



Department
of Health

COVID-19 Appendix K Review

**Traumatic Brain Injury (TBI) and
Nursing Home Transition and Diversion
(NHTD) Waiver**

May 2020

Appendix K Overview

May 2020

“Appendix K” for NHTD/TBI 1915(c) Waivers During COVID-19 Emergency

- The Appendix K for NHTD/TBI mirrors many of the provisions the Department included in its guidance to be immediately responsive to participants and providers during the initial days of the COVID-19 emergency is [available here](#).
- CMS approved New York’s Appendix K for NHTD/TBI on April 21, 2020.
- The Appendix K provisions are in effect beginning March 1, 2020 and are anticipated to remain in effect through February 28, 2021.
- The following slides summarize temporary flexibilities and provisions included in the Appendix K waiver.

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Appendix K General Overview

Delivery in Alternative Settings

- SDP, CIC and ILST may be provided in alternate settings with prior approval from the RRDC.

Telephonic/Telehealth Service Delivery

- UAS-NY Community Health Assessment (CHA) may be completed using telephonic/telehealth modalities.
- Intake meetings, LOC assessments and Service Coordination selection may be completed via telehealth/telephonic modalities.

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Appendix K General Overview

Telephonic/Telehealth Service Delivery

- PRI/SCREEN may be used when a UAS-NY CHA cannot be secured.
- The PRI/SCREEN may only be used for 90 days from the date of waiver eligibility until the UAS-NY CHA can be secured.

Telephonic/Telehealth Service Delivery

- ILST, CIC, PBIS, Wellness Counseling (NHTD), Nutritional Counseling (NHTD), SDP and Substance Abuse Program services (TBI) may be conducted via telephonic/telehealth modalities.
- Requirement for face-to-face visits by supervisors of SC, ILST, and PBIS is suspended.
- Prior approval by the RRDC is required for alternative methods of service delivery.

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Appendix K General Overview

Home and Community Support Services and Service Coordination

- SC may provide monthly contact through telephonic/telehealth modalities.
- Nursing supervision services for HCSS may conduct in-home and in-person supervision through indirect means, including telephone or video communication.
- Current staff training protocols do not preclude webinars or telephonic training methods.

Obtaining Participant Consent

- Electronic signatures, consent secured via email and verbal consent will be implemented and documented in order to expedite service implementation during the emergency.
- Verbal consent and consent secured via email are only used as authorization for providers to deliver services while awaiting receipt of the signed service plan.
- Verbal consent and consent secured via email do not substitute for electronic or hardcopy signatures on service plans.

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Appendix K General Overview

Incident Reporting

- All SRI reporting protocols remain the same. Reports of on-site investigations may be delayed, if the health of the participant and/or investigator might be at risk because of COVID-19, and a delay in the investigation would not jeopardize the health and safety of individuals served.
- Incident documentation and investigations will be maintained by the SC.
- As many investigative activities that can be completed via telephonic means will continue.

Incident Reporting

- The timeframe to complete and close out investigations may be extended beyond 30 days with the approval of the RRDC and will continue to be monitored.
- Providers must update all investigative information and close out pending investigations no later than **July 1, 2020**.
- The filing deadline for cost reporting year 2019 for NHTD/TBI waiver service providers has been extended to August 1, 2020.

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Appendix K General Overview

HCBS Settings

- Waives compliance with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) to minimize the spread of infection for the duration of the emergency Appendix K.

Conflict of Interest

- During the COVID-19 pandemic for the period of the emergency Appendix K, case management entities may provide direct services.

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Appendix K General Overview

Regional Resource Development Centers

- Intake meetings may be completed using telephonic methods.
- Provider meetings continue, using telephonic methods.
- May conduct new provider application interviews via phone.
- Complete wellness calls to participants.
- Review and approve detailed plans to provide services using alternative means.

Retainer Payments

- The Department is working on finalizing guidance for billing for “Retainer Payments” as provided in the Appendix K

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Ability to Exceed Service Limits

- The existing NHTD 1915(c) waiver allows NHTD participants to exceed service limitations for certain services, if sufficient justification for the service is included in the service plan.
- The approved Appendix K provides comparable language for TBI waiver participants for the period of the emergency. With this approval, TBI waiver participants may exceed service limits with justification, for the following TBI services:
 - Independent Living Skills Training (ILST)
 - Positive Behavioral Interventions and Supports (PBIS)
 - Substance Abuse Program
 - Structured Day Program services (SDP)

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Delivering Services in Alternative Settings

During the emergency period, NYS has limited the size of group activities and implemented a “stay at home” requirement. The approved NHTD and TBI Appendix K allows Structured Day Program (SDP), Community Integration Counseling (CIC), and Independent Living Skills Training (ILST) services to be provided in alternate settings:

- These services may temporarily be delivered in the participant’s residential setting, which is defined as:
 - The participant’s private home; or
 - A residential emergency setting, such as a hotel.
- Services may only be provided in non-traditional settings when the provider has submitted appropriate justification and received prior authorization from the RRDC.

