APPENDIX K: Emergency Preparedness and Response and COVID-19 Addendum

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.[i] 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.R02.07 (NHTD) &
NY.0269.R04.08 (TBI)

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

X	**Pandemic or Epidemic**
O	**Natural Disaster**
O	**National Security Emergency**
O	**Environmental**
O	**Other (specify):**

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 (3,500 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 K-2-m to include the delay of submission of evidentiary/372 reports.

Consistent with CMS guidance, New York State (NYS) seeks to supplement the previously approved Appendix K to amend the anticipated end date of the Appendix K.

Language was revised to allow for the suspension of Conflict of Interest requirements through the duration of the Appendix K.

All approved Appendix K authority will continue until modified or terminated. All modifications/additions to this document are identified in highlighted text and will remain in effect until the overall end date of the Appendix K which is six months after the end of the PHE, unless otherwise specified.

New York amends the original Appendix K with subsequent revisions. All approved changes in prior CMS Appendix K approvals remain in effect due to the continuing nationwide Public Health Emergency determination made by the Secretary of the Department of Health and Human Services.
This amendment enacts provisions of the CMS-approved spending plan and narrative for Section 9817 of the American Rescue Plan Act (ARPA). The NYS plan was partially approved effective August 25, 2021. These provisions are indicated by "eFMAP" provisions.
a. Stimulate workforce stability. This is a retroactive one-time performance payment for each direct service staff person the provider hires/hired throughout the PHE and/or Appendix K period.
b. Implementation of a statewide training stipend program to reimburse providers for a portion of costs incurred above and beyond expenses the provider typically sustains for training staff due to the increase of staff turnover created by the complexities of the PHE.
c. An additional stipend will be made to staff who are fully vaccinated to facilitate a sufficient workforce to maintain services throughout the PHE.
d. Enhancement of current rates for Structured Day Programs and HCSS Nursing visits.

Revisions include:

- The NYS disaster emergency declared by Executive Order No 202 expired on June 25, 2021. This has impacted statewide application of emergency measures. This responsibility is now delegated to the local level, primarily Local Departments of Health. As a result, policies mandating masking, vaccination requirements, size of public/community gatherings varies throughout the state and may change over time. Therefore, NYS will continue to allow waiver services to be provided in alternative settings and through alternative means.
- Advise providers that in addition to hourly-unit billing, claims may also be submitted using quarter-hour units (equal to one hour) for the following NHTD and TBI services: ILST, CIC, PBIS, Structured Day Program (SDP) Services and Substance Abuse Program (TBI only,) and HCSS, effective March 1, 2020.
- In response to eFMAP provisions, NYS seeks to modify the NHTD Nursing Visit rate from a per visit rate to an hourly rate. Currently, NHTD has a rate code for the activity however, nursing visits are not identified as a specific service in the waiver application. Nursing visits are a licensure requirement for Home and Community Support Services (HCSS) providers which must be a Licensed Home Care Service Agency (LHCSA). The TBI waiver application provides for additional hourly billing of HCSS services to accommodate nursing visits. There is no specific rate code for the service however there are service limits. By making this change the nursing visit time will be specifically identified via rate code . NYS will assign a new rate code to TBI HCSS providers for Nursing Visits and NHTD will continue to use the same rate code, now using an hourly unit of service. This is not a new service, the activity is included in the service definition of HCSS. The current "per visit" rate will be converted to a new hourly rate. This will be effective upon approval of the Appendix K.
- In response to eFMAP provisions a rate differential is added to the existing hourly rate for Structured Day Programs (SDP). This will be effective April 1, 2021.
- Nursing supervision services for HCSS must resume face-to-face service provision as established in LHCSA guidance/regulation.
- In response to eFMAP provisions NYS will implement a stipend to stimulate workforce stability by offering additional payments for vaccinated staff providing: Service Coordination, ILST, PBIS, CIC, HCSS (including Nurses and aides, Peer Mentoring (NHTD only,) Respite, Substance Abuse Program Services (TBI only,) and Structured Day Program). This will be effective April 1, 2021.
- In response to the approved spending plan for implementation of ARPA section 9817 to expand service capacity, NYS will modify and augment existing services to implement a series of enhancements to support the recruitment and retention of key staff. Due to the high volume of staff turnover as a result of the COVID-19 pandemic, providers are required to increase available staff training and supplement training related to waiver services. Costs associated with this training exceed current operational costs for the delivery of waiver service(s). NYS will implement a training stipend for all waiver service providers approved and offering services during the PHE, not to exceed $350 of the providers' per-

