



**Background:**

This standalone appendix may be utilized by the state during emergency situations to request amendments to its approved waiver, to multiple approved waivers in the state, and/or to all approved waivers in the state. It includes actions that states can take under the existing Section 1915(c) home and community-based waiver authority in order to respond to an emergency. Other activities may require the use of various other authorities such as the Section 1115 demonstrations or the Section 1135 authorities.<sup>1</sup> This appendix may be applied retroactively as needed by the state. Public notice requirements normally applicable under 1915(c) do not apply to information contained in this Appendix.

**Appendix K-1: General Information**

**General Information:**

A. State: New York

B. Waiver Title(s): Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI)

C. Control Number(s): NY.0444.R02.04 (NHTD) & NY.0269.R04.03 (TBI)

D. Type of Emergency (The state may check more than one box):

<input checked="" type="checkbox"/>	<b>Pandemic or Epidemic</b>
<input type="checkbox"/>	<b>Natural Disaster</b>
<input type="checkbox"/>	<b>National Security Emergency</b>
<input type="checkbox"/>	<b>Environmental</b>
<input type="checkbox"/>	<b>Other (specify):</b>

E. **Brief Description of Emergency.** *In no more than one paragraph each*, briefly describe the: 1) nature of emergency; 2) number of individuals affected and the state’s mechanism to identify individuals at risk; 3) roles of state, local and other entities involved in approved waiver operations; and 4) expected changes needed to service delivery methods, if applicable. The state should provide this information for State (NYS). each emergency checked if those emergencies affect different geographic areas and require different changes to the waiver.

A new coronavirus: 2019 Novel Coronavirus, is spreading worldwide, causing the disease called COVID-19. Due to both travel-related cases and community contact transmission of COVID-19 in New York State, on March 7, 2020, Governor Andrew Cuomo declared a state of emergency to begin the processes and plans for quickly and effectively containing the spread of the virus. On March 11, 2020, the World Health Organization declared the COVID-19 as a pandemic. The declared state of emergency has sequestered waiver participants and waiver service providers to their homes with limited community access. Participants enrolled in the NHTD (2,500 individuals) and TBI (3,200 individuals) are impacted. The emergency has impacted services on a statewide basis. This amendment applies statewide for both NHTD and TBI.

The Nursing Home Transition and Diversion (NHTD) waiver serves individuals between the age of 18-64 who have a physical disability and seniors age 65 or older. The services available to NHTD Waiver participants include:

- Service Coordination (SC)
- Assistive Technology (AT)
- Community Integration Counseling (CIC)
- Community Transitional Services (CTS)
- Congregate and Home Delivered Meals
- Environmental/Vehicle Modifications
- Home and Community Support Services
- Home Visits by Medical Personnel
- Independent Living Skills Training
- Moving Assistance
- Nutritional Counseling/Educational Services
- Peer Mentoring
- Positive Behavioral Interventions and Supports (PBIS)
- Respiratory Therapy
- Respite Services (community based)
- Social Transportation
- Structured Day Program Services (SDP)
- Wellness Counseling.

Traumatic Brain Injury waiver services are available to individuals diagnosed with a traumatic brain injury who are between the age of 18-64 upon application.

The services available to TBI waiver participants include:

- Service Coordination (SC)
- Assistive Technology (AT)
- Community Integration Counseling (CIC)
- Community Transitional Services (CTS)
- Environmental/Vehicle Modifications
- Home and Community Support Services
- Independent Living Skills Training
- Positive Behavioral Interventions and Supports (PBIS)

Respite Services (community based)  
Substance Abuse Program  
Social Transportation  
Structured Day Program Services (SDP)

New York State (NYS) seeks to supplement the previously approved Appendix to add additional language to support language presented by CMS effective June 30, 2020 that establishes additional guardrails for providers seeking retainer payments. Additionally, consistent with the guidance document, NYS amends the previously approved language providing retainer payments for more than three 30 consecutive day periods to limit retainer payments to up to three 30-day episodes not to exceed a total of ninety (90) days. This amendment is also updating section K-2-m to include the delay of submission of evidentiary/372 reports.