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Use of Telehealth/Telephonic Modalities

During the period of the emergency:

- The Appendix K allows for the use of Telehealth/Telephonic Modalities and must follow DOH guidance on the use of Telehealth/Telephonic Modalities. See information available at: https://www.health.ny.gov/health_care/medicaid/covid19/index.htm.
- The UAS-NY Community Health Assessment (CHA) may be completed using telephonic/telehealth modalities. Intake meetings, LOC assessments and Service Coordination selection may be completed via telehealth/telephonic modalities.
- UAS-NY Community Health Assessments (CHA) re-assessments are extended during the period of the emergency. All existing assessments will remain in place during the period of the Appendix K.
- Service plan reviews (Initial and Revised) will continue within established timeframes.
- When a UAS-NY CHA cannot be secured, NYSDOH will allow the use the PRI/SCREEN for community admissions and nursing home transitions for 90 days from the date of waiver eligibility until the UAS-NY CHA can be secured.

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Services That May Be Provided via Telephonic/Telehealth Modalities

- The following services may be provided via telephonic/telehealth modalities during the period of the emergency:
 - Independent Living Skills Training (ILST),
 - Community Integration Counseling (CIC),
 - Positive Behavioral Intervention and Support Services (PBIS),
 - Wellness Counseling (NHTD only),
 - Nutritional Counseling (NHTD only),
 - Structured Day Programs and
 - Substance Abuse Program Services (TBI only).
- Requirement for face-to-face visits by supervisors of SC, ILST, and PBIS is suspended.

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Service Coordination and Home and Community Support Services During the Period of the Emergency

Service Coordination:

- Service Coordinators must continue to provide monthly contact (may be provided through telephonic/telehealth modalities) with all waiver participants assigned to their case load.
- Service Coordinators are advised to update and revise, as necessary, Waiver Contact Lists and Plans of Protective Oversight (PPOs).

Home and Community Support Services:

- The Waiver Program does not dictate LHCSA regulation, and providers are referred to DAL: DHCBS-20-08 and COVID-19 Guidance for the Authorization of Community Based Long-Term Services and Supports Covered by Medicaid (https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_covid19_homehealthcarehospiceguidance_032220.pdf) and the Dear Agency Administrator letter dated April 10, 2020 (https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_regulatoryreliefhomecareproviders_041020-rev-145pm.pdf).
- Nursing supervision services for HCSS may conduct in-home and in-person supervision through indirect means, including telephone or video communication.
- Current staff training protocols do not preclude webinars or telephonic training methods.

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Methods for Obtaining Participant Consent During the Period of the Emergency

- Electronic signatures, consent secured via email and verbal consent will be implemented and documented in order to expedite service implementation during the emergency.
 - When verbal consent is provided by the participant, the service provider must include an attestation confirming that the participant intends to sign when the document is available.
 - The date and time that the verbal consent was acquired must be included in the provider's service notes.
 - Subsequent to notice of verbal consent, the RRDC will contact the applicant/participant to confirm their intent and agreement.

Service Plan Development and Implementation Consent Guidelines During the Period of the Emergency

- Verbal consent and consent secured via email are only used as authorization for providers to deliver services while awaiting receipt of the signed service plan.
- Verbal consent and consent secured via email do not substitute for electronic or hardcopy signatures on service plans.
- The use of e-signatures that meets privacy and security requirements will be added as a method for the participant or legal guardian signing the service plan to indicate approval of the plan.
- Services may start while waiting for the signature to be returned to the Service Coordinator, whether electronically or by mail. Signatures will include a date reflecting the service plan meeting date.

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Use of Telehealth/Telephonic Modalities During the Period of the Emergency

- Timeframes for development and implementation of the Service Plan remains in place.
- Telephonic and telehealth modalities will be implemented to support service planning.
- Monthly face-to-face protocols are amended to allow for telephonic/telehealth communication. Monthly contact is still required.
- Team Meetings may be provided via telephonic/telehealth modalities.
- Services being provided via telephonic modalities will be required to submit a detailed plan to the RRDC, explaining how the service and goals of the service will be implemented using alternative means.

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Incident Reporting Requirements

- Providers must continue to report and investigate all incidents (serious and recordable) as established in current protocols.
- Reports of on-site investigations may be delayed, if the health of the participant and/or investigator might be at risk because of COVID-19, and a delay in the investigation would not jeopardize the health and safety of individuals served.
- The Service Coordinator is to continue to receive all Serious Reportable Incidents within 24 hours of date of discovery and to keep the RRDC apprised of all incidents.
- Incident documentation (paper) and investigations will be maintained by the Service Coordinator until such time that the information may be electronically conveyed to the RRDC. Providers may also notify the RRDC regarding any issues of concern. As many investigative activities that can be completed via telephonic means will continue.

