

# A Toolkit for Providers and Participants to Understand Missouri's New Eligibility Process for Home and Community Based Services

**Legal Services of Eastern Missouri  
Benefits Tech Advocacy Hub<sup>1</sup>  
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**Disclaimer:** This document is not intended as legal advice or to predict individual outcomes with the assessment process. The information here is based on an analysis of publicly available information from Missouri state regulations (19 CSR 30-81) and the Level of Care eligibility algorithm v2.3, posted on the Missouri Department of Health and Senior Services website at <https://health.mo.gov/seniors/hcbs/pdf/loc-algorithm2-3.pdf>. It includes some comparisons and analysis based on general information and may not apply to all individual situations.

DHSS has a page dedicated to the [Level of Care Transformation](#) with additional resources including a [recording](#) and [slides](#) from their September 20, 2024 webinar on the new algorithm. DHSS has also posted a [quick guide](#) to the interRAI assessment coding.

We are grateful to the Missouri Department of Health and Senior Services for making the new Level of Care algorithm publicly available to allow for

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<sup>1</sup> The Benefits Tech Advocacy Hub is a joint project of Upturn, the National Health Law Program, and TechTonic Justice that gives advocates tools to fight harmful benefits technology and force greater transparency so that harm can be identified, prevented, or reduced earlier in the technology's lifecycle.

analyses such as this one and to enable a more robust and informed conversation about how the algorithm will change people's eligibility for home and community based services in Missouri.

## **Background**

Starting on October 1, 2024, the Missouri Department of Health and Senior Services (DHSS) will use a new algorithm to determine whether people are eligible for home and community based services, or HCBS. To be eligible, you must meet "skilled nursing facility level of care." Level of care is often abbreviated as LOC.

The new LOC algorithm changes who is eligible for HCBS. Many people who were previously eligible and have received services for years will be newly **ineligible**. Without these services, some may struggle to remain in their own homes and ultimately be forced into nursing homes or other institutional settings.

### **The interRAI Home Care (HC) assessment**

Missouri, like many states, uses a questionnaire called the interRAI HC assessment to determine a person's LOC needs. The interRAI is a commercial product that states purchase and adapt to their own needs. It has more than 250 questions, though not all of these questions are used to assess Level of Care. Some are used to develop a care plan once approved, and others are not used at all.

### **The Level of Care algorithm**

States that use the interRAI assessment also use a scoring algorithm to turn the responses from the assessment into an eligibility score.

Missouri's Level of Care algorithm groups 39 of the 250-plus questions on the assessment into 12 categories. Each category has a formula for how

many points a person receives in that category, based on their answers to that category's questions.

For example: Question 1 has possible answers A, B, and C. Answer A scores 3 points, answer B scores 6 points, and answer C scores 9 points. This is a simplified explanation, but only slightly. The algorithm is a series of if/then statements that add points based on what your answers are to specific questions.

### **Who will be impacted**

This will impact adults who are seeking eligibility for home and community based services in Missouri provided through the Aged and Disabled Waiver, the Independent Living Waiver, and state plan personal care services.

Since October 30, 2021, the Missouri Department of Health and Senior Services has been using a dual system to assess eligibility for home and community based services, both for new applicants and current participants undergoing reassessment for eligibility. Under this dual system, agency staff assess applicants and participants for skilled nursing facility LOC using the scoring mechanism that has been in place since 1982, as well as the new algorithm. If applicants meet the LOC threshold using either method, they are deemed eligible for HCBS.

After October 1, 2024, however, you must meet the LOC threshold using just the new algorithm. If you do not, you will not be found eligible and cannot receive these services. This is true even if your condition has not improved.

### **What people should know for their assessments**

- Give a realistic sense of what you can do yourself.
- Many people have fluctuating needs. Remember to describe the assistance needed on your worst day in the period of time the assessor is asking about.
- While it can feel embarrassing or uncomfortable to respond to some of the questions, try to give as much information as possible. Remember that these very personal questions are not meant to pry or cause embarrassment, but to be sure you get the help you need to remain in your home.
- Ask questions if you do not understand what a word means or what the assessor is asking you.
- Ask what the possible scores are, and what they mean. For example, on questions about activities of daily living (such as bathing, using the toilet, and moving around your home) and instrumental activities of daily living (including managing medications and meal preparation), the possible scores on the interRAI assessment are: (0) independent; (1) setup; (2) supervision; (3) limited assistance; (4) extensive assistance; (5) maximal assistance; (6) total dependence.
- When you are scheduling your assessment, let DHSS know if you need disability-related accommodations, such as sign language interpretation, or interpretation into a language other than English.
- Ask for someone to be present with you (such as a family member, caregiver, advocate, or legal aid attorney), and let them help answer the questions. If you want to answer some questions privately, that's okay too. Just remember, the goal is to help the assessor

understand what assistance would be helpful to you. Just because you *can* do something independently with pain or at risk to your safety does not mean that you should not have help to do it.