staff cost to provide PCA training and/or a stipend of $100 for costs associated with training staff in waiver service protocols. This will be effective April 1, 2021. Stipends are only available for staff assigned to provide waiver services.

- Access to retainer payments terminates upon approval of this Appendix K amendment.
- Any provider utilizing telephonic modalities or alternative means for service provision will be required to update their detailed plan with each service plan renewal.
- The Regional Resource Development Center (RRDC) will require providers to update all Serious Reportable Incident (SRI) investigative reports/information no later than June 1, 2022.
- In anticipation of the termination of the federal PHE in 2022, service coordination providers will be required to submit a transition plan beginning April 1, 2022, identifying new/updated level of care re-assessment dates for all waiver participants assigned to their caseload. The Regional Resource Development Centers will work with service coordination providers to submit a transition and/or corrective action plan identifying new/updated re-assessment dates for all waiver participants assigned to their caseload. Overdue reassessments will be prioritized. The plan will be submitted to the RRDC by May14, 2022. Each waiver participant who did not have a re-assessment completed within the required twelve month period will be prioritized for re-assessment by September 1, 2022

F. Proposed Effective Date: Start Date: March 1, 2020 **Anticipated End Date:** Six months after the end of the federal public health emergency for COVID-19.

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]:

The NYS disaster emergency declared by Executive Order No 202 expired on June 25, 2021. This has impacted statewide application of emergency measures. This responsibility is now delegated to the local level, primarily Local Departments of Health. As a result, policies mandating masking, vaccination requirements, size of public/community gatherings varies throughout the state. Therefore, NYS will continue to allow waiver services to be provided in alternative settings and through alternative means. During the federal public health 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]

The state disaster emergency declared by Executive Order No 202 expired June 25, 2021. SHO#20-044 establishes that the current level of care determination is considered valid for that individual for the entirety of the additional 12 month period and the recertification is not due until 12 months after the original due date, regardless of the end date of the Appendix K. In response to this requirement, the Regional Resource Development Centers will work with service coordination providers to submit a transition and/or corrective action plan beginning April 1, 2022, identifying new/updated re-assessment dates for all waiver participants assigned to their caseload. Overdue reassessments will be prioritized. The plan will be submitted to the RRDC by May 14, 2022. Each waiver participant who did not have a re-assessment completed within the required twelve-month period will be prioritized for re-assessment by September 1, 2022. All up to date 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. _x__ 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.]

New York State licensing regulations and waiver protocols require that Home and Community Support Services (HCSS) providers must include nursing supervision and training by nursing staff in the provision of services. NHTD currently has a rate code and rate assigned to this activity, but it is not defined as an independent service in the waiver application. The TBI application allows providers to bill for additional HCSS hours for this activity but the nursing service is not separately delineated. It is included in the service description of HCSS. The approved TBI waiver application states: The RN assessment, and supervision visit (not to exceed four (4) hours per visit) are billable within this service definition (billed at a rate of up to four (4) hours/units per visit, three (3) times per year. There are no limits to the number of nursing visits in the NHTD application. The cost of the nursing visit is not factored into the rate for HCSS as the number of visits varies by participant. The implementation of this change will provide parity across both waiver programs for nursing services. By making this change the nursing visit time will be specifically identified. NHTD providers will utilize the currently assigned rate code attached to the service. The unit of service will change from per visit to per hour. TBI providers will utilize a new rate code which will be assigned to HCSS providers. The service provided in NHTD is the same as the service provided to TBI participants. This Appendix K converts the NHTD per visit rate to an hourly rate and providers of TBI HCSS will utilize a new rate code and the same new hourly rate. Nursing Visits will continue to be contained within the service definition of HCSS. Billing for nursing visits and the provision of HCSS may occur for the same date of service and time. Note: the nurse is providing observation and assessment of the waiver participant and the staff's provision of in-home services.

