

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, Chinese, Haitian-Creole, Italian, Korean, Polish, Russian, Spanish, 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.