Changes from the previously approved submission are identified in highlighted text.

**F. Proposed Effective Date: Start Date:** March 1, 2020 **Anticipated End Date:** February 28, 2021

**G. Description of Transition Plan.**

All activities will take place in response to the impact of COVID-19 as efficiently and effectively as possible based upon the complexity of the change.

**H. Geographic Areas Affected:**

These actions will apply statewide across both waivers to all waiver participants and their families impacted by the COVID-19 virus statewide.

**I. Description of State Disaster Plan (if available) *Reference to external documents is acceptable:***

NYSDOH is a member of the New York State Disaster Preparedness Commission, comprised of the commissioners, directors/chairpersons of the 32 State agencies and one volunteer organization – the American Red Cross. The responsibilities of the Disaster Preparedness Commission include: the preparation of State disaster plans; the direction of State disaster operations and coordination with local government operations; and the coordination of federal, State and private recovery efforts. Information on the State Disaster Plan can be found at the following website:  
<http://www.dhSES.ny.gov/planning/cemp/>.

**Appendix K-2: Temporary or Emergency-Specific Amendment to Approved Waiver**

## Temporary or Emergency-Specific Amendment to Approved Waiver:

*These are changes that, while directly related to the state's response to an emergency situation, require amendment to the approved waiver document. These changes are time limited and tied specifically to individuals impacted by the emergency. Permanent or long-ranging changes will need to be incorporated into the main appendices of the waiver, via an amendment request in the waiver management system (WMS) upon advice from CMS.*

### a. \_\_\_ Access and Eligibility:

#### i. \_\_\_ Temporarily increase the cost limits for entry into the waiver.

[Provide explanation of changes and specify the temporary cost limit.]

#### ii. \_\_\_ Temporarily modify additional targeting criteria.

[Explanation of changes]

### b. x Services

#### i. \_\_\_ Temporarily modify service scope or coverage.

[Complete Section A- Services to be Added/Modified During an Emergency.]

#### ii. x Temporarily exceed service limitations (including limits on sets of services as described in Appendix C-4) or requirements for amount, duration, and prior authorization to address health and welfare issues presented by the emergency.

[Explanation of changes]

Currently, the NHTD waiver program allows individuals to exceed service limits if sufficiently justified. NYSDOH is adding the same provision in the TBI waiver to ensure the health and welfare of our TBI waiver participants. NYSDOH seeks to apply this exception to those services that currently do not include the language in the existing **TBI** application: Independent Living Skills Training (ILST), Positive Behavioral Interventions and Support (PBIS), Substance Abuse Program (SAP), and Structured Day Program (SDP).

#### iii. \_\_\_ Temporarily add services to the waiver to address the emergency situation (for example, emergency counseling; heightened case management to address emergency needs; emergency medical supplies and equipment; individually directed goods and services; ancillary services to establish temporary residences for dislocated waiver enrollees; necessary technology; emergency evacuation transportation outside of the scope of non-emergency transportation or transportation already provided through the waiver).

[Complete Section A-Services to be Added/Modified During an Emergency]

**iv. x Temporarily expand setting(s) where services may be provided (e.g. hotels, shelters, schools, churches). Note for respite services only, the state should indicate any facility-based settings and indicate whether room and board is included:**

[Explanation of modification, and advisement if room and board is included in the respite rate]:

Currently, NYS emergency protocols limit the size of group settings and requires a “stay at home” protocol; as such, Structured Day Program settings may not be provided in established program sites. Therefore, NYS will be allowing the service to be provided in alternative settings. During the emergency period, the following services may be offered in non-traditional settings (e.g., counseling outside of an office setting): Community Integration Counseling (CIC) and Independent Living Skills Training (ILST). With appropriate justification and prior authorization from the Regional Resource Development Center (RRDC), Structured Day Program services may also be delivered temporarily in the participant’s residential setting, which is defined as:

- The participant’s private home; or
- A residential emergency setting, such as a hotel.

