



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

May 6, 2005

Dear Interested Party:

As you may be aware, in October 2004, Governor Pataki signed into law legislation authorizing the Department of Health (DOH) to apply for a Medicaid waiver for enhanced nursing home transition and diversion activities. This new waiver reflects the Governor's pledge to provide New Yorkers with disabilities a wide array of supportive care and services in the least restrictive, most appropriate setting.

DOH will be applying for a Medicaid waiver to provide community-based services for persons eighteen years and older who would otherwise be cared for in a nursing facility and who, considered as an aggregate group, can be served at less cost in a community setting. State contracted not-for-profit Regional Resource Development Centers (RRDC) will administer applicant non-financial waiver eligibility, needs assessment, service plan approval and maintenance, and information activities.

Waiver services may include: case management (service coordination); personal care; independent living skills training; environmental accessibility adaptations; community transition services; assistive technology; adult day health care; staff for safety assurance; non-medical support needed to retain independence; respite and other services defined by DOH and approved by the federal Centers for Medicare and Medicaid Services (CMS).

The Department will be working with representatives from independent living centers, disability and senior groups, local government, providers and others to design the new program. Accordingly, we are requesting information and advice from you and other stakeholders. Your response to the enclosed Request for information (RFI) is an important first step toward a successful collaborative process; we encourage you to respond to all questions or only to those that you are most knowledgeable about or interested in addressing.

The RFI is designed to elicit your perspective on certain waiver issues including: participant eligibility, community resource capacity, roles of the RRDC; and service planning. We would also appreciate comments on the need for other services that you believe are necessary to fulfill the waiver's purpose. Please send us your comments by **June 15, 2005**, and include the name, telephone number and E-mail address of a contact person to call if we have questions regarding your response.

The Department anticipates issuing a Request for Proposal for the RRDC contracts once the waiver for nursing home transition and diversion services is developed. Please understand that your response to the present RFI, concerning overall waiver design and services, is not related to nor would preclude participation in any future RRDC application.

Thank you for responding to this important initiative.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn Kuhmerker", written in a cursive style.

Kathryn Kuhmerker  
Deputy Commissioner  
Office of Medicaid Management

Enclosure

**NEW YORK STATE DEPARTMENT OF HEALTH (DOH)  
NURSING HOME TRANSITION AND DIVERSION MEDICAID WAIVER  
REQUEST FOR INFORMATION (RFI)**

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**NEW YORK STATE DEPARTMENT OF HEALTH (DOH)  
NURSING HOME TRANSITION AND DIVERSION MEDICAID WAIVER**

**REQUEST FOR INFORMATION (RFI)**

**I. PURPOSE OF THE RFI**

The New York State Department of Health (DOH) Nursing Home Transition and Diversion Medicaid Waiver will offer an opportunity for individuals eighteen years and older with disabilities to live and receive medical and other ancillary services in the most appropriate available home and community integrated setting. Because of the diversity in the nature of disability and needed services of the targeted participant population, we are inviting advice and technical information from all interested individuals, providers, and other stakeholders as an important first step toward a successful collaborative process.<sup>1</sup>

The RFI is designed to elicit your perspective on certain waiver components including: participant eligibility, community resource capacity, role of the Regional Resource Development Centers (RRDC), service planning, quality assurance, data management, and the need for waiver services that you believe are necessary to fulfill the program's purpose.<sup>2</sup>

We encourage you to respond to either all questions or only to those that you are most knowledgeable about or interested in addressing. You can be assured that your responses will be carefully considered in the development of the waiver application to be submitted to the federal Centers for Medicare and Medicaid Services (CMS).

**II. BACKGROUND / LEGISLATIVE MANDATE**

In October 2004, Governor Pataki signed into law legislation authorizing DOH to design a new Medicaid waiver to provide enhanced nursing home transition and diversion activities for persons who would otherwise be cared for in a nursing facility and who, considered as an aggregate group, can be cared for at less cost in a community setting. This enacted legislation reflects the State's commitment to provide New Yorkers living with disabilities a wide array of supportive care and services in the least restrictive most appropriate available setting. Please refer to

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<sup>1</sup> **No contract will be awarded based on responses to this RFI.**

<sup>2</sup> Enacting statute, S7073 and S7715 (attached), Chapters 615 and 627 of the Laws of 2004 respectively, directs DOH to contract with "Regional Resource Development Specialists" defined as "not-for-profit agencies having experience with providing community-based services to individuals with disabilities." For the purpose of this program, and consistent with other similar activities, these entities will be referred to as "Regional Resource Development Centers" (RRDC); "Regional Resource Development Specialists" (RRDS) will refer to the employees of the RRDCs, who carry out RRDC responsibilities.

