



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

July 11, 2024

DAL: DHCBS NH 24-10

Subject Nursing Home Transition and
Diversion (NHTD) Waiver Settlement

Dear Nursing Home Administrator, Social Work Director, MDS Coordinator, Discharge Planner:

This letter is to inform you of additional resources now available to nursing home staff working with residents interested in returning to community life and a proposed settlement in a class action litigation matter involving the Nursing Home Transition and Diversion (NHTD) Waiver Program.

As you are aware, many nursing home residents will require community-based Medicaid services to be safely discharged from your facility.

The former DAL NH-19-16 states:

On August 8, 2019, the Public Health and Health Planning Council adopted changes to 10 NYCRR 415.2 (Definitions) and 415.3 (Residents' Rights). These regulatory amendments add a new subdivision to Section 415.3, which adds new requirements to enhance a nursing home's responsibility to provide information to residents and/or their designated representatives.

Effective October 9, 2019, upon the rule's publication in the State Register, nursing homes will be required to ensure that all residents and/or their designated representatives are provided information on home and community-based services and community transition programs that may be available to support them in returning to the community.

Nursing homes will be required to notify all residents upon admission of their right to live in the most integrated and least restrictive setting and are expected to make a referral to the Local Contact Agency at any time the resident and/or designated representative requests to speak to someone about returning to the community. Additionally, the nursing home must post in a public area of the facility the contact number for the Local Contact Agency. To identify what Local Contact Agency is responsible for your county, please refer to the attached listing of the State's Local Contact Agencies.

Nursing homes must ensure that discharge planning staff are available and able to discuss options for discharge planning with residents and/or their designated representatives, with consideration for the resident's medical, physical, and psychosocial needs.

Please see update to DAL NH-19-16 below:

The Open Doors program has been identified as the Local Contact Agency. Open Doors can be contacted by referring to the regional listing identified at <https://ilny.us/transition-assistance> by calling NYAIL's Transition Center Hotline at 844-545-7108, via fax to 518-465-4625, or via email to secq@ilny.org. The Open Doors Transition Centers have transition specialists at Independent Living Centers across the state to directly assist people in nursing homes access the services they need to return to the community. This includes providing people with objective information about services and supports that are available in their local community. Additional information about Open Doors can be found at: <https://ilny.us/programs/open-doors>.

One of the programs available to support individuals in the community is the NHTD Waiver Program. Referrals to the NHTD Program can be made by contacting the Regional Resource Development Center (RRDC) or by contacting the Open Doors Program.

Links for the RRDC contacts are located at:

https://www.health.ny.gov/facilities/long_term_care/nhtd/

You are expected to review the referral process available at this site.

The Department expects you to review a video with residents which briefly explains the NHTD program and the referral process. The video is located at:

https://www.health.ny.gov/facilities/long_term_care/nhtd/resources/index.htm

After this initial distribution, the Department expects that your facility will make this video available for viewing by residents at intervals of no less than every six months. The Department will provide reminders as to this ongoing expectation.

There are additional outreach materials, which includes posters and rack cards, that should be made accessible to residents and their loved ones, available at:

https://www.health.ny.gov/facilities/long_term_care/nhtd/resources/index.htm

Within the near future, copies of this information will also be sent to your facility directly, so that it may be made available to residents and staff as needed. Posters must be posted conspicuously in a public space in your facility.

All of this information is provided to facilitate discharge planning and assist with referrals to the appropriate community resources. Nursing homes are reminded of the obligation to uphold the *Olmstead* decision by ensuring that all residents who express a desire to return to the community are provided the opportunity and assistance to allow the resident to live in the most integrated and least restrictive setting possible.

Finally, enclosed herein, is a copy of a Notice of Proposed Settlement in a Class Action litigation matter, *Bagley v. New York State Department of Health* concerning the NHTD program. This Notice summarizes the proposed Settlement Agreement and provide class members with notice that they have the right to comment on or object to the terms of the proposed Settlement Agreement, and instructions on how to do so. The Department expects you to post a copy of this Notice in a common area to which residents routinely have access.

Any questions regarding the NHTD Waiver Program may be directed to the RRDC, the Open Doors Program, or by emailing: nhtdwaiver@health.ny.gov.

Sincerely,

Michael Chittenden
Director, Center for Home and Community
Based Services
Office of Aging and Long Term Care

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION CONCERNING NEW YORK'S NURSING HOME TRANSITION AND DIVERSION (NHTD) PROGRAM

Who Should Read this Notice?

You should read this notice if you are a member of the class (part of the group) that will be affected by the settlement of the *Bagley v. New York State Department of Health* class action lawsuit. You are a Class Member if you:

- (1) are a New York City resident who,
- (2) at any time after August 18, 2012,
- (3) have been or are a recipient of Medicaid coverage that supports community-based long-term care services, and
- (4) you are over the age of eighteen, and
- (5) you have applied, are applying or, during the three-year period following the Court's approval of the Settlement Agreement, you apply for NHTD Waiver Program services in New York City, and
- (6) you have been found to be ineligible for the NHTD Waiver Program at the Intake Interview stage, or
- (7) you were told you were probably eligible but subsequently were deemed ineligible without receiving a formal notice of that decision; and
- (8) you have never been enrolled in the NHTD Waiver Program.