**v. \_\_\_ Temporarily provide services in out of state settings (if not already permitted in the state’s approved waiver). [Explanation of changes]**

**c. \_\_\_ Temporarily permit payment for services rendered by family caregivers or legally responsible individuals if not already permitted under the waiver.** Indicate the services to which this will apply and the safeguards to ensure that individuals receive necessary services as authorized in the plan of care, and the procedures that are used to ensure that payments are made for services rendered.

**d. \_\_\_ Temporarily modify provider qualifications (for example, expand provider pool, temporarily modify or suspend licensure and certification requirements).**

**i. \_\_\_ Temporarily modify provider qualifications.**

[Provide explanation of changes, list each service affected, list the provider type, and the changes in provider qualifications.]

**ii. \_\_\_ Temporarily modify provider types.**

[Provide explanation of changes, list each service affected, and the changes in the provider type for each service].

**iii. \_\_\_ Temporarily modify licensure or other requirements for settings where waiver services are furnished.**

[Provide explanation of changes, description of facilities to be utilized and list each service provided in each facility utilized.]

**e. \_\_\_X Temporarily modify processes for level of care evaluations or re-evaluations (within regulatory requirements). [Describe]**

Extend annual UAS-NY Community Health Assessments (CHA) re-assessments for the period of this Appendix. Service plan reviews will continue within established timeframes. Currently both the NHTD and TBI waivers allow the use of the PRI/SCREEN for individuals transitioning from nursing homes into waiver services for the first 90 days of waiver eligibility. During the emergency period, NYSDOH will allow the use the PRI/SCREEN for community admissions for the first 90 days of waiver eligibility until the UAS-NY CHA can be secured. Consistent with NYSDOH long term services and supports guidance the UAS-NY CHA may be conducted using telephonic/telehealth modalities. Initial LOC assessments may be completed via telehealth/telephonic modalities.

**f. \_\_\_ Temporarily increase payment rates.**

[Provide an explanation for the increase. List the provider types, rates by service, and specify whether this change is based on a rate development method that is different from the current approved waiver (and if different, specify and explain the rate development method). If the rate varies by provider, list the rate by service and by provider.]

**g. \_x\_ Temporarily modify person-centered service plan development process and individual(s) responsible for person-centered service plan development, including qualifications.**

[Describe any modifications including qualifications of individuals responsible for service plan development, and address Participant Safeguards. Also include strategies to ensure that services are received as authorized.]

Timeframes for the development and implementation of service planning remains in place. Telephonic and telehealth modalities will be implemented to support service planning. Electronic signatures, consent secured via email and verbal consent will be implemented and documented in order to expedite service implementation during the emergency. The service provider will include an attestation statement when verbal consent is provided. Additionally, the date and time that the verbal consent is acquired will be included in the provider's service notes. In the case of verbal consent, the RRDC will contact the applicant/participant to confirm the agreement. 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.

Face-to-face protocols are amended. Team meetings may be provided via telephonic/telehealth modalities.

Services that are being provided via telephonic modalities will be required to submit a detailed plan to the RRDC, explaining how the services and goals of the service will be implemented using alternative means.

**h. x Temporarily modify incident reporting requirements, medication management or other participant safeguards to ensure individual health and welfare, and to account for emergency circumstances.** [Explanation of changes]

Providers must continue to report and investigate all incidents. 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 and to keep the RRDC apprised of all incidents. Timeframes for reporting all incidents to the Service Coordinator and service providers remain the same (24 hours from date of discovery). 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. The timeframe to complete and close out investigations may extend beyond 30 days and will be monitored by the RRDC. The RRDC will require providers to update all investigative information no later than July 1, 2020.

**i. \_\_\_** Temporarily allow for payment for services for the purpose of supporting waiver participants in an acute care hospital or short-term institutional stay when necessary supports (including communication and intensive personal care) are not available in that setting, or when the individual requires those services for communication and behavioral stabilization, and such services are not covered in such settings.

