



# New Jersey Department of Human Services Seeks to Eliminate Any Willing Provider Requirements and to Authorize Termination of Medicaid Managed Care Contracts for Nursing Homes Throughout New Jersey

Client Advisories

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The New Jersey Department of Human Services (DHS) recently announced a new administrative initiative that would provide waivers of the long-standing Any Willing Provider (AWP) policy. The current AWP policy mandates that any participating Medicaid Managed Care Plan must include in its network all long-term care providers who request enrollment. This policy has been in effect in New Jersey since the beginning of the NJMMIS Managed Long-Term Services program in 2015.

The proposed change to the AWP policy allows managed care plans (MCOs) to terminate long-term care providers at their discretion. Under this proposed change, the criteria that may be used for unilateral termination includes facilities that have been cited in two of the three most recent calendar years in the following three categories:

1. Facilities included on the CMS Special Focus Facilities (SFF) list, including list D, the SFF "candidate" list.
2. Facilities that have been cited for two or more Level "G" deficiencies on surveys performed by NJDOH; and
3. Facilities that have received a one-star rating on Nursing Home Compare by CMS for 9 of the 12 previous quarters.

DHS has decided that approximately 20 nursing homes in New Jersey fall into this category which would permit MCOs to terminate. The proposed changes to the definition of an AWP places the number of facilities at risk of

being unilaterally terminated in excess of the estimation by DHS. For example, as many as 20% of skilled nursing facilities may have a one-star rating with CMS at any time. Presently, it appears that over 40 providers have a one-star rating in New Jersey.

Based upon CMS data on nursing home enforcement, there were over 100 CMPs issued in 2024 against New Jersey nursing homes. An automatic trigger for a CMP is a level G (isolated actual harm) deficiency, meaning many of these facilities could potentially be at risk. The current SFF candidate list includes 10 facilities. There are 2 facilities officially still classified as SFFs who should be nearing the end of this designation. As demonstrated, the number of affected facilities is much higher than DHS' estimates and could change dramatically from year to year.

The impact on a provider from being terminated from one or more MCO networks will be devastating. It is estimated that nearly 63% of nursing home residents are covered by Medicaid. While a MCO may choose to let these residents remain in the affected building, the loss of any significant number of existing residents along with the loss of new admissions is likely to lead to immediate financial distress. Closure of impacted facilities is possible, resulting in catastrophic disruptions to residents who must be transferred, their families, the facility's employees, and the community.

The program is currently scheduled to become effective as soon as July 1<sup>st</sup>, 2025, unless attempts to stop the initiative are successful. We are making efforts to stop this unfair initiative right now.

Because ratings on CMS Five Star and designation of Special Focus by CMS are not subject to appeal, the broad impact of this new position of DHS will potentially impact many long-term care facilities. Deficiencies may be appealed, but it is not clear how an appeal would affect a DHS designation as an AWQP. DHS has not specified any details of their appeal process or whether this would be available to affected providers. Thus, the new AWP initiative could be viewed as action that is tantamount to a CMS termination action without affording due process to the affected provider.

If your facility might be impacted, or if you would like to join this fight, please contact **Greg Palakow**, head of Archer's Health Care Group at [gpalakow@archerlaw.com](mailto:gpalakow@archerlaw.com) or 609-580-3748.

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