

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-14-26  
Baltimore, Maryland 21244-1850



**Disabled and Elderly Health Programs Group**

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March 10, 2021

Donna Frescatore  
New York State Department of Health  
99 Washington Avenue, Suite 211  
Albany, New York 12210

Dear Ms. Frescatore:

We are writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is approving New York's request to amend the following 1915(c) Home and Community-Based Services (HCBS) waivers with the Emergency Preparedness and Response Appendix K in order to respond to the COVID-19 pandemic:

WAIVER TITLE	CMS AMENDMENT CONTROL NUMBER
Nursing Home Transition and Diversion Waiver	NY.0444.R02.05
Traumatic Brain Injury Waiver	NY.0269.R04.05

The amendment that the state has requested in the Appendix K is additive to those previously approved and is effective from March 1, 2020 to six months after the end of the federal public health emergency (PHE) for COVID-19; it applies in all locations served by the individual waivers for anyone impacted by COVID-19.

Please note the guidance issued in the December 22, 2020 State Health Official Letter ([SHO](#)). Specifically, flexibilities approved via the 1135 authority expire at the end of the PHE. We advise that the state review the SHO, as well as the flexibilities approved via the 1135 authority and consider if adjustments need to be made in the Appendix K to compensate for the loss of the 1135 options. For example, CMS strongly advises that a state that waived regulatory requirements of a home and community-based setting for any new settings being used during the PHE, assess those settings to determine if they are appropriate for use in the six months after the PHE expires. When closing an Appendix K or ending an Appendix K flexibility prior to the end date of the Appendix K, the requirement for advance notice of beneficiaries applies. More details can be found on pages 11-12 of the SHO.

We have included the approved Appendix K pages with this correspondence. Please utilize the waiver management system for HCBS waivers for any further amendments to these waiver programs other than the Appendix K.

If you need assistance, feel free to contact Ryan Shannahan of my staff at 410-786-0295 or by e-mail at [Ryan.Shannahan@cms.hhs.gov](mailto:Ryan.Shannahan@cms.hhs.gov) or Ralph Lollar at 410-786-0777 or by e-mail at [Ralph.Lollar@cms.hhs.gov](mailto:Ralph.Lollar@cms.hhs.gov) .

Sincerely,

Alissa Mooney DeBoy  
Director, DEHPG

Enclosure