

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
601 E. 12th St., Room 355  
Kansas City, Missouri 64106



**Medicaid and CHIP Operations Group**

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November 28, 2022

Amir Bassiri, Medicaid Director  
New York State Department of Health  
Office of Health Insurance Programs  
Empire State Plaza  
Corning Tower, Room 1466  
Albany, NY 12237

RE: New York State (NYS) Department of Health (DOH) Traumatic Brain Injury (TBI) Waiver  
Renewal, NY.0269.R05.00.

Dear Mr. Bassiri:

The Centers for Medicare & Medicaid Services (CMS) is approving the state's request to renew the NYS-DOH 1915(c) TBI waiver. This Home and Community-Based Services (HCBS) waiver, which provides services to individuals who have experienced the onset of a TBI between the ages of eighteen and sixty-four and who meet a nursing facility level of care, has been assigned CMS control number NY.0269.R05.00. This control number should be referenced on all future correspondences relating to this waiver action.

With this renewal, the state offers waiver participants flexibility with the team meeting component of Service Coordination: the option to conduct the meeting virtually, via telephone or in-person. The renewal also modifies the provider qualifications for Respite and Home and Community Support Services, makes technical changes to certain service definitions, applies a single template for cost reporting and highlights the annual statewide minimum wage increases, which differ based on region and industry. The action also enacts an overall increase in service utilization figures and rates as a result of the robust surge of individuals with complex needs transitioning from nursing facilities to the community/waiver program.

For this HCBS waiver, the state has requested a waiver of 1902(a)(10)(B) of the Social Security Act in order to waive comparability of services. The waiver has been approved for a five-year period with an effective date of September 1, 2022.

This waiver will offer the following supports for waiver participants: Respite, Service Coordination, Assistive Technology Services, Community Transitional Services, Environmental Modification Services, Transportation Services, Community Integration Counseling, Home and Community Support Services, Independent Living Skills and Training Services, Positive Behavioral Interventions and Support Services, Structured Day Program and Substance Abuse Program Services.

The following number of unduplicated recipients and estimates of average per capita cost of waiver services have been approved:

Waiver C Factor Year	D Factor Estimates	D' Factor Estimates	G Factor Estimates	G' Factor Estimates	G' Factor Estimates
Year 1	3,615	\$68,084.53	\$20,722.00	\$99,871.10	\$11,880.75
Year 2	3,940	\$68,166.22	\$21,281.49	\$102,567.63	\$12,201.53
Year 3	4,294	\$68,162.54	\$21,856.09	\$105,336.95	\$12,530.97
Year 4	4,680	\$68,173.42	\$22,446.21	\$108,181.05	\$12,869.31
Year 5	5,132	\$68,186.30	\$23,052.26	\$111,101.94	\$13,216.78

This approval is subject to your agreement to serve no more individuals than those indicated in “C Factor Estimates” shown in the table above. If the state wishes to serve more individuals or make any other alterations to this waiver, an amendment must be submitted for approval. The state may renew the waiver at the end of the five-year period by providing evidence and documentation of satisfactory performance and oversight.

It is important to note that CMS approval of this waiver solely addresses the state’s compliance with the applicable Medicaid authorities. CMS approval does not address the state’s independent and separate obligations under federal laws including, but not limited to, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or the Supreme Court’s Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the Olmstead decision is available at [http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm).

CMS reminds the state that the state must have an approved spending plan in order to use the money realized from section 9817 of the American Rescue Plan (ARP). Approval of this action does not constitute approval of the state’s spending plan.

Thank you for your cooperation during the review process. If you have any questions concerning this information, please contact me at (410) 786-7561. You may also contact Christopher Semidey at [Christopher.Semidey@cms.hhs.gov](mailto:Christopher.Semidey@cms.hhs.gov) or (212) 616-2328.

Sincerely,

George P. Failla, Jr., Director  
Division of HCBS Operations and Oversight

cc: Christopher Semidey, CMS  
Ciera Lucas, CMS  
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Wendy Hill Petras, CMS  
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