Frequently Asked Questions
Approved Traumatic Brain Injury Medicaid Waiver Application
and Conflict of Interest Criteria
February 16, 2018

1) Are we to do both Patient Review Instrument (PRI) and a Uniform Assessment System-NY (UAS-NY) effective September 1, 2017?

Effective September 1, 2017 all Level of Care (LOC) assessments for community based individuals will be conducted using the Uniform Assessment System-NY's (UAS-NY) Community Assessment. The Patient Review Instrument (PRI) will continue to be used for individuals who are placed in a nursing home or hospital. After September 1, 2017, if the individual has a completed PRI, the UAS-NY Community Assessment must be completed within 90 calendar days of the Notice of Decision (NOD) effective date and completed by a Registered Nurse (RN) who has completed all UAS-NY required training.

2) Who is responsible for adding the TBI participants into the UAS?

As instructed in UAS-NY Course 1200, Managing Your Organization's Case List, if no record is found after completing a case list search for a TBI participant's record, followed by a statewide search, the appropriate Regional Resource Development Center (RRDC) should create a new record for the TBI participant in the UAS-NY database.

3) If an individual does not obtain a Level of Care (LOC) score of 5 or greater what is the timeline to secure a second UAS-NY assessment? If they still do not score nursing facility level of care, who are approved providers to obtain an assessment, and what information must be included/addressed in this assessment?

In instances where the Nursing Facility Level of Care (NFLOC) score does not result in an eligibility determination, the assessment of the TBI population may be further enhanced by the addition of a subsequent clinical assessment or evaluation which focuses on cognitive and functional deficits, including ADL and IADL challenges, mood disorders, and balance concerns. A second UAS-NY assessment may be completed by an approved UAS-NY assessor, who may also be the RRDC Nurse Evaluator. There is no specific timeline assigned to completing the second assessment. There must be sufficient time to allow the participant to rest between assessments, the assessor to complete document reviews and to identify a second assessor.

Should the second assessment fail to support NFLOC, the individual may seek an additional clinical evaluation by: the applicant /participant's Primary Care Physician with knowledge related to the individual's TBI and/or TBI/neurocognitive specialist, an independent provider who specializes in or is knowledgeable about TBI disability examinations, Physical Medicine and Rehabilitation (PM&R) physician, Neurologist, Psychiatrist or Neuropsychologist. The clinical evaluation must demonstrate evidence of neurocognitive, behavioral and/or functional deficits on physical examination or diagnostic testing and/or meet DSM-5 criteria for major neurocognitive disorder and clearly indicate the individual requires NFLOC.

4) **If a LOC expires while going through the process to get additional assessments, what is the protocol to follow, as we will have individuals without active LOC assessments?**

   Providers should make every effort to secure the second UAS-NY Community Assessment in a timely manner with all available resources. Since coordinating a clinical assessment (alternate route) may require time to schedule, waiver participants/applicants are encouraged to request a fair hearing with aid continuing, so as not to experience an interruption in waiver services.

5) **Would a UAS-NY need to be completed for participants that request Independent Living Skills Training (ILST) through an addendum/RSP even though the previous LOC assessment has not expired?**

   No. The assessment on record would serve as the source necessary to complete the training plan and service goals. In the absence of a UAS-NY Community Assessment, other resources available in the participant's plan such as medical records, PRI and SCREEN, and case history may be used to develop the training plan until a UAS-NY Community Assessment can be completed.

6) **During transition, when conducting a UAS-NY for the NFLOC, do we have 90 days to get the UAS completed?**

   A PRI and SCREEN is used to assess level of care for individuals who are transitioning out of a nursing home or hospital. A UAS-NY Community Assessment must be conducted within 90 calendar days of the effective date of the Notice of Decision for any individual whose level of care was determined by a PRI-SCREEN.

7) **Will independent agencies have access to the Health Commerce System (HCS) to see the UAS?**

   Any qualified professional seeking to perform NFLOC assessments using the UAS-NY Community Assessment must complete a mandatory training to access the assessment tool. This on-line training prepares RN assessors to use the application and the assessment instruments. Any approved TBI waiver service provider, RRDS and/or NYSDOH waiver staff may perform and/or contribute to the assessment process and upon request, will have access to the HCS.

