

## Appendix 5

### In Lieu of Services (ILOS)

**ILOS Definition.** ILOS is a cost-effective, medically necessary service or setting that is offered to a Participant as a substitute for a State Plan service or setting in accordance with 42 CFR § 438.3(e)(2) and all future regulations and sub-regulatory federal guidance. All ILOS must be allowable under Medicaid State Plan or Section 1915(c) waiver rules and approved by the Department in advance.

**Compliance With Federal Requirements.** ILOSs must not violate any applicable federal requirements, including 42 CFR § 438.3(e)(2), general prohibitions on payment for room and board costs under Title XIX of the Social Security Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Emergency Medical Treatment and Labor Act.

**Department Approved ILOS.** The services or settings listed below are determined by the Department to be a medically appropriate and cost-effective substitute for the named covered services or settings under the State Plan for the following clinically defined target populations. The CHC-MCO may provide ILOS only from this approved list to Participants during the contract year.

**Pursuant to 42 CFR 438.3, CHC-MCOs may not provide ILOS without first applying to the Department and obtaining approval to offer the ILOS by demonstrating all requirements will be met. If the CHC-MCO identifies a potential ILOS that they would like to offer during a future contract period, the CHC-MCO must follow the process described in the ILOS development guidelines and request form documents as detailed in the In Lieu of Services Operations Memorandum.**

| ILOS Name              | ILOS Definition   | Substituted State Plan Service or Setting | Procedure Code(s) (e.g., HCPCS or CPT) That Identify ILOS | Clinically Defined Target Population(s)   |
|------------------------|---|---|---|---|
| <b>Assisted Living</b> | A group living situation, licensed under 55 PA Code Chapter 2800, for NFCE members that provides food, shelter, assistance with personal care and activities of daily living, health assessment and monitoring, and assistance or supervision of supplemental health care services. | Nursing Facility Services                 | T2030 and T2031   | NFCE individuals in a nursing facility who are interested in transition to a less restrictive setting, or individuals at risk of nursing facility placement who are interested in diversion from placement in a Nursing Facility. |

CHC-MCOs must demonstrate through the PCSP and Assisted Living Support Plans that all of the Participants needs will be addressed and services will be provided in the Assisted Living setting in accordance with the CHC-MCO and OLTL ILOS Agreement, and current year CHC Agreement. CHC-MCOs must adhere to all applicable 55 Pa. Code § 2800 regulations (Assisted Living Residences) for Participants that choose assisted living ILOS.

Assisted Living Facilities impacted by the discontinuance of Assisted Living as an ILOS must be notified by the CHC-MCO of the intent to discontinue services at least sixty (60) calendar days in advance.

**Encounter Data.** The CHC-MCO must utilize identified codes to submit encounter data on ILOS.

**Clinical Determination of Appropriateness.** For each approved ILOS, the Department determined a clinically defined target population as individuals who are medically appropriate for the ILOS and for whom the use of the ILOS is likely to result in lower costs than utilization of the substituted State Plan service and setting.

For a Participant to receive an ILOS, a determination of medical appropriateness must be made by the CHC-MCO using their professional judgement and assessing the Participant's presenting medical condition, preferred course of treatment, and current or past medical treatment. Prior to offering the ILOS, the CHC-MCO must develop a policy and procedure for determining whether an ILOS is medically necessary, and the individual meets the targeted population to receive an ILOS and submit to the Department for review and approval.

The CHC-MCO shall document the determination of medical appropriateness within the Participant's records, which could include the Participant's PCSP, medical record (paper or electronic), or another record that details the Participant's level of care. The documentation must include how each ILOS is expected to address the Participant's needs. The Department must approve the CHC-MCO's documentation process before the CHC-MCO elects to provide the ILOS.

### **CHC-MCO Responsibilities:**

1. **ILOS Option for the CHC-MCO.** The CHC-MCO is not required to offer an ILOS to Participants.
2. **Public Disclosure of ILOS Provided.** The CHC-MCO shall include in its Participant handbook the protections available to participants who receive ILOS, including a description of the process to determine eligibility for specific ILOS, the voluntary nature of ILOS, and the right to file a Complaint, Grievance or Fair Hearing with regards to the denial or receipt of an ILOS.
3. **Calculation of Cost of ILOS.** CHC-MCO shall supply any information needed by the Department to assist in calculating cost projections for approved or potential ILOS, including but not limited to, specific claims, cost information, encounter data, and other Participant data that will assist the Department in meeting and current or future CMS documentation requirements. The CHC-MCO will also comply with any standards detailed in the Community HealthChoices Financial Reporting Requirements documenting ILOS expenditures.
4. **Provision of ILOS Encounter Data to the Department.** Encounter data must be submitted to the Department by the CHC-MCO in accordance with Section VIII.A.1 for ILOS and, when available, include data necessary for the State to stratify ILOS utilization by sex (including sexual orientation and gender identity), race, ethnicity, disability status, and language spoken to inform health equity initiatives and efforts to mitigate health disparities.