NYS discussed the nursing activities with providers and LHCSA representatives as related to HCSS waiver participants. The $61.80 rate for NHTD and TBI specified above was determined after reviewing current nursing salaries, current Medicaid private duty nursing rates, time needed to complete accurate in-home assessments and review of current claims. The Bureau of Labor Statistics indicates that the median salary for a registered nurse in NYS is $43.19 per hour with additional costs for benefits (approximately 29.2%). This activity is the same for NHTD and TBI. The provision of nursing assessments and in-home support presented extraordinary circumstances during the PHE which require additional salary incentives to maintain the nursing workforce. Based on this review, the conversion of the per visit rate to hourly appears appropriate and reasonable. This will be effective April 1, 2021. These rates will remain in effect until the overall end date of the Appendix K which is six months after the end of the PHE. The nursing activities and rates will be reassessed at the time of renewal of the NHTD/TBI waiver applications.

NYS seeks to establish a rate differential for the period of the PHE for Structured Day Programs to reimburse providers for costs incurred in adapting the day program site to address safety and personal protection of staff and waiver participants and support providers for the significant loss of billable services.

Structured Day Program (SDP) services are individually designed services provided to facilitate acquisition, retention, or improvement in self-help, socialization, and adaptive skills and takes place in a non-residential setting separate from the participant's private residence or other living arrangement. The program must provide adequate protection

for waiver participants' safety and must be located in a building that meets all provisions of the NYS Uniform Fire Prevention and Building Codes. Access to the program must adhere to the requirements of the ADA. The RRDS and/or NYSDOH staff assess the appropriateness of the physical space for the NHTD waiver participants by completing a site visit.

It should be noted that Structured Day Programs (SDPs) often serve as an alternative to home care and promote community integration and socialization. It is important to note that NYSDOH is receiving a number of notifications from providers with change of addresses since the start of the pandemic, a number of leases were terminated during the pandemic and now new leases are beginning. Modifications of program sites is necessary to address new PHE/PPE and social distancing requirements. Due to issues related to transportation, congregate settings, exposure to staff and other program participants, utilization of this service was greatly diminished during the PHE. Providers were unable to provide a comparable number of hours through alternative means. This resulted in a significant hardship to SDPs and there is concern that several providers may "shutter" services. The enhanced rate will only be provided for face-to-face services rendered during the PHE and enhanced FMAP period not to exceed the timeframe associated with the approval of the Appendix K amendment. The enhanced rate will not apply to providers who sought retainer payments and/or providing services through alternative means. This rate change will remain in effect until the overall end date of the Appendix K which is six months after the end of the PHE. The service and rates will be reassessed at the time of renewal of the NHTD/TBI waiver applications