[Specify the services.]

**j. x** Temporarily include retainer payments to address emergency related issues.

[Describe the circumstances under which such payments are authorized and applicable limits on their duration. Retainer payments are available for habilitation and personal care only.]



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 include personal care as a component (e.g., by supporting 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. The provider may only request up to three (3), thirty (30) consecutive day periods per participant, not to exceed ninety (90) days. Consecutive days are those days that are eligible for billing. 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.

Providers may not seek retainer payments if they would exceed the number of hours in the approved service plan. Retainer payment requests authorized after June 30, 2020 will include a supplement to the prior attestation to include:

- All current billing requirements remain in place: retainer payments will be subject to recoupment if inappropriate billing or duplicate payments for services occurred (or in periods of disaster, duplicate uses of available funding streams), as identified in a state or federal audit or any other authorized third party review. Note that "duplicate uses of available funding streams" means accessing more than one PHE funding stream for the same purpose;
- While receiving retainer payments, the provider has not received relief from any other source(s), including, but not limited to, unemployment benefits and Small Business Administration loans, that would exceed revenue for the last full quarter prior to the Public Health Emergency (PHE);
- The provider will not lay off staff and will maintain wages at existing levels;
- If the provider received revenues from other sources that exceeds pre-PHE level income, retainer payments will not be available; and
- Funding is subject to a final reconciliation to include an evaluation of other sources of emergency funding including unemployment benefits and Small Business Administrative Loans and may require the recoupment of retainer payments if revenue exceeds the quarter prior to the PHE.

**k. \_\_\_ Temporarily institute or expand opportunities for self-direction.**

[Provide an overview and any expansion of self-direction opportunities including a list of services that may be self-directed and an overview of participant safeguards.]

**l. Increase Factor C.**

[Explain the reason for the increase and list the current approved Factor C as well as the proposed revised Factor C]

**m. Other Changes Necessary [For example, any changes to billing processes, use of contracted entities or any other changes needed by the State to address imminent needs of individuals in the waiver program]. [Explanation of changes]**

**Appendix K Addendum: COVID-19 Pandemic Response**

**1. HCBS Regulations**

- a.  Not comply with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) that individuals are able to have visitors of their choosing at any time, for settings added after March 17, 2014, to minimize the spread of infection during the COVID-19 pandemic.

**2. Services**

- a.  Add an electronic method of service delivery (e.g. telephonic) allowing services to continue to be provided remotely in the home setting for:
  - i.  Service Coordination. The monthly face-to-face and the requirement for a quarterly in-home visit by Service Coordinators is suspended.
  - ii.  Personal care services that only require verbal cueing.
  - iii.  In-home habilitation
  - iv.  Monthly monitoring (i.e., in order to meet the reasonable indication of need for services requirement in 1915(c) waivers).
  - v.  Other *[Describe]*:

Intake meetings completed by the RRDC, initial eligibility assessments including LOC, Team Meetings for service planning.  
The following NHTD/TBI waiver services may be provided via telephonic/telehealth modalities: 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). Face-to-face visits by supervisors of SC, ILST, and PBIS are also suspended and nursing supervision services for HCSS may conduct in-home and in-person supervision through indirect means, including by telephone or video communication.

- b.  Add home-delivered meals
- c.  Add medical supplies, equipment and appliances (over and above that which is in the state plan)
- d.  Add Assistive Technology

**3. Conflict of Interest: The state is responding to the COVID-19 pandemic personnel crisis by authorizing case management entities to provide direct services. Therefore, the case management entity qualifies under 42 CFR 441.301(c)(1)(vi) as the only willing and qualified entity.**

- a.  Current safeguards authorized in the approved waiver will apply to these entities.
- b.  Additional safeguards listed below will apply to these entities.

To avoid exacerbating disruptions to the delivery of essential services, including Service Coordination, now and throughout the COVID-19 emergency, temporarily suspend and delay the implementation of the plan to transition to Conflict of Interest (COI) standards from January 1, 2021 to February 28, 2021.