To the extent that existing health care codes do not accurately identify ILOS, the Department will provide specific codes and modifiers that the CHC-MCO shall use to ensure consistent use.

5. **Operations and Quality Reporting Requirements.** The CHC-MCO is required to comply with Operations and Quality Management Reporting requirements as specified in Section VIII:D.1 to enable the Department to monitor the CHC-MCO's in-lieu of program.

### **Participant Rights**

1. **ILOS Option for Participants.** The CHC-MCO shall not require Participants to use an ILOS as a substitute for a State Plan Service.

- 2. Participant Rights and Protections.** When receiving an ILOS, Participants retain all of the rights afforded to them in 42 CFR Part 438, including, for example, the right to make informed decisions about their health care and to receive information on available treatment options and alternatives per 42 CFR § 438.100(b)(2). In accordance with 42 CFR § 438.3(e)(2)(ii), the CHC-MCO shall not require Participants to utilize ILOS or from mandating replacement of a State Plan Service for an ILOS. ILOS may not be used to reduce, discourage, or jeopardize Participants' access to covered State Plan Services or Settings. If a Participant chooses not to receive an ILOS, they always retain their right to receive the covered State Plan Service or Setting on the same terms as would apply if an ILOS were not an option. The CHC-MCO is not permitted to deny a Participant a medically appropriate State Plan Service or Setting on the basis that a Participant has been offered an ILOS, is currently receiving an ILOS, or has received an ILOS in the past.

In accordance with 42 CFR § 438.10(g)(2)(ix), all of the CHC-MCO's Participant handbooks must contain information on Participant rights and responsibilities, including the Complaint, Grievance, and fair hearings requirements outlined in Exhibit G. Regardless of a Participant's utilization of an ILOS, the Participant retains all rights and privileges under Exhibit G. The Department will review and approve the ILOS language included in the Participant handbooks annually.

## **Oversight**

**Performance Monitoring** The Department will include any ILOSs the CHC-MCO elects to provide in the overall quality monitoring structure detailed in Exhibit F- Quality Management and Utilization Management Program Requirements, to ensure that all ILOS received by Participants are medically appropriate, cost effective, and used at the option of the Participant and CHC-MCO.

**Utilization and Cost** The utilization and actual cost of ILOSs shall be taken into account in developing the component of the capitation rates that represents the covered State Plan services, unless a federal statute or regulation explicitly requires otherwise.

**Network Adequacy** The CHC-MCO must develop and maintain a network of ILOS providers that have the capacity and capability to deliver medically appropriate and cost effective ILOSs selected by the Participant.

**Discontinuation of ILOS by the CHC-MCO** The CHC-MCO may discontinue offering an approved ILOS with notice to the Department at least sixty (60) calendar days prior to the discontinuation date. The CHC-MCO must ensure that any ILOS that were authorized for a Participant prior to the discontinuation of that specific ILOS are not disrupted by a change in ILOS offerings, either by completing the authorized service or by seamlessly transitioning the Participant into other medically necessary services or programs that meet the Participant's needs. The CHC-MCO's transition plan must be provided to the Department as part of the ILOS discontinuation process. The transition plan must identify the total number of Participants utilizing the ILOS through the

discontinuation date and the alternative services that will be offered (either State Plan services or other approved ILOS). The CHC-MCO must not offer the ILOS after the date of discontinuation.

At least 45 calendar days before discontinuing an ILOS, the CHC-MCO must notify Participants affected by the discontinuation of the ILOS of the following:

- The discontinuance of the ILOS and the last date the Participant can receive the ILOS, and
- How the CHC-MCO will ensure that the Participant will receive the ILOS as authorized or the plan to transition the Participant to other comparable medically necessary services.

**Discontinuation of ILOS by the Department** In the event the Department or CMS determines an ILOS not to be medically appropriate or cost effective, the CHC-MCO will assist the Department in preparing a transition plan to phase out the applicable ILOS while ensuring access for affected Participants to contractually required services with minimal disruption of care. The transition plan will include a process to notify Participants of the termination of the ILOS that they are currently receiving as expeditiously as required by the Participants' health condition. If the Department discontinues an ILOS, the Department will amend the Agreement to remove the applicable ILOS.