What is this Notice About?

This notice is about a lawsuit settlement that could affect your rights. In 2015, a class action lawsuit about the NHTD Waiver Program ("the Lawsuit") was filed in federal court titled *Bagley et al. v. New York State Department of Health et al.* The Lawsuit alleged, among other things, that the DOH designed and administered the NHTD Waiver Program in New York City in number of problematic ways that made it hard for qualified applicants to receive services. DOH has denied that it acted improperly. The Plaintiffs and the DOH are now proposing a settlement that they believe is fair for all Class Members. However, the Court must approve the Settlement Agreement for it to take effect.

WHAT IS IN THE SETTLEMENT?

In general, the Settlement Agreement aims to improve communication with applicants, make NHTD Program services more easily available, and speed up the application process. To achieve these goals, the settlement requires, among other things:

- Additional training for agencies that administer or provide services through the NHTD Waiver Program;
- Outreach to class members, nursing home residents, nursing home administrators and discharge planners, and others, to make them aware of the services available in the community with the NHTD Waiver Program, and the application process;

- Consistent and clear written notices in common languages in New York City, large print, Braille, or an accessible electronic format upon request;
- Information in denial notices about how the applicant can challenge the decision;
- Hiring housing specialists to assist applicants and service coordinators with finding apartments;
- Seeking approval to increase reimbursement rates for Service Coordination Agencies so they can invest staff time in helping applicants before NHTD Program services start, subject to CMS approval;
- Increasing coordination between the NHTD Program and the Open Doors Program to help applicants more efficiently move and receive community-based services.
- Increasing assistance by the NYC NHTD Waiver Program Administrator for applicants whose cases present complexities that have made it hard for the person to access NHTD Program services.

The changes will be reflected in a new version of the NHTD Waiver Program Manual, which is available to all agencies that provide services in the Program and to the general public on the DOH's website.

This is just a short summary of the Settlement Agreement. The Settlement Agreement, which details all of the terms of the settlement, is on this website, <https://mobilizationforjustice.org/nhtd/>. To get a copy of the Settlement Agreement, or if you have any questions, you may call, mail, or email counsel for the Class Members. Here is their contact information:

Mobilization for Justice
110 William Street, 6th Floor
New York, NY 10038
Phone: 212-417-3700
Fax: 212-417-3891
nhtdclass@mfjlegal.org

OR

Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
Phone: 212-336-2000
Fax: 212-336-2222
nhtdclass@mfjlegal.org

Releases

If the Court approves the Settlement Agreement, DOH will be released from any further liability for declaratory, injunctive, or any other equitable relief in connection with the events that led to the Lawsuit. This means that you may not be able to sue DOH for events relating to applications to the NHTD Waiver Program prior to the effective date of the Settlement Agreement.

You have a Right to Comment on or Object to the Terms of the Settlement

Before the Settlement can be approved, the Court will hold a “Fairness Hearing” to listen to any objections that may be made

If I Agree with the Settlement Agreement Do I have to Do Anything?

No. If you agree with the Settlement Agreement, you do not need to do anything. If the Court approves the Settlement Agreement, you will see the actions described above. You will also be bound by the settlement.

How can I Object to the Settlement Agreement?

There are two ways you can object to or comment on the Settlement Agreement:

1. You can provide the Court with a letter or other written statement marked “**Bagley Settlement**,” containing your objections or comments on the Settlement. Be sure to include your name, address, telephone number, signature, and a full explanation of all the reasons that you object to the Settlement Agreement. You can deliver the letter to the Clerk of the Court in person, on or before September 20, 2024, or by mail, in which case the letter must be postmarked by September 20, 2024. You also must send a copy of the letter to either Patterson Belknap Webb & Tyler LLP or Mobilization for Justice, lawyers for the Class Members. The mailing addresses for the lawyers are listed above. The Court’s address is below:

**Clerk of the Court
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201**

2. You can come to court on the day of the Fairness Hearing (see below) and tell the Judge about your comments and/or objection(s). The Fairness Hearing will be held by Judge Frederic Block in Courtroom 10C South, on the 10th floor of the United States District Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on October 1, 2024, at 3:00pm. You are not required to attend the Fairness Hearing if you do not wish to comment or if you have filed an objection or comment in writing.

If you have any questions, you may call or email counsel for the Class Members.

DO NOT CALL THE COURT

This notice is also available in Arabic, Bengali, Burmese, Chinese, French, Haitian-Creole, Italian, Japanese, Korean, Nepali, Polish, Russian, Spanish, Urdu, and Yiddish on the New York State Department of Health’s website, at https://health.ny.gov/facilities/long_term_care/nhtd/resources/index.htm.