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Amir Bassiri
Deputy Commissioner, Office of Health Insurance Programs
Medicaid Director
New York State Department of Health
One Commerce Plaza
Albany, NY 12210

Re: Request for Guidance on Application of the Federal Medicaid Community Engagement Requirement (Section 71119, PL 119-21) and the “Medically Frail” Exemption for Legacy MLTC Enrollees and TBI Waiver Participants

Dear Mr. Bassiri:

I am writing on behalf of the New York State Adult Day Services Association (NYSADSA), which represents social adult day care (SADC) programs and adult day services providers across New York State. Our members deliver essential community-based long-term care, frequently integrated with Managed Long-Term Care (MLTC) plans or the Traumatic Brain Injury (TBI) Medicaid Waiver. Many of the participants we serve are Medicaid-only (non-dual) adults under age 64 with long-standing MLTC enrollment (legacy status prior to Sept. 1, 2025) or TBI Waiver participation who require ongoing community-based services.

We respectfully seek the Department’s guidance on how New York State — and, where applicable, the New York City Human Resources Administration (HRA) — will identify and apply exemptions from the federal Medicaid community engagement (“work”) requirement for this population, particularly the mandatory exemption for individuals who are “medically frail or otherwise [have] special medical needs.”

Background and Statutory Framework

Section 71119 of the 2025 budget reconciliation law (Public Law (PL) 119-21) adds Section 1902(xx) to the Social Security Act, conditioning Medicaid eligibility for non-pregnant, non-dual adults ages 19-64 in the expansion-eligible population on demonstrating at least 80 hours per month of qualifying activity, beginning Jan. 1, 2027. The statute establishes mandatory exemptions, including individuals who are “medically frail or otherwise [have] special medical needs,” a category the law specifies includes those who are blind or disabled; have a physical, intellectual, or developmental disability that limits the ability to perform one or more activities of daily living (ADLs); have a substance use disorder; have a disabling mental disorder; or have a serious or complex medical condition.

This statutory language closely tracks the existing federal “medically frail” definition at 42 Code of Federal Regulations (CFR) 440.315, which the Department already applies in other contexts. Importantly, to reduce burden on enrollees, the law directs states to use available information “where possible” to verify compliance or exemption status without requiring additional documentation from individuals — and the Centers for Medicare and Medicaid Services (CMS) has long contemplated reliance on Medicaid claims data, managed care organization health assessments, and case management information for this purpose. We anticipate the Health and Human Services (HHS) interim final rule (issued June 1, 2026) and related CMS guidance will shape implementation, and we hope to align provider practice with the Department’s approach.

The Concern

We have observed that some SADC programs are being asked to post current job openings, to ask all participants about returning to work, and to demonstrate that they are assisting participants in that process. (We note that habilitation services are not an SADC service.) Among a population composed largely of long-term MLTC enrollees and TBI Waiver participants — most of whom meet or approach a Nursing Facility Level of Care (NFLOC) and have substantial functional limitations — these expectations have created significant concern about how they reconcile with the medically frail exemption these individuals are likely to qualify for. Our goal is to prevent avoidable coverage disruptions and administrative barriers for individuals whom the statute appears designed to exempt.

We are particularly concerned that an ex parte verification process keyed to Social Security Administration (SSA) disability status (Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI)) would fail to capture much of this population. Many of the individuals we serve are demonstrably disabled and medically frail yet have no SSA disability determination — for example, lawful permanent residents and other lawfully present non-citizens who have not accrued the work credits required for SSDI or who are not eligible for SSI. The medically frail exemption under Section 1902(xx) and 42 CFR 440.315 is defined by functional limitation and medical condition, not by receipt of a federal disability benefit. We therefore urge the Department to confirm that medical frailty will be determined from clinical and functional data — Uniform Assessment System for New York (UAS-NY) assessments, NFLOC determinations, MLTC and TBI Waiver records, and claims/encounter data — and not contingent on, or limited to, individuals with an SSA disability finding.

Specific Questions

1. **Legacy MLTC Enrollees — Use of Existing Data.** How will New York Medicaid and HRA identify and apply the medically frail exemption for legacy MLTC enrollees using existing records — such as UAS-NY assessments, MLTC enrollment history, claims/encounter data, and documented functional needs related to ADLs — without requiring new documentation from the individual?
2. **TBI Waiver Participants.** For TBI Waiver participants (carved out of standard MLTC), how will the Department determine medically frail or special-medical-needs status using TBI-specific documentation, NFLOC determinations, and Structured Day Program records?

3. **ADL Threshold and TBI-Related Deficits.** For individuals who may not meet full NFLOC but qualify for MLTC via minimum ADL thresholds (e.g., needing assistance with more than two ADLs), or who have TBI-related cognitive or physical deficits, how will medical frailty be determined — particularly given that 42 CFR 440.315 ties medical frailty to limitations in performing one or more ADLs?
4. **Independence from SSA Disability Status.** Will the Department confirm that the medically frail exemption is determined by functional and clinical criteria rather than by receipt of an SSA disability determination, and that the State will not rely solely on SSDI/SSI status to identify exempt individuals? This is critical for disabled and medically frail enrollees — including lawful permanent residents and other lawfully present non-citizens — who have no SSA disability finding (e.g., due to insufficient work credits for SSDI or ineligibility for SSI) and would be erroneously flagged as non-compliant under a wage- or disability-data-only check.
5. **Renewal and Redetermination.** What processes will be used at renewal or redetermination (and at the six-month redeterminations beginning Jan. 1, 2027) to automatically apply exemptions based on available records, minimizing requests for additional documentation from long-term MLTC and TBI Waiver participants? Will the Department establish standing or “internal flag” exemptions for individuals whose qualifying condition or disability status is unlikely to change?
6. **State Guidance and Provider Role.** Is the Department developing State-specific guidance, best practices, or anticipated implementation timelines for these populations? Specifically, what role — if any — does the Department expect SADC programs to play with respect to community engagement inquiries for participants who are likely medically frail, so that providers do not inadvertently create barriers or generate confusion for exempt individuals?
7. **Appeal or Fair Hearing Opportunity.** Will there be a clear appeal or fair hearing process for individuals who are determined by HRA or other authorities to be subject to the community engagement requirement despite their MLTC, Nursing Home Transition and Diversion (NHTD), or TBI Waiver participation? Specifically, will affected participants receive timely written notice of any such determination, along with instructions on how to challenge it and request the medically frail exemption? Given the substantial functional needs of this population, we want to ensure that any erroneous determination can be promptly corrected without disruption to a participant’s coverage or access to services during the review.

Request

Our objective is to support accurate, consistent, and burden-minimizing implementation, so that eligible long-term MLTC and TBI Waiver participants can maintain access to critical services — including adult day programs — without unnecessary administrative barriers. We would greatly appreciate any written guidance or policy clarification the Department can provide, and we would welcome the opportunity for a meeting or call with appropriate Department staff.

Thank you for your leadership and for the Department’s ongoing work to support New Yorkers with long-term care needs. We look forward to your response.

Respectfully,

A handwritten signature in black ink, appearing to read "Tammy Ryan". The signature is fluid and cursive, with the first name "Tammy" written in a larger, more prominent script than the last name "Ryan".

Tammy Ryan
President
NYSADSA

cc: Anesa Brkanovic, DOH
Susan Montgomery, DOH