- Don't give in to pressure to be rushed through the assessment.
- Keep track of falls, nearly falling, and trips to the hospital. Write the date and time and detail what happened.
- Before the assessment, write down things that are important to say that you might forget. This may be about ways you need help or questions you have.
- Take a look at paperwork from the last time you were assessed, if you have it, or request it from your assessor. What was your score then? What activities did you score as needing help with? How have your needs changed since then?

### **Factors that are important in determining eligibility for HCBS under the new LOC algorithm**

- **Meal prep:** Can you stand at the stove to cook a meal? If you had no help with meal preparation, would you be able to eat a meal? Can you open packages? Move a full pot from the stove? Think realistically about how you would feed yourself with no help.
- **Balance and falls:** Make sure to tell the assessor about any falls in the past 90 days.
- **Toileting and incontinence:** Make sure to note if you need assistance cleaning up from incontinent episodes or with managing

a catheter or ostomy. Even if you do not have a formal diagnosis of incontinence, you may still score points in this area. Do you have accidents at night sometimes and need to wash your sheets? Do you need help bathing and changing your clothes after an episode of incontinence?

- **Managing medication:** Do you require assistance to remember when to take medication? To open pill bottles? Are there any other medication-related scenarios in which you need help?
- **Bathing:** Are you able to get in and out of the shower or tub safely? Are you at risk of falling in the shower or tub? If you have hair, are you able to comb or brush it without pain? Does it hurt your shoulders to lift your arms above your head to wash and dry your hair?
- **Mobility:** If you use more than one way of getting around, it's important to share how much assistance you need when using the one with which you need the most assistance. If you use a mobility device, such as a walker, can you get to all the places you need to in your home, or do you sometimes go without it? Is doing that safe for you?
- **Behavioral:** Make sure to mention if you have a behavioral issue that is either present or with which you have a past history. The areas here that are being assessed are if you are experiencing wandering, physical abuse, being socially inappropriate or disruptive, engaging in inappropriate public sexual behavior, and resisting care or not taking your medications.

- **Rehabilitation:** If you receive both speech pathology and audiology services, make sure to mention both. If you are supposed to receive services weekly but missed an appointment the week before your assessment, note that to your assessor.

## **After the assessment**

After your assessment, the Department of Health and Senior Services will send you a notice either approving you or denying you for HCBS.

- If approved, DHSS will develop a care plan and authorize you for a certain number of hours per day or per week, depending on your needs.
- If denied, DHSS will send you a notice of action, detailing the reasons why you were denied, your rights to disagree, and important deadlines.

## **To respond to a notice of action**

- Call or email Legal Services of Eastern Missouri at (314) 256-8701 or [hcbs@lsemo.org](mailto:hcbs@lsemo.org). Intake is open Monday to Thursday from 9:00 a.m. to 11:00 a.m. and 1:00 p.m. to 3:00 p.m. On Tuesdays, it is also open from 5:15 p.m. to 7:15 p.m.
- File an appeal. You can ask your DHSS caseworker to submit your appeal, or you can do it yourself using the example hearing request letter below. If you would like to continue your services at the level you have been receiving, you must appeal within 10 days of the notice of action. If you decide to keep receiving services while your appeal is pending, it is important to understand that you might

have to pay the Department of Health and Senior Services back for those services if you lose your appeal.

- You can also appeal and have your services stopped or reduced until a hearing officer makes a decision. The deadline for this is within 90 days of getting the notice of action.
- If your services get reduced even though you requested a hearing within the 10-day window, contact the Department of Health and Senior Services nurse who did the assessment to get your services reinstated so your caregiver can continue to be paid.
- You will get a letter with the hearing date. If you need a different date, request it as soon as possible and explain why.