8) **What is the time frame for the UAS-NY to be completed?**

   Registered professional nurses trained to conduct the UAS-NY Community Assessment should make every effort to sign and finalize the assessment the day it is conducted or within a day or two of when it was conducted. Consideration should be made for participant/applicant fatigue, time necessary to review case and medical history, adapting communication style and questioning as soon as possible to ensure the assessment reflects the individual's current level of need. If any major changes occur in the individual's health or circumstances, a new UAS-NY Community Assessment can be conducted. The assessment must be conducted on an annual basis and within ninety (90) days of waiver enrollment.

9) Will the agency completing both screens be reimbursed for both the PRI and UAS-NY?

The PRI and SCREEN is no longer needed to establish NFLOC for TBI waiver services. As such, only the UAS-NY Community Assessment will need to be completed. There is no rate code assigned for completing assessments. Additional Home and Community Support Service (HCSS) hours are allowed for an HCSS/LHCSA to complete an assessment, or the assessment time may be billed as a nursing visit for a Certified Home Health Agency (CHHA).

10) The application states "The LOC assessment is completed within ninety days of the effective date of the Notice of Decision and annually thereafter." Is ninety days only referring to ISPs? If so what is the effective date?

The 1915c waiver application states that the UAS-NY Community Assessment is to be completed within ninety (90) days of the effective date of the Notice of Decision (for initial enrollment) and annually thereafter. Individuals who have another assessment on file prior to September 1, 2017 will not have to complete another assessment until one year after the date of that assessment. Subsequent assessments are to be completed annually.

11) Will provider agencies be doing the UAS-NY?

The UAS-NY Community Assessment must be conducted, signed and finalized by an RN who has completed the UAS-NY required training. The on-line training prepares assessors to use the application and the assessment instruments. Any qualified TBI provider, RRDS and/or NYSDOH waiver staff may perform and/or contribute to the assessment process. Only a Registered Professional Nurse trained in the implementation of the tool can sign and authorize the assessment.

12) If participants are deemed ineligible, what will happen to those that need TBI waiver services to remain independent and safe in the community? Who will support them?

All individuals seeking 1915c Medicaid waiver services must require a nursing facility level of care as evidenced by a score of five (5) or above on the UAS-NY in order to be eligible for waiver services. NYSDOH has implemented protocols which provide for an alternate route to eligibility if the participant does not meet level of care requirements on the UAS-NY. If the participant is ultimately deemed ineligible to remain on the waiver, they are encouraged to access Medicaid state plan services available on a fee-for-service basis or managed care product.

13) Is it acceptable for the nurse to complete the UAS-NY at the team meeting? This would eliminate the need for an additional visit and allow the UAS-NY to be completed at the team meeting.

Providers are encouraged to implement agency policies that allow for UAS-NY assessments to be completed in compliance with timelines established by CMS and NYSDOH. The UAS-NY is to be completed in an environment most comfortable for the individual with family support and/or individuals with knowledge of the participant's strengths, weaknesses and ability, free from distraction. The UAS-NY Community Assessment is not to be completed at a team meeting.

14) **When does the two (2) year time limit associated with Community Integration Counseling (CIC) begin**?

The two (2) year period begins with the approval of the next annual service plan after September 2017.

15) **When do the service limits for Independent Living Skills Training (ILST) and Positive Behavioral Intervention and Supports (PBIS) begin?**

The new service limit schedule begins with the approval of the next annual service plan after September 2017.

16) **Is there a possibility to have a limited number of hours of Independent Living Skills Training (ILST) assessment to determine the safety and behavioral concerns of the waiver participants while they are out in the community?**

Each service plan contains an approved number of annual service units a provider is authorized to deliver. No additional hours are provided to complete initial and re-assessments for ILST. The service is not to exceed two hundred twenty (220) hours annually and limited to no more than four (4) hours daily.

17) **If a service plan is completed prior to the effective date of the new waiver application, September 1, 2017, when is the next service plan due?**

The service plan is now required to be completed annually. The next plan would be due one year from the date of approval of the existing plan.