S7715 (attached) for the specific details of participant eligibility, allowable services, and administration and management of the waiver program.

### III. CONTENT OF RESPONSE

The following section is formatted to reflect various components of and implementation issues related to program design. Please respond to the questions about the specific waiver elements, and identify by letter/number each question you are addressing. As mentioned previously, it is recognized that respondents may have different areas of expertise and interest; therefore, it is not necessary to respond to each item. You are also invited to suggest and comment on services or implementation issues not specifically outlined below. Accordingly, the areas suggested for comment include:

#### A. Participant Waiver Eligibility:<sup>3</sup>

1. How would you propose identifying potential participants for this program?
2. Do you have comments about the development of assessment tools and measures to assure coordination with or avoid duplication of existing processes?
3. The enabling legislation allows the Commissioner to set eligibility criteria in addition to the standard set in statute (See above or S7715). Do you have other eligibility criteria to suggest?
4. If you have experience in determining eligibility for other waiver programs, what have you learned that might assist us in the development of this new waiver?
5. General federal policy for Home and Community Based Services (HCBS) waivers prevents individuals from participating in more than one HCBS waiver simultaneously. Federal policy also requires that an individual be able to choose the HCBS waiver in which s/he will participate, as long as all participation criteria are met, and allows participants to access regular State Plan services, e.g. personal care services.

How would you propose coordinating the new waiver with other Medicaid processes in your locality, e.g. MA financial eligibility or prior authorization for State Plan services?

What do you recommend as appropriate coordinative efforts between this new waiver and other existing MA waiver programs, such as the current

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<sup>3</sup> “Participant eligibility” refers to eligibility for participation in this waiver program, not determination of financial eligibility for Medicaid.

## HCBS Waiver for Individuals with Traumatic Brain Injury (HCBS/TBI), Long Term Home Health Care Program (LTHHCP)?

### B. Community Resource Capacity:

Experience has shown that successful HCBS waivers provide thoughtful coordination and delivery of a range of health and non-medical social support services. We anticipate that, in addition to the services noted in the legislation, other services will be considered for inclusion. Equally important to the mix of services is the availability of those services within reasonable timeframes. That is why, for example, under the HCBS/TBI Waiver, one of the current responsibilities of the RRDCs is development of provider capacity. In this respect,

1. What waiver services do you believe should be considered in addition to those referenced above? If possible, please include suggested service definitions and provider qualifications.
2. In your community, what health and/or non-medical social support services do you anticipate might be needed but for which existing capacity may be insufficient to meet the need generated by the new waiver? What steps do you suggest to address such service gaps?
3. What provider or other community coalitions might be encouraged to develop needed service capacity?
4. Federal Medicaid rules will permit the State to include, as a waiver service, community transition services for individuals in nursing homes who need supports to establish a home/apartment, e.g. security deposits, cost of furniture acquisition and moving assistance.

Affordable accessible housing is often cited as essential to successful community integration programs. How is your community addressing the housing needs of persons with disabilities? Do you have an innovative approach to suggest to help pay for waiver participants' direct housing costs (e.g. rent or mortgage payments) since Medicaid does not cover these expenses?

5. What approach do you recommend service coordinators use to effectively integrate informal caregiver supports into participant service plans?

### C. Service Planning:

It is anticipated that, under the new waiver, one of the responsibilities of a service coordinator will be assisting participants to develop and implement a service plan which identifies needed services and providers. The RRDCs will be responsible for evaluating and approving the service plans.

1. To develop an effective service plan, home and community-based waiver service providers must work collaboratively with other elements of the long-term care system, e.g. participants, hospitals, home and community-based providers, Independent Living Centers (ILCs), nursing homes, and State agency programs that provide needed ancillary services.

From your experience with these or other programs, what have you identified as best practices and/or difficulties that may be encountered during the implementation of this waiver?

2. In your opinion, is it advisable to require that a participant's service coordination be provided by a separate agency than that which provides all other services to the individual? If so, how might this impact the availability of a sufficient number of providers in your region?