**4. Provider Qualifications**

- a.  Allow spouses and parents of minor children to provide personal care services
- b.  Allow a family member to be paid to render services to an individual.
- c.  Allow other practitioners in lieu of approved providers within the waiver. *[Indicate the providers and their qualifications]*

[Redacted area]

- d.  Modify service providers for home-delivered meals to allow for additional providers, including non-traditional providers.

**5. Processes**

- a.  Allow an extension for reassessments and reevaluations for up to one year past the due date.
- b.  Allow the option to conduct evaluations, assessments, person-centered service planning meetings and Team Meetings virtually/remotely in lieu of face-to-face meetings.
- c.  Adjust prior approval/authorization elements approved in waiver.
- d.  Adjust assessment requirements
- e.  Add an electronic method of signing off on required documents such as the person-centered service plan.

## Contact Person(s)

### A. The Medicaid agency representative with whom CMS should communicate regarding the request:

**First Name:** Maribeth  
**Last Name** Gnozzio  
**Title:** Bureau Director, BCIAD  
**Agency:** NYSDOH OHIP Division of Long-Term Care  
**Address 1:** 99 Washington Avenue  
**Address 2:** One Commerce Plaza Room 1605  
**City** Albany  
**State** New York  
**Zip Code** 12210  
**Telephone:** 518-486-4315  
**E-mail** Maribeth.gnozzio@health.ny.gov  
**Fax Number** 518-474-1428

## 8. Authorizing Signature

**Signature:**

/S/

State Medicaid Director or Designee

**Date:**


8/24/2020

**First Name:** Donna  
**Last Name** Frescatore  
**Title:** Medicaid Director  
**Agency:** NYSDOH Office Health Insurance Programs  
**Address 1:** One Commerce Plaza  
**Address 2:** 99 Washington Avenue  
17th Floor  
**City** Albany  
**State** New York  
**Zip Code** 12210  
**Telephone:** 518-474-3018  
**E-mail** Donna.frescatore@health.ny.gov  
**Fax Number**

## Section A---Services to be Added/Modified During an Emergency

Complete for each service added during a time of emergency. For services in the approved waiver that the state is temporarily modifying, enter the entire service definition and highlight the change. State laws, regulations and policies referenced in the specification should be readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Specification				
Service Title:				
<i>Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:</i>				
Service Definition (Scope):				
Specify applicable (if any) limits on the amount, frequency, or duration of this service:				
Provider Specifications				
Provider Category(s) <i>(check one or both):</i>	<input type="checkbox"/>	Individual. List types:	<input type="checkbox"/>	Agency. List the types of agencies:
			0	
Specify whether the service may be provided by <i>(check each that applies):</i>	<input type="checkbox"/>	Legally Responsible Person	<input type="checkbox"/>	Relative/Legal Guardian
<b>Provider Qualifications</b> <i>(provide the following information for each type of provider):</i>				
Provider Type:	License <i>(specify)</i>	Certificate <i>(specify)</i>	Other Standard <i>(specify)</i>	
<b>Verification of Provider Qualifications</b>				
Provider Type:	Entity Responsible for Verification:		Frequency of Verification	
Service Delivery Method				
<b>Service Delivery Method</b> <i>(check each that applies):</i>	<input type="checkbox"/>	Participant-directed as specified in Appendix E	<input type="checkbox"/>	Provider managed



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<sup>i</sup> Numerous changes that the state may want to make may necessitate authority outside of the scope of section 1915(c) authority. States interested in changes to administrative claiming or changes that require section 1115 or section 1135 authority should engage CMS in a discussion as soon as possible. Some examples may include: (a) changes to administrative activities, such as the establishment of a hotline; or (b) suspension of general Medicaid rules that are not addressed under section 1915(c) such as payment rules or eligibility rules or suspension of provisions of section 1902(a) to which 1915(c) is typically bound.