## **Hearing rights**

It is helpful to know what rights you have as part of the hearing process. You have the right to:

- Review the agency's exhibits (i.e., the documents they provide) before the hearing. If you do not receive the documents with enough time to review them, let the hearing officer know.
- Bring witnesses who can provide information about your needs, such as a family member or caregiver.
- Submit evidence that supports you and your application, such as doctors' statements, medical records, etc.
- Have the hearing in-person, if you want to.



- Request reasonable accommodations for your disability.
- Receive interpretation services if your primary language is one other than English.
- Have someone with you to help at the hearing. They do not have to be an attorney.

## **At the hearing**

- The hearing will be held via telephone by default, and all parties will call in. If it is important to you that the hearing officer sees you—for example, in order to understand physical or other impairments that help establish your Level of Care need—you can request an in-person hearing. You can also request an in-person hearing if you would simply be more comfortable speaking to the hearing officer face-to-face instead of on the phone. They may try to talk you out of it but be firm. Reach out to Legal Services of Eastern Missouri if your in-person hearing request is denied.
- You have the right to bring someone to help you with the hearing. This could be an attorney, an advocate, or just a friend or family member. You can also bring witnesses (people who will provide testimony or information to the hearing officer). Witnesses are discussed more below.
- The Department of Health and Senior Services witness will go first. This may or may not be the person who did your assessment. They will explain your score and how it was determined to the hearing officer. You can ask them questions, and so can the hearing officer.

- Then, it will be your turn. Each hearing officer is different: You may get a chance to explain your needs, or the hearing officer may ask you specific questions. Likewise, any witnesses you bring may be allowed to speak about your needs, or the hearing officer may ask them specific questions.
- The hearing officer acts like a judge. Listen carefully to their instructions and questions.
- Before the hearing, send in (by mail, fax, or email) all of the written evidence you want to use that the Department of Health and Senior Services does not have on file.
- If you did not get a written denial notice, or if the notice does not explain why you are not eligible for services in a way that you can understand, **start the hearing by stating**, “Your Honor, DHSS did not explain to me why I am not eligible for services, and I do not know what I must prove in order to qualify for HCBS.”
- Say “I object” if the Department of Health and Senior Services is trying to use information that it did not give you before the hearing. The hearing officer will almost always allow the information to be submitted anyway, but they should say they will “give it the weight it is due.” Don’t be discouraged if this happens; it is still important to get into evidence that you tried to object. Even if overruled, the objection could be important for a future appeal.
- Explain what kinds of things you would have to go without if you do not get services (such as bathing, cleaning, changing linens,

laundry, appointments, medications, meals, getting outside, etc.). Explain how this would affect you and your everyday life.

- Review the interRAI questionnaire that the assessor completed. Sometimes, the assessor records your answers wrong, puts you as more capable than you are, or rushes the assessment. If these occurred during your assessment, prove it with your testimony, other witnesses, and doctors' statements.
- If you get to the end of the hearing and you believe there is still information the hearing officer needs to know that has not been covered, **speak up**. Say there is something important that has not been discussed, and you would like to add it to the record to be considered.
- The hearing officer will send you a written decision on your eligibility after the hearing.
- If you win, you will be eligible for HCBS and the Department of Health and Senior Services will develop a care plan for you.
- If you lose, you have 90 days from the date you receive the decision to appeal to the Circuit Court. Contact Legal Services of Eastern Missouri to learn more about the appeal process and to see if a free lawyer can represent you.

**For more detailed information, you can review the Benefits Tech Advocacy Hub Fair Hearings Guide, available online [here](#).**

## **EXAMPLE HEARING REQUEST LETTER**

The below is just an example of what a hearing request could look like. It does not need to be long, just a short statement of what you are appealing and why. Be sure to include your name, date of birth, and DCN if you know it.

You can submit your appeal request to your DHSS caseworker or to the person listed on the notice informing you that you are ineligible. If you are not sure where to send it, reach out to Legal Services of Eastern Missouri at [hcbs@lsem.org](mailto:hcbs@lsem.org) or (314) 256-8701 for help.

October 1, 2024

My name is Jane Doe and I am requesting a fair hearing. I want to appeal the termination of my home and community based services. I still need help to remain in my home, and I think I should still qualify for services.

OPTIONAL LANGUAGE: I would like my services to continue at the same level during my appeal.

Sincerely,

Jane Doe

DCN XXXXXXXX

Date of Birth 1/1/1950

Phone Number 314-555-5555