D. Systems / Contract Performance / Program Evaluation / Quality Assurance:

1. From your experience, what do you suggest as best practices for DOH and the RRDSs to obtain participant and community feedback about services and overall waiver effectiveness?
2. Do you or your locality currently conduct consumer interviews or mail surveys to elicit communication about delivered services that might serve as models for this new waiver program? How do you assess the effectiveness of these measures in providing useful accurate information?

E. Electronic Applications for Data and Record Management:

1. Would you foresee any problems with the use of electronic management systems for processing, storing and submitting participant waiver applications, service coordination records and other necessary information?
2. What systems change and/or coordination with current information technology (IT) efforts do you believe are required to establish a fully functioning integrated on-line application, service coordination, and data transfer/storage system?

#### IV. SUBMISSION OF RESPONSES TO THE RFI

Diverse insights are critical for the development of a comprehensive program. We appreciate your efforts on this important initiative.

This RFI has been mailed to potential respondents known to DOH; we hope that you will share it with anyone you believe may be interested. Receipt of written responses may be followed-up with a meeting(s) to solicit additional information.

Submit all responses in writing by **June 15, 2005** to:

Betty Rice, Director  
Division of Consumer and Local District Relations  
Office of Medicaid Management  
NYS Department of Health  
One Commerce Plaza, Suite 826  
Albany, New York 12210

Attn: Theresa Lieberman

Please include the person's name, telephone number and E-mail address to contact in the event there are questions regarding your submission.

If you would prefer, you may email your response in Microsoft Word format to: [tal05@health.state.ny.us](mailto:tal05@health.state.ny.us). Thank you again.



# STATE OF NEW YORK

7715

## IN SENATE

August 8, 2004

Introduced by Sen. MEIER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the social services law and a chapter of the laws of 2004 amending the social services law relating to authorizing the commissioner of health to apply for a nursing facility transition and diversion medicaid waiver, in relation to authorizing the commissioner of health to apply for a nursing facility transition and diversion medicaid waiver

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 6-a of section 366 of the social services law,  
2 as added by a chapter of the laws of 2004, amending the social services  
3 law relating to authorizing the commissioner of health to apply for a  
4 nursing facility transition and diversion medicaid wavier, as proposed  
5 in legislative bills numbers S.7073 and A.11350-A, is amended to read as  
6 follows:

7 6-a. a. The commissioner of health shall apply for a nursing facility  
8 transition and diversion medicaid waiver pursuant to subdivision (c) of  
9 section nineteen hundred fifteen of the federal social security act in  
10 order to provide home and community based services to individuals who  
11 would otherwise be cared for in a nursing facility and who would be  
12 considered to be part of an aggregate group of individuals who, taken  
13 together, will be cared for at less cost in the community than they  
14 would have otherwise and to provide reimbursement for several home and  
15 community based services not presently included in the medical assist-  
16 ance program. The initial application shall provide for no less than  
17 five thousand persons to be eligible to participate in the waiver spread  
18 over the first three years and continue to increase thereafter.

19 b. A person eligible for participation in the nursing facility transi-  
20 tion and diversion medicaid waiver program shall:

- 21 (i) be at least eighteen years of age;  
22 (ii) be eligible for and in receipt of medicaid authorization for long  
23 term care services, including nursing facility services;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD18671-01-4

1 (iii) have resided in a nursing facility and/or have been assessed and  
2 determined to require the level of care provided by a nursing facility;  
3 (iv) be capable of residing in the community if provided with services  
4 specified in paragraph f of this subdivision, in addition to other  
5 services provided under this title, as determined by the assessment  
6 required by paragraph d of this subdivision; and  
7 (v) ~~[be considered to be part of an aggregate group of individuals  
8 who, taken together, will be cared for at less cost in the community  
9 than they would have otherwise; and~~  
10 (vi)] meet such other criteria as may be established by the commis-  
11 sioner of health as may be necessary to administer the provision of this  
12 subdivision in an equitable manner.

13 c. The department of health shall develop such waiver application in  
14 conjunction with independent living centers ~~and~~, representatives from  
15 disability and senior groups and such other interested parties as the  
16 department shall determine to be appropriate.