A rate differential of $10.00 per hour will be added to the existing rate amount for the period of April 1, 2021 until six months after the end of the Federal PHE. A new TBI rate code will be utilized with assigned rate amounts of: $27.56 per hour. (upstate) and $32.84(downstate) per hour. A new NHTD rate code will be utilized with assigned rate amounts of $27.56 per hour. (upstate) and $32.66 per hour (downstate.) Services qualifying for the rate differential must have been provided in-person to participants beginning April 1, 2021 or thereafter throughout the period of the PHE. The new rate codes will only be utilized for in-person services provided throughout the PHE and are retro-active to April 1, 2021. New providers enrolled after April 1, 2021 may be reimbursed at this rate if services are provided in-person and during the period of the Appendix K. The *existing rate codes* (TBI 9870 rate amount: $17.56 upstate/$22.84 downstate and NHTD 9777 $17.56/$22.66 downstate) will be utilized for Structured Day Program services provided through alternative means or for retainer payments during the PHE and/or the term of the Appendix K. Several SDP providers sought to offer waiver participants in-person services as an alternative to isolation throughout the pandemic by adapting/modifying their environment or re-locating service provision. These adaptations were done at a significant cost to the provider. NYS seeks to acknowledge those accommodations through a temporary rate adjustment.

NYS would be remiss if it does not take action to recognize the dedication and commitment of those direct service staff who continued to meet with and provide direct contact services to waiver participants throughout the PHE.

NYS implements a stipend for all direct service staff HCSS (Nurses and aides), Respite, Service Coordinators, CIC, ILST, PBIS, Peer Mentoring (NHTD only) Substance Abuse (TBI only,) Structured Day Program staff who provide(d) services from April 1, 2021 to six months after the end of the Federal PHE.

NYS provides a stipend to all waiver service providers employing the staff indicated above in the amount of $2,500 for each direct service staff person the provider hires/hired on or after April 1, 2021 and maintains/maintained that employee for thirty days or more throughout the PHE and/or Appendix K period. An additional amount of $500 will be added for each employee fully vaccinated. Each provider will be required to submit a disbursement plan to the RRDC for review and approval. All funds must be dispersed directly to staff and cannot be used to cover administrative costs assumed by the provider.

A $3,000 stipend will be provided to each direct service staff member HCSS (Nurses and aides), Respite, Service Coordinators, CIC, ILST, PBIS, Peer Mentoring (NHTD only) Substance Abuse (TBI only,) Structured Day Program staff hired prior to April 1, 2021 employed and providing direct services to waiver participants for thirty days or more during the period of the PHE and/or the Appendix K waiver amendment period. An additional amount of $500 will be added for each fully vaccinated employee meeting these criteria. Each provider will be required to submit a separate disbursement plan to the RRDC for review and approval. The RRDC review and approval will include ensuring that stipend payments are made only once per individual employee. The employee list will be cross referenced to ensure that a staff person receives payment from only one waiver service provider. Payments will be made to the provider upon approval of the disbursement plan. All funds must be disbursed directly to staff and cannot be used to cover administrative costs assumed by the provider.

Stipend payments will be made directly to the provider upon approval of the Appendix K for employees serving waiver participants for a period of at least any thirty days throughout the PHE and/or Appendix K period. Each provider may maintain the funds in an internal pool account for distribution to staff. Providers may implement their own "tiered payment plan" to staff, but all funds must be utilized solely for staff payments. The payment plan must be included in the provider's disbursement plan. If a qualified employee leaves employment prior to receipt of the stipend the stipend amount will be included in the pool and will be redistributed among the remaining pool of qualified employees. As such employees may receive more than the minimum $2,500 limit.

Providers will be required to complete an attestation that the funds will be utilized to pay the employee in compliance with tax, labor and worker's compensation and any other applicable laws and requirements. This will result in a net payment to the employee less than the stated stipend payment.

Provider disbursement plans must be submitted to and approved by the RRDC before claims can be submitted. All payments will be disbursed to the employee as identified by the agency's written approved plan.

Providers shall distribute the stipend to qualified staff based on the agency's approved plan. Unused pooled funds must be used to enhance payments to employees, but cannot be less than the base stipend amount. Stipend amounts will continue to be adjusted until such time that all funds are expended up until the end of the PHE and the period of the Appendix K. Providers will be responsible to report quarterly regarding the status of pending funds. Any unexpended funds will be returned to the state and associated FFP claims will be returned to CMS.