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Other Reporting Requirements

- Providers may also notify the RRDC regarding any issues of concern. The RRDCs continue to conduct Provider meetings using telephonic methods.
- The timeframe to complete and close out investigations may be extended beyond 30 days with the approval of the RRDC and will continue to be monitored.
- The RRDC will require providers to update all investigative information and will seek to have providers close out pending investigations no later than **July 1, 2020**.
- Cost reporting: the filing deadline for cost reporting year 2019 for NHTD/TBI waiver service providers has been extended to August 1, 2020.
 - All questions regarding cost reporting should be directed to the mailbox at: 1915CR@health.ny.gov.

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Waiver of HCBS Settings and Conflict of Interest Criteria During the Period of the Emergency

- Appendix K waives compliance with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) to minimize the spread of infection during the COVID-19 pandemic.
- During the COVID-19 pandemic, case management entities may provide direct services.
- To avoid exacerbating disruptions to the delivery of essential services, including Service Coordination, the implementation deadline for complying with the Corrective Action Plan to transition to Conflict of interest has been delayed by two months, or from January 1, 2021 to February 28, 2021 .
 - *Important Note: providers will need to begin implementation efforts in the current year to ensure we meet the February 28, 2021 Conflict of Interest implementation date. Additional guidance will be forthcoming.*

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Regional Resource Development Centers

- Continue to work remotely.
- Continue to receive referrals.
- Intake meetings may be completed using telephonic methods.
- Provider meetings continue, using telephonic methods.
- Continue to provide oversight of Serious Reportable Incidents.
- Continue to review and approve service plans.
- May conduct new provider application interviews via phone.
- Complete wellness calls to participants.
- Review and approve detailed plans to provide services using alternative means.

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Summary of Appendix K Processes During the Period of the Emergency

- Allows an extension for LOC reassessments for up to one year past the due date.
- Allows the option to conduct evaluations, assessments, person-centered service planning meetings and Team Meetings virtually/remotely in lieu of face-to-face meetings.
- Adjusts prior approval/authorization protocols in approved waivers.
- Adds an electronic method of signing off on required documents such as the person-centered service plan.
- Establishes services that can be provided using telehealth/telephonic modalities.

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Retainer Payments During the Period of the Emergency

- Appendix K provides the following provisions regarding Retainer Payments:

“Upon approval by the RRDC, providers offering Home and Community Support Services (HCSS), Structured Day Program (SDP) services, Independent Living Skills Training (ILST), Community Integration Counseling (CIC) and Positive Behavioral Interventions and Support (PBIS) services may bill retainer payments at the providers’ existing rate, not to exceed the hours approved within participant Service Plans.

These services listed support ADL/IADL skill training and activities. Any changes to a participant’s existing Service Plan will require an addendum and prior approval from the RRDC. Alternative means to current service provision will require prior approval from the RRDC. The RRDC will confirm that every attempt was made to provide services through alternative means (telehealth/telephonic) before considering approval of retainer payments.

Retainer payments cannot be provided for more than 30 consecutive days. There may be more than one 30 consecutive day period. If nursing facility has a bed hold that is less than 30 days, the retainer payment will not exceed that amount. Retainer payments are for direct care providers who normally provide services that include habilitation and personal care, but are currently unable to due to complications experienced during the COVID-19 pandemic because the waiver participant is sick due to COVID-19; or the waiver participant is sequestered and/or quarantined based on local, state, federal and/or medical requirements/orders. The state will implement a distinguishable process to monitor payments to avoid duplication of billing.”

Additional Resources

Link to where all guidance documentation published by the NYSDOH can be found:

<https://coronavirus.health.ny.gov/information-healthcare-providers>

Link to NHTD and TBI March 20, 2020 Guidance Document:

<https://coronavirus.health.ny.gov/system/files/documents/2020/03/covid19nhtdtbi3.20.20.pdf>

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Additional Resources

Provider Links regarding COVID-19:

- COVID-19 Weekly Healthcare Provider Update Compilation: As of April 22, 2020, 8:00 AM
https://coronavirus.health.ny.gov/system/files/documents/2020/04/covid19_provider_update_compilation_42220.pdf
- Telehealth:
https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_covid19_adhctelehealthfaq_032820.pdf
- Home Health Care:
https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_covid19_homehealthcarehospiceguidance_032220.pdf and
https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_regulatoryreliefhomecareproviders_041020-rev-145pm.pdf
- 1135 Waiver:
https://coronavirus.health.ny.gov/system/files/documents/2020/03/1135_waiver_request.pdf
- Health Home Training:
https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_hhatrainingprogram_041020.pdf

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Contact the NYS Department of Health Waiver unit at:

waivertransition@health.ny.gov