18) **Home Evaluators/Driver Rehab Specialist: Do they need to be a waiver provider or could they be a subcontractor for the provider? Are there new forms for this service? Does documentation of the qualifications of the evaluator need to be kept with the e-mod provider or included in the e-mod packet?**

The Home Evaluator or Driver Rehabilitation Specialist does not have to be a waiver provider. Current forms will be revised to reflect the changes in the recently approved waiver application. These will be made available to providers as they become available and the revised Program Manual is completed.

19) **Could the Executive Director be director over Positive Behavioral Interventions and Support Services (PBIS)? Are Director/Supervisor qualifications grandfathered also?**

To serve as PBIS Director, the candidate must meet the qualifications outlined in the approved waiver application. Any approved provider offering Positive Behavioral Interventions and Support Services at the time the application was approved (September 1, 2017) is approved to continue service provision until the person terminates their employment with his/her current employer. New employees/providers are required to meet the new qualifications. An Executive Director may supervise service provision as long as he/she meets the qualifications and has sufficient time to provide the required supervision and support.

20) Independent Living Skills Training Services (ILST) qualifications indicate that any agency with more than two (2) ILSTs must provide supervision. Does the supervision requirement apply only if the ILST do not meet the new qualification requirements?

As per the new application guidelines, no supervisor qualifications are listed, and the ILST supervisor must fully meet the qualifications of an ILST provider. If there are more than two ILST staff, a supervisor must be designated.

The supervisor is expected to meet any waiver participants prior to approving the training plan developed by an ILST under their supervision, have supervisory meetings with staff on at a monthly basis, and review and sign-off on all training plans.

21) Will Independent Living Skills Training Services (ILST) and/or Community Integration Counseling (CIC) staff who meet the requirements in the 2009 TBI Program Manual, but not the approved application be able to continue to provide services?

Any provider currently providing ILST and/or CIC approved prior to the waiver approval is permitted to continue that service provision as long as he/she continues to be employed by the same organization. Staff not meeting the new qualifications will have their qualifications sunset when they terminate employment with the agency they were employed at the time of the application approval.

22) The application is cited as being an "enhancement" to the current TBI Waiver manual. Therefore, if an item is not mentioned in the application but is in the 2008 manual, can I assume I would still follow those guidelines?

The reference provided indicates that the Program Manual provides more operational detail and requirements than the waiver application. New staff must meet the requirements established in the waiver application. Current forms and protocols will be revised to reflect the changes in the recently approved waiver application. This information will be made available to providers as they become available. A revised Program Manual is in development.

23) A Community Integration Counseling (CIC) staff has applied to my agency. The person has a Master's in Psychology and has 10 years' experience providing CIC at another agency. If staff were to transition to a new agency is it true that this particular staff could no longer be in a CIC role?

A Master's Degree in Psychology only does not meet the new qualifications. In order to serve as a CIC in your agency, this individual needs to meet the qualifications as they are laid out in the currently approved application.

24) How is billing completed for UAS-NY Assessments that are not service recipients at our agency?

There is no specific rate code assigned to the waiver for the completion of UAS-NY assessments. UAS-NY assessments may be billed as a nursing visit if the agency is licensed to provide and bill for nursing visits.

25) What rates should be reflected in the service plan grids?

All Service Plans approved by the RRDC after September 1, 2017 should reflect the rates effective April 1, 2015 as indicated on the eMedNY notice issued to waiver providers.

26) There are now allowable RN billable visits for supervision of the Home and Community Support Services (HCSS) staff. Is this service allowed to overlap with the HCSS service?

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). Subsequent visits made by the selected provider's supervising RN for on-the-job training of the HCSS staff are considered administrative costs and, therefore, are not billable and as such incurred by the provider. HCSS staff should not provide care during the RN visits to avoid duplicate billing.

27) Will DOH Rate division be formally notifying TBI Waiver providers that the Home and Community Support Services (HCSS) rate has changed effective 9/1/2017?

This notice will be distributed by the NYSDOH Rates Unit and/or eMedNY Notice.

28) Should a Service Coordinator (SC) who is submitting an addendum to increase Home and Community Support Services (HCSS) hours and reduce Structured Day Program (SDP) utilize the current rates despite the Revised Service Plan (RSP) having been approved prior to 9/1/17?