The RRDC will survey all providers for a projection of the total number of staff/stipends incurred and/or anticipated for the period of and leading to the termination of the Appendix K provisions. This stipend must be the only training stipend/reimbursement afforded the provider throughout the Appendix K period for the identified staff. Prior authorization will be required by the RRDC if the provider at any point in time exceeds the projected number of stipends included in their survey. Providers will submit a prior authorization request to the RRDC before seeking stipends and may adjust the number of requested stipends based on changing employment numbers. The request will indicate the name of the staff, date of hire and current employment status. A staff person will not qualify if another provider was provided a stipend for the same individual (staff person changing employment). If a qualified employee leaves employment prior to disbursement of the funds by NYS or distribution of the funds by the employer, the stipend will be redistributed among the remaining pool of qualified employees.

Due to the high volume of staff turnover as a result of the COVID-19 pandemic, providers are required to increase available staff training and supplement training related to waiver services. Costs associated with this training exceed current operational costs for the delivery of waiver service(s). As such, NYS will supplement the typical cost of delivery of services and implement a statewide training stipend program for Personal Care Aide (PCA) and waiver service training that is not reimbursed elsewhere and incurred as a result of staff turnover during the PHE. This will enhance service capacity during the PHE. This stipend will support providers for the cost incurred for those staff providing waiver services only. There are specific regulations governing the training of individuals employed by a licensed home care services agency (LHCSA) which are included in the qualifications for HCSS providers.

The provider may submit a claim for training costs incurred not to exceed $350 per trainee for each direct care staff (PCA) providing waiver services. A registered nurse must be the instructor for content related to personal care skills. LHCSA Providers must have an approved personal care aide training plan as approved by the licensing unit to be reimbursed for any training expense. Providers may be reimbursed for training expenses (not to exceed the $350 limit) associated with those staff utilizing Alternative Competency Demonstration qualifications and working with waiver participants.

Additionally, the provider may claim $100 for all staff trained on waiver services and assigned a TBI/NHTD caseload. All waiver service providers may claim the $100 for initial waiver staff training and an additional $100 for annual training (for any annual training completed during the PHE). The incentive will terminate at the end of the Appendix K period. "Waiver service only" providers must have an approved training curriculum. Staff must have been employed during the PHE period beginning April 1, 2021. The provider must be able to produce documentation of successful completion of the training (training certificate) and the staff must be working or has worked with a waiver participant. Prior authorization of all training stipends must be provided by the Regional Resource Development Center (RRDC) prior to billing. The prior authorization request will indicate the name of the staff, date of hire, date and subject of the training the date completed. Upon submission of the Appendix K, the RRDC will survey all providers for a projection of the total number of staff/stipends incurred and/or anticipated through the termination of the Appendix K provisions. Prior authorization will be required by the RRDC if the provider seeks to exceed that projected number included in the initial survey.

An average training scenario for PCA staff was presented as follows:
The provider must assign an RN for 40 hours of PCA training. Additionally, a second RN is required to assist with the skills training for 20 hours. A number of staff will not successfully complete the pre and post testing and a number of staff will ultimately not pass the Criminal Background Check. This results in a very high per-capita investment for a limited number of approved staff. The demands to recruit and maintain a qualified workforce are high. If the provider "procures" training from a Department of Education certified training entity e.g., Community College, the per capita cost for training can be as much as $300, without the cost to provider for salary, transportation etc.

The flow of funds for these supplemental payments will differ from other HCBS Waiver services, which are adjudicated through eMedNY as service payments tied to individual service recipients. These supplemental payments will be made as lump-sum payments to qualified providers using eMedNY and for the amounts approved by the RRDC in the providers' prior authorization request.

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 remain 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. 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 and intake meetings may be provided via telephonic/telehealth modalities or face-to-face. Throughout the PHE, all staff providing face-to-face services are required to wear a mask or other PPE while providing services and must adhere to home care policy and guidance issued for HCBS services and/or other state and local mandates.