17 d. The commissioner of health shall contract with not-for-profit agen-  
18 cies around the state that have experience with providing community  
19 based services to individuals with disabilities, hereinafter referred to  
20 as regional resource development specialists, who shall be responsible  
21 for initial contact with the prospective waiver participant, for assur-  
22 ing the waiver candidates have choice in selecting a service coordinator  
23 and other providers, and for assessing applicants including ~~[eligibil-~~  
24 ~~ity]~~ decisions for eligibility for participation in the waiver, which  
25 contain the original service plan and all subsequent revised service  
26 plans. Regional resource development specialists shall be responsible  
27 for approving service plans and the department of health shall provide  
28 technical assistance and oversight.

29 e. Prior to the person's participation in the waiver program, a  
30 service coordinator approved by the department of health shall undertake  
31 the development of a written plan of care for the provision of services  
32 consistent with the level of care determined by an initial assessment,  
33 in accordance with criteria established by the commissioner of health.  
34 Such plans shall set forth the type of services to be furnished, the  
35 amount, the frequency and duration of each service and the type of  
36 providers to furnish each service.

37 f. Nursing facility transition and diversion services which may be  
38 provided to persons specified in paragraph b of this subdivision shall  
39 be established and defined as part of the waiver application development  
40 process specified in paragraph c of this subdivision and may include:  
41 (i) case management services; (ii) personal care; (iii) independent  
42 living skills training; (iv) environmental accessibility adaptations;  
43 (v) costs of community transition services; (vi) assistive technology;  
44 (vii) adult day health; (viii) staff for safety assurance; (ix) non-med-  
45 ical support services needed to maintain independence; (x) respite  
46 services; and (xi) such other home and community based services as may  
47 be approved by the secretary of the federal department of health and  
48 human services.

49 g. The department of health shall designate who may provide the nurs-  
50 ing facility transition and diversion services identified in paragraph  
51 f of this subdivision, subject to the approval of the commissioner of  
52 health.

53 h. Before a person may participate in the nursing transition waiver  
54 program specified in this subdivision, the regional resource development  
55 specialists shall determine that:

1 (i) the individual is at least eighteen years of age and eligible for  
2 and in receipt of medicaid authorization for long term care services,  
3 including nursing facility services; and

4 (ii) the individual resides in a nursing facility and/or has been  
5 assessed and determined to require nursing facility care[ ~~and~~

6 ~~(iii) the individual can be considered to be part of an aggregate~~  
7 ~~group of individuals who, taken together, will be cared for at less cost~~  
8 ~~in the community than they would have otherwise.~~

9 ~~i. The responsible social services district shall reimburse the~~  
10 ~~department of health for twenty percent of the non federal share of such~~  
11 ~~costs].~~

12 § 2. Section 2 of a chapter of the laws of 2004, amending the social  
13 services law relating to authorizing the commissioner of health to apply  
14 for a nursing facility transition and diversion medicaid waiver, as  
15 proposed in legislative bills numbers S. 7073 and A. 11350-A, is renum-  
16 bered section 3 and a new section 2 is added to read as follows:

17 § 2. The opening paragraph of paragraph g of subdivision 1 of section  
18 368-a of the social services law, as added by chapter 816 of the laws of  
19 1983, is amended to read as follows:

20 Notwithstanding any other provision of law, reimbursement for the  
21 following services: care, treatment, maintenance and nursing services in  
22 nursing homes and health related care and services in intermediate care  
23 facilities provided in accordance with paragraph (b) of subdivision two  
24 of section three hundred sixty-five-a of this [~~chapter~~] title; home  
25 health services provided in accordance with paragraph (d) of subdivision  
26 two of section three hundred sixty-five-a of this [~~chapter~~] title;  
27 personal care services provided in accordance with paragraph (e) of  
28 subdivision two of section three hundred [~~sixty-five~~] sixty-five-a of  
29 this [~~chapter~~] title; [~~and~~] long term home health care programs  
30 services[ ~~] provided in accordance with section three hundred sixty-sev-~~  
31 ~~en-c of this [~~chapter~~] title; and nursing home transition and diversion~~  
32 ~~services provided in accordance with subdivision six-a of section three~~  
33 ~~hundred sixty-six of this title shall be made as follows:~~

34 § 3. This act shall take effect on the same date and in the same  
35 manner as a chapter of the laws of 2004, amending the social services  
36 law relating to authorizing the commissioner of health to apply for a  
37 nursing facility transition and diversion medicaid waiver, as proposed  
38 in legislative bills numbers S. 7073 and A. 11350-A, takes effect.

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