The Service Plan should reflect the current rate at the time of the addendum submission.

29) Can there be more than three (3) billable visits that the Home and Community Support Services (HCSS) nurse can have? For example, the Licensed Home Care Support Agency (LHCSA) regulations state that the patient must be evaluated prior to staff returning to care for the patient. Could there be three (3) nursing visits and (3) prn visits for reassessment not to exceed a total of 12 annual units?

The language in the approved waiver application is specific. The twelve (12) hours of nursing (billed at a rate of up to four (4) hours/units per visit, three (3) times per year) are for RN assessment visits. Subsequent visits made by the selected provider's supervising RN for on-the-job training of the HCSS staff are considered administrative costs and, therefore, are not billable and as such incurred by the provider.

30) Is one (1) unit equivalent to one (1) hour of RN visits?

The service definition of Home and Community Support Services (HCSS) now allows for RN visits for the purposes of assessment or supervision. One (1) hour of HCSS is one unit/hour of RN assessment/supervision. RN assessment/supervision visits can be up to four (4) hours each visit and may occur up to three (3) times per year. HCSS staff cannot bill at the same time as the RN assessor/supervisor, as that would be duplicate billing.

31) When must Conflict of Interest (COI) requirements be in place for Service Coordination?

Providers are expected to be in full compliance with the Conflict of Interest standards by January 2019.

32) Can you please clarify anything that falls under the new Conflict of Interest (COI) guidelines that is in effect as of September 2017?

With the approval of the TBI Waiver application and the Conflict of Interest criteria which have been established, all providers are expected to be compliant by January 2019. NYSDOH will work with the Regional Resource Development Centers (RRDCs) in the interim to provide support in achieving full compliance. Providers will be required to have interim compliance measures in place prior to January 2019.

33) What are the changes in TBI Incident Reporting?

The definitions of Serious Reportable Incidents (SRIs) have been amended to include:

- Abuse: subcategories include physical, sexual, psychological, seclusion, restraint, mistreatment and/or aversive conditioning;
- Neglect;
- Violation of a person's civil rights;
- Missing person;
- Death of a waiver participant due to circumstances that were not of a natural cause;
- Unplanned hospitalization which results in admission/observation for greater than 24 hours;
- Possible criminal action; and
- Medication error/refusal.

The investigation process remains the same.

The definitions of recordable incidents have been amended to include:

- Injury accidental in nature: must be reported to the RRDC within 24 hours to determine if it will be categorized as an SRI;
- Death due to natural causes when in a treatment facility or hospice environment: must be reported to the RRDC within 24 hours to determine if it will be categorized as an SRI; and
- Sensitive Situation: any situation related to a waiver participant that needs to be monitored for a potential adverse outcome. This includes events that attract media attention or inappropriate activity which could threaten the participant's ability to remain in the community.

34) Serious Reportable Incident (SRI) categories: exploitation will that be added to abuse or taken off SRI form?

There is no longer a specific category of exploitation included in the SRI reporting. However, the act of exploitation is now included as a possible criminal act or mistreatment. This will be further defined in the revised Program Manual.

35) Will Sensitive Situation still be a Serious Reportable Incident (SRI)?

Sensitive Situation will be categorized as a Recordable Incident. It includes any situation related to a waiver participant that needs to be monitored for a potential adverse outcome. This includes events that attract media attention or inappropriate activity which could threaten the participant's ability to remain in the community.

36) Does proof of a Serious Incident Review Committee (SIRC) meeting/review need to be submitted to the RRDC prior to closing the incident?

For an investigation to be considered closed, the final investigation report must be submitted to the RRDC and the provider's SIRC must have met, reviewed the investigation and indicated that the incident is closed.

37) Are providers reporting incidents to the Justice Center now?

No, providers will continue to report to the Regional Resource Development Center (RRDC).

38) Will the database be changed to reflect the change in timelines?

NYSDOH is in the process of updating the waiver databases. Included in this upgrade will be reports to assist in maintaining compliance with the requirements in the recently approved application.

39) What are the expectations for the Independent Living Skills Training (ILST) and Positive Behavioral Intervention and Supports (PBIS) assessments?