Services that are being provided via telephonic modalities or alternative means will be required to submit a detailed plan to the RRDC, updated with each service plan renewal 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 June 1, 2022

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. Retainer payments terminate upon approval of this Appendix K amendment.

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]

The timeframes for the submission of the CMS 372s and the evidentiary package(s) will be extended as needed pursuant to the emergency. In addition, the state may suspend the collection of data, for current reviews looking back at performance measures other than those identified for the Health and Welfare assurance and future look behind reviews at performance measures other than those identified for the Health and Welfare assurance. As a result, the current look behind data that would have been collected as well as future data will be unavailable for this time frame in ensuing reports due to the circumstances of the pandemic.

Cost Report deadlines for TBI NHTD waiver service providers may be extended throughout the duration of the PHE and Appendix K period without penalty.

NYS is changing the billing unit requirement for HCSS, PBIS, CIC, SDP, Substance Abuse Program (TBI only) and ILST from hourly to quarter-hour units. The nature of service provision during the PHE calls for more flexibility in billing. Encouraging visits of shorter duration appears to be beneficial to the waiver participant by providing additional contacts with service providers who can ensure the health and welfare of the participant. This change is retro-active to March 1, 2020.

Current billing practices utilize a unit rate generally based on a per hour basis. There are no restrictions in the waiver application or in the claims process which restricts billing in a partial unit. Providers are advised that billing may occur based on quarter hour units not to exceed one hour. Providers are not required to accrue partial units until they reach the full hour. The same rate codes and hourly rate remain in place. This may present a problem for claim submissions for those providers offering services for a limited number of hours. Allowing for quarter-hour billing will preserve the ability of waiver participants to access services for which they cannot tolerate a full hour of service. Quarter-hour billing also serves to incentivize the providers to conduct "check-in" visits, which ensure the participant's health and safety in the community. The use of quarter hour units does not restrict the provider from accruing a full-service hour and billing accordingly, but provides for incremental claims if necessary.

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) Peer Mentoring (NHTD only). Face-to-face visits by and supervisors of SC, ILST, and PBIS are also suspended. Nursing supervision services for HCSS must resume face-to-face service provision as established in LHCSA guidance/regulation.

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 duration of the Appendix K, temporarily suspend and delay the implementation of the plan to transition to Conflict of Interest (COI) standards.

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]*

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/ **Date: 3/29/2022**

State Medicaid Director or Designee

First Name:	*Brett*
Last Name	*Friedman*
Title:	*Medicaid Director*
Agency:	*NYSDOH Office Health Insurance Programs*
Address 1:	*One Commerce Plaza*
Address 2:	*99 Washington Avenue* *Suite 1715*
City	*Albany*
State	*New York*
Zip Code	*12210*
Telephone:	*518-474-3018*
E-mail	*Brett.friedman@health.ny.gov*
Fax Number	*518-486-1346*

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:					
Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:					
Service Definition (Scope)**:**					
Specify applicable (if any) limits on the amount, frequency, or duration of this service:					

Provider Specifications				
Provider Category(s) *(check one or both)***:**	☐	Individual. List types:	☐	Agency. List the types of agencies:

Specify whether the service may be provided by *(check each that applies):*	☐	Legally Responsible Person	☐	Relative/Legal Guardian

Provider Qualifications (*provide the following information for each type of provider)*:

Provider Type:	License *(specify)*	Certificate *(specify)*	Other Standard *(specify)*

Verification of Provider Qualifications

Provider Type:	Entity Responsible for Verification:	Frequency of Verification

Service Delivery Method				
Service Delivery Method *(check each that applies)*:	☐	Participant-directed as specified in Appendix E	☒	Provider managed

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:	
Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:	
Service Definition (Scope)**:**	

[i] 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.