indicate the date of enrollment.

Notice of Determination DOH 5235 – Disenrollment from Health Home



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If the Health Home Enrollee is going to be Disenrolled from the Health Home program and they are in disagreement with the decision or cannot have a conversation with the Care Manager regarding the disenrollment, the Health Home Service Provider must provide the member timely notice, which is a *minimum of 10 days' notice prior to the proposed action*. HHSP's should review and complete the discharge plan prior to disenrollment. In addition, the Health Home Service Provider is responsible for issuing the DOH 5235 and upload a copy in the AHIHH Care Management Record System. The Health Home Service Provider should mail or give the enrollee the DOH 5235 prior to disenrollment.

In cases of a member being transferred to a different HHSP, the DOH 5235 is not required as the member will continue to receive Health Home services.

Under circumstances where the member voluntarily disenrolls from the Health Home program, the HHSP *will not* issue the DOH 5235 and the enrollee *will not* have the right to request a fair hearing. For those enrollees who are voluntarily disenrolling, the proper withdrawal of consents are to be completed by the Health Home Service Provider and a copy uploaded in the AHIHH Care Management Record System.

A disenrollment letter on agency letterhead must be Issued to all disenrolling members. The letter must include the date of disenrollment, reason, and how to re-enroll. If the member is voluntarily disenrolling, then the member does not need the DOH 5235 issued, but the letter must state that of this affective date the member's signed Health Home consents are no longer valid. ***Please see Health Home Disenrollment Policy for more information***

Fair Hearing Process:

If a Health Home Enrollee is not in agreement with their denial of enrollment or disenrollment from Health Home, they can request a Fair Hearing. The Health Home Enrollee will need to complete the back of the DOH 5236 or DOH 5235 and submit for review to OTDA. The HHSP should immediately alert the Health Home when a candidate/member has requested a fair hearing if they are aware. The member can also request a conference with the Lead Health Home in lieu of or concurrently with the Fair Hearing.

The candidate/member has **60 days from the date of the notice to request a Fair Hearing** from the Office of Temporary and Disability Assistance (OTDA). When a Fair Hearing is requested, OTDA's Office of Administrative Hearings (OAH) will issue form OAH-4420 (Acknowledgement of Fair Hearing Request), the Fair Hearing number assigned, and Confirmation of Aid Status. OTDA OAH will then issue form OAH-457 (Notice of Fair Hearing) to the Health Home and the member. This form will also provide the Fair Hearing number that has been assigned by OTDA, as well as the date, time, and location of the hearing. Form OAH-457 will also indicate the Aid status and if the Health Home is being directed to provide Aid Continuing, i.e., to continue providing services unchanged until the Decision After Fair Hearing Notice is issued.



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Aid Continuing

If the Health Home Enrollee requests a Fair Hearing before the effective date on the Notice of Determination (DOH 5235) the Health Home Enrollee can continue to receive Health Home Care Management Services until the Fair Hearing decision is given to the Health Home Enrollee. If the Health Home Enrollee does not wish to stay with their Current Health Home Service Provider AHI HH will transfer the Health Home Enrollee to another Health Home Service Provider.

If the Health Home Enrollee checks the box *“I agree to have the action taken on my Medical Assistance benefits, as described in the notice, prior to the issuance of the fair hearing decision”* under the continuing your benefits, AHIHH with Pend the Health Home Enrollee in MAPP until a decision is made during the Fair Hearing process.

AHI Health Home can file a challenge to the Aid Continuing if evidence supports the decision.

Right to a Conference

The Health Home Enrollee may have a conference with AHIHH to review these actions. If the Health Home Enrollee requests a conference, they should ask as soon as possible. During the conference if AHIHH discovers the wrong decision was made or, if information the enrollee provides AHIHH determines to change the initial decision, AHIHH will take corrective action and inform the Health Home Enrollee in writing. The Health Home Enrollee can request a conference by calling AHIHH directly at 518-480-0111. If AHIHH upholds the decision to disenroll the Health Home Enrollee is still entitled to a Fair Hearing.

Waiver of Appearance

Under certain circumstances the Health Home can request a waiver of appearance from the OTDA five days before the hearing date. The requests will be reviewed by OTDA on a case-by-case basis. The request must include the primary contact person and a backup contact person. Also included in the request it must contain the fair hearing number, date of the hearing, and a summary of the specific facts relevant to the case under review at the hearing.