The Independent Living Skills Training (ILST) provider will use the comprehensive functional assessment provided through the UAS-NY to identify participant strengths and weaknesses in performing Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL), identify desired goals and outcomes, and develop a plan that outlines necessary steps to attain their ILST goals.

The Positive Behavioral Intervention and Supports (PBIS) assessment is a comprehensive assessment of the individual's behavior that is completed in the context of his/her medical diagnosis, abilities/disabilities, and the environment which precipitates the behaviors. The number of hours utilized to complete this assessment must be included in the service plan and may not exceed ten (10) hours. This assessment must be consistent with information contained within the UAS-NY assessment.

40) Is there any tracking for the provider that needs to be submitted to the RRDC or oversight the RRDC needs to do to assure monthly supervision of providers are occurring or Directors meeting all participants in the agency's caseload?

By signing a service plan, the supervisor/director is attesting that they are complying with the requirements of the waiver as outlined in the application approved effective September 1, 2017. Additionally, this information may be captured by Individual Service Reports (ISRs) and/or Team Meeting Minutes. As the Program Manual is revised, new forms may be implemented.

41) Are we to remove the ten percent (10%) administrative fee for Community Transitional Services (CTS)?

An administrative fee for Community Transitional Services (CTS) is not allowable and should not be included in the service plan. The approved application states: "This service includes: the cost of moving furniture and other belongings; security deposits; broker's fees required to obtain a lease on an apartment or home; purchasing essential home furnishings; set-up fees or deposits for utility or service access (e.g. telephone, electricity, heating); and health and safety assurances such as pest removal, allergen control, or one-time cleaning prior to occupancy, costs and/or fees associated with securing the service."

42) What is the timeframe to release the updated TBI Waiver manual reflecting the changes in the approved application?

There currently is no specific date.

43) Will employees who do not meet the new qualifications outlined in the application and are "grandfathered" be allowed to move to a new agency if their existing agency closes and/or stops providing the service for which they were grandfathered?

As stated in the approved waiver application, the grandfathering of current providers sunsets when a grandfathered staff person's employment is terminated. If an agency closes or no longer provides a particular service, then the employee will be unable to transition to a new agency under the previously approved provider qualifications. Additional considerations will be applied should a provider merge or acquire another provider. This will be addressed on a case by case basis and is contingent on the terms associated with the new agency.

Recently CMS has requested that the term "grandfathering" no longer be used. Once a person who currently does not meet the approved qualifications terminates their employment with the waiver service provider, they are no longer allowed to provide waiver services under the old qualifications.

44) When will the workgroup on cost reports start? And can providers receive a draft of the template proposed in the coming weeks to prepare in advance?

A presentation is being developed by the NYSDOH Rates Unit. A webinar will be scheduled in the near future.

45) The new application states that <u>quarterly</u> visits still occur in the home. The November 17, 2017 Town Meeting PowerPoint said the requirement has changed and it's now only once <u>every 6 months</u> – please clarify.

There appears to be some confusion regarding the information presented. As per Appendix C-1 of the approved application, the Service Coordinator is responsible for: Conducting monthly face to face visits and in-home visits with the participant no less than once a quarter. The information presented on the November 2017 Town Meeting PowerPoint specifies that **<u>team meetings</u>** are to occur every six (6) months.

46) We understand that a Service Coordination (SC) supervisor must see each participant before the plan is approved. Does this have to be the same supervisor that signs off on the plan?

As per the information contained in the Major Changes section of the Main Module of the approved waiver application, the Service Coordination Supervisor must meet with all waiver participants served by the Service Coordinators they supervise. The Service Coordination Supervisors must review and sign all service plans completed by the Service Coordinators they supervise.

The purpose of this meeting is to ensure that the supervisor has first-hand knowledge of the waiver participants for whom they are approving plans.

47) We have a Service Coordinator (SC) who would be grandfathered with our agency since she does not meet the current SC qualifications. I cannot locate where it breaks out different qualifications for a Service Coordination Supervisor other than to say if you qualify as a Service Coordinator you qualify as an Service Coordinator Supervisor. Does this mean that we could look at using her as our Service Coordination Supervisor?

The Service Definition in Appendix C-1 states that all agencies employing two (2) or more Service Coordinators must provide supervision by an individual who fully meets the qualifications as a Service Coordinator. Because Service Coordinator Supervisor is a position that was not required prior to the current approved application, a supervisor must fully meet the qualifications as they are written in Appendix C-1.

48) If an agency has one Service Coordinator and they also qualify to be the Service Coordinator Supervisor, can they supervise themselves?

The Service Definition found in Appendix C-1 of the current approved application states that all agencies employing two (2) or more Service Coordinators must provide supervision by an individual who fully meets the qualifications as a Service Coordinator, therefore an agency with only one (1) Service Coordinator would not be required to have a Service Coordinator supervisor.

49) Regarding the new supervisory requirements:

a. Can the monthly supervision of staff be a phone conference?

The purpose of the meeting is to review participant cases, address staff concerns and to serve as a resource to staff and participants. Further instruction regarding this process will be included in the revised Program Manual. Case conference/supervision discussions should be documented. They should reflect a team approach. The method of the conference is at the discretion of the provider.

b. The supervisor must meet with the participant prior to signing off on the training plan. For Independent Living Skills Training (ILST), does this mean the detailed goal plan? This would mean two annual meetings.

The application states the UAS-NY is used to develop the detailed plan/training plan and service goals for ILST services. Additionally, the application states that the supervisor is expected to meet with any waiver participants prior to approving the training plan developed by an ILST under their supervision.

c. Supervisors are now required to meet with participants at least annually (semi-annually if the above is correct). Can these be phone meetings as well?

Further instruction regarding this process will be included in the revised Program Manual. All participant meetings are to be face to face and may include participation and discussion at a Team Meeting. Response from participants/families has been extremely positive that supervisors will have direct knowledge of the waiver participants they serve and can serve as a back-up for staff.

50) Are you able to direct Positive Behavioral Intervention and Supports (PBIS) providers on how to proceed with cases in which the clients are approved over 240 annual PBIS hours? I understand that effective September 1, 2017 the new manual caps PBIS hours, nevertheless, my agency provides services to clients whose current approved RSPs indicate higher hours. Does the RRDC have the ability to approve higher PBIS hours at their discretion?

Participants who completed an assessment and have an approved service plan prior to the implementation of the new service limits will still be eligible to receive the approved services; however, they will have to adhere to the new service limits when a new service plan and assessment is completed.

51) See below and please clarify why there should be a form submitted for those pursuing Olmstead housing which is open to people both on and off the waiver. Does this put DOH in the position of potentially denying someone for a subsidy for which DOH is not in charge of as in the case of Olmstead?

Additionally, attached is a Prior Approval Request form for individuals seeking to request the housing subsidy. Any participant/applicant that may be in need of housing and/or seeking housing should have a form completed and submitted to the RRDC (This includes individuals who are applying for housing through alternate programs, such as Olmstead).

The TBI Housing Subsidy is the payer of last resort. The TBI Housing Subsidy needs to plan for potential funding needs. Since there are resources available via Olmstead, that program should be accessed first. If a participant/applicant is never going to seek a TBI Housing Subsidy and only Olmstead, then the prior authorization is not required. In most circumstances if the person is denied Olmstead, then they request TBI Housing. The program needs to be able to anticipate future costs. Additionally, the Regional Resource Development Centers (RRDCs) have indicated that on many occasions, they are not even aware that Olmstead support is being sought on behalf of a person. This form is requested in order to project future utilization and costs for the program(s).

52) Is a Service Coordinator (SC) allowed to provide other waiver services as long the services provided are not to a participant assigned to their own caseload? For example: provide Positive Behavioral Intervention and Supports (PBIS) for a participant that they do not provide service coordination?

Yes, these interim measures will remain in place until January 2019 when all providers will need to be in full compliance.

53) The following statement is provided on the Conflict of Interest Compliance Plan template. What does it mean: *Describe who reviews service limits, frequency and duration of services in conjunction with the service plan review.*

Explain who in the provider agency reviews the services needs identified in the service plan in relationship to frequency and duration.