Evidence Packet

Within a reasonable timeframe prior to the hearing the Health Home Enrollee can request a copy of the case file. The Health Home will provide the Health Home Enrollee with copies of the case file that may be needed for the fair hearing review. The Health Home will send copies of the evidence packet within 10 business days of receiving notice from OTDA of the Fair Hearing date.

The evidence packet will include information that the Health Home used to make their decision about the Health Home Enrollees enrollment in the program. Included in the packet will be all signed DOH forms applicable to Health Home, the most recent Comprehensive Assessment as well as the



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most recent Plan of Care. Also included are case notes, medical documentation, and a case summary.

Decision After Fair Hearing

When the Decision after Fair Hearing is issued, it is binding upon the Health Home and must be complied with.

If the decision after the Fair Hearing is in favor of the Health Home Enrollee, the Health Home will need to end the pended segment in MAPP and begin a new enrollment segment to be effective the first of the month following disenrollment to ensure no lapse in the segments. The Health Home Enrollee can request a new Health Home Service Provider as well and the Health Home will complete the transfer.

Either party may request that OTDA reconsider the decision after the Fair Hearing if they feel there has been an error in law or fact. A request for reconsideration must be sent to the OTDA Litigation Mailbox. During this time the Fair Hearing decision remains in effect.

Children's HCBS Waiver Participants

If a youth that has had a Level of Care completed by the Health Home Service provider in order to participate in the Children's Wavier, the family must be issued the DOH-5287 notice of Decision for Enrollment or Denial of Enrollment in the NYS 1915(c) Children's Waiver. The Notice of Decision must be completed each time a Level of care is completed for the member.

Notice of Decision for eligible children/youth:

Upon signing and finalizing the HCBS/LOC Eligibility Determination within the UAS, the HHCM will be presented with an outcome confirming that the child/youth is HCBS/LOC eligible or ineligible for the identified Target Population. HHCMs must notify the child/youth of the HCBS/LOC eligibility determination within 3 – 5 business days of determining the eligibility outcome.

If the child/youth is determined eligible and there is a Children's Waiver slot available per Capacity Management, the HHCM will send the child/youth a Notice of Decision Enrollment (DOH5287) form. The Notice of Decision (NOD) will document the outcome of the HCBS/LOC Eligibility Determination.



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Notice of Decision for ineligible children/youth:

If the child/youth is not found to be HCBS eligible, the HHCM will send the NOD form to the child/family and will work with the child/family to connect to other needed services, as appropriate. The same form – Notice of Decision (NOD) Enrollment (DOH5287) – is sent for both enrollment and denial of enrollment. The Notice of Decision (NOD) will document the outcome of the HCBS/LOC Eligibility Determination and provide information on State Fair Hearing rights available to the child/family if they do not agree with the HCBS/LOC Eligibility Determination.

When a member has been enrolled in the 1915(c) and is now being disenrolled from the Wavier the DOH-5288 Notice of Decision for Discontinuance in the NYS 1915 (c) Children’s Waiver must be issued.

*** For more information on the Children’s Waiver please see the HHSC Waiver and HCBS Policy and the HHSC HCBS Waiver Disenrollment and Discharge Policy***



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Quality and Performance Improvement

AHI HH will periodically review records to ensure compliance with the procedures and standards set forth in this policy. Quality indicators will include but may not be limited to:

- Evidence in the AHIHH care management record system to support the decision/determination
- Proper and timely issuance of the appropriate notice of determination form
- The Health Home will review all and track ALL Fair Hearing filed against the Health Home

Agencies found to be non-compliant with this policy may be required to engage in the corrective action process and/or be imposed other sanctions.

AHI Health Home will review the status and outcomes of filed Fair Hearings quarterly at the Compliance Committee meetings.

Training

This policy will be disseminated for review and questions before a policy training is given. If more time is needed outside of the initial policy training a future in-depth training will be developed to understand notice procedures and management of the Fair Hearing process.

Contact Person: Assistant Director, Health Home

Responsible Person: Health Home Service Provider

Reviewed By: Director, Care Management and Health Home

Approved By: Chief Compliance Officer



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Appendix A

Desk Guide: Notice of Determination Forms

Notice of determination forms can also be found in 7 languages by following the link: https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/

Table with 2 columns: Type of Notice, Description and Location. Rows include DOH 5236, DOH 5234, DOH 5235, DOH 5287, and DOH 5288.