54) A slide from the Conflict of Interest Compliance Plan webinar discusses "case acceptance determination." It states, "provider agencies may not accept/deny cases based on the waiver participant's personal history, whether medical or otherwise and may not receive any participant's person information until after a case has been accepted". This goes against the LHCSA regs (766.3) which states "all patients are accepted for health care services only after a determination has been made by a registered professional nurse or by an individual directly supervised by a registered professional nurse that the patent's needs can be safety and adequately met by the agency." Please explain how providers can remain compliant with both.

As the waiver existed prior to the current application (approved September 1, 2017), a nursing assessment would not be completed by the HCSS agency until after a provider was selected by the participant. By the participant's very acceptance onto the waiver, it established that the participant is appropriate for waiver services, i.e., can be served safely in the community with the support of available services. The currently approved application does not change this sequence of events, and therefore is in compliance with both the conflict of interest provisions put forth by NYSDOH and the LHCSA regulations. A provider should not discriminate against a case based on the medical history of the person, nor should it "cherry pick" cases based the hours of services indicated in the participant's service plan. Providers may choose not to serve a case; however, that decision should be based on the individual assessment completed by the registered nurse employed by the LHCSA, not the prior history of the participant.

55) In the PowerPoint, does "entity" mean "provider agency?"

Yes, "entity" refers to an agency that is approved to provide waiver services.

56) With the new restrictions for staff qualifications, finding eligible providers for our waiver participants has become more than challenging. Since there have been so many new degrees since the initial creation of the application, can there be adjustments to the current requirements for Community Integration Counseling (CIC), Positive Behavioral Intervention and Supports (PBIS) and Independent Living Skills Training (ILST)? For instance, there is a new degree called Master's in Disabilities which is more pertinent to our population than some of the licensing degrees.

It has been determined by NYSDOH and CMS that the qualifications listed in the approved waiver application are the standard by which all new employees will be held.

Not every degree meets NYSDOH or NYS Department of Education (NYSDOE) scope of practice requirements. For example: "The MA in Disability Studies is a liberal arts degree that does not lead to certification or licensure in any of the applied professions (social work, special education, or rehabilitation counseling)."

57) Can licensed Mental Health Practitioner be added to Positive Behavioral Intervention and Supports (PBIS)?

It has been determined by NYSDOH and CMS that the qualifications listed in the approved waiver application are the standard by which all new employees will be held.

58) Is the restriction for licensing for Community Integration Counseling (CIC) still required, and if not, can Masters in Psychology be reinstated as an eligible degree?

It has been determined by NYSDOH and CMS that the qualifications listed in the approved waiver application are the standard by which all new employees will be held. NYSDOH is not seeking to amend the qualifications in the application at this time.

59) Can there be more of a clarification for the Independent Living Skills Training (ILST) section? The confusion can be eliminated by calling those who meet the first more restrictive requirement 'supervisors'. This is the case for Positive Behavioral Intervention and Supports (PBIS) where the program director supervises the behavior specialists. The fact that no classification is designated as a supervisor means that even the supervisor needs to be supervised or an agency can appoint an individual with an associate's degree to supervise a licensed professional for one case and then reverse the role for the next.

Further clarification regarding supervision will be included in the revised Program Manual. Staff are to be supervised by individuals with at least comparable qualifications. NYSDOH chose to not implement a "tiered" approach to qualifications as previously presented in the application and Program Manual. In the past, this has created significant audit issues.

60) The limitation of Positive Behavioral Intervention and Supports (PBIS) and Independent Living Skills Training (ILST) to four (4) hours per week will have a significant impact on waiver participants, staff and agencies. Many of the increased hours have been requested by the RRDS knowing the effectiveness of the services for the more challenging waiver participants to remain on the Waiver. Therefore, can the RRDS make a determination when such increases are necessary for PBIS and ILST? If this is not an option, can the new four (4) hour limit only apply to any new waiver participant? If this is still not an option, can the current waiver participants receiving more than six (6) hours be grandfathered for two (2) years?

The service limits in the approved waiver application were established by CMS after discussion with NYSDOH. A Notice of Decision will be issued when a service is denied and/or decreased and the participant is entitled to due process related to that decision.