



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 12, 2020

Dear NHTD and TBI Waiver Service Provider:

The purpose of this letter is to formally notify you that no later than January 1, 2021, New York State must comply with the Federal Conflict of Interest requirements of federal rules at: [42 CFR 441.301\(c\)\(1\)\(vi\)](#) (the Federal Conflict of Interest Rule) for waiver services provided under the Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) Home and Community Based Services (HCBS) 1915c Waivers. In summary, this rule states that providers of case management (Service Coordination) activities must be independent of service provision. A provider cannot provide both direct service and case management to the same individual except under unique circumstances set forth in regulation.

To facilitate compliance with the Federal Conflict of Interest Rule, the New York State Department of Health (NYSDOH) has collaborated with providers, the Centers for Medicare and Medicaid Services (CMS), Regional Resource Development Centers (RRDCs) and other stakeholders in determining a path for compliance. Most recently those collaborations include meetings held on January 11, 2019, March 6, 2019, May 14, 2019, August 8, 2019, and November 4, 2019. The result of those meetings was the identification of four models that are compliant with the Conflict of Interest Rule for the delivery of services under the NHTD and TBI waivers. Accordingly, on or before January 1, 2021, waiver providers must be delivering services under one of the following four models:

- Providers may choose to provide Service Coordination (SC) only;
- Providers may choose to provide SC and exempt waiver services only (exempt waiver services include: Assistive Technology (AT), Environmental/Vehicle Modifications, Community Transitional Services (CTS), Moving Assistance, Congregate Meals);
- Providers may choose to provide all waiver services except for SC; or
- Providers may choose to continue provision of all waiver services (including SC) but cannot provide both SC and another direct waiver service to the same participant.

To ensure a smooth transition to these provider models, NYSDOH previously requested that you submit your model of choice and transition plan to NYSDOH. This information is critical to help ensure the needs of waiver participants are met while at the same time ensuring federal compliance.

Based on the Conflict of Interest compliant model you choose, that information will be used to identify waiver participants that may need to transition from services provided by you to another provider. If you have not already done so, you must formally advise NYSDOH and the RRDC no later than **March 20, 2020** of your choice of service model.

Effective June 1, 2020, any new waiver participant entering waiver services, will select providers, including service coordination, from a list of providers that are COI compliant.

We appreciate your assistance in implementing the Federal Conflict of Interest Rule and ensuring the smooth transition of services. We will work with you over the next several months to begin the transition of cases/services to ensure the state is fully compliant with the Conflict of Interest Rule on or before January 1, 2021.

If you have any questions regarding this information, they may be directed to waivertransition@health.ny.gov or you may contact the RRDC.

Sincerely,

A handwritten signature in black ink that reads "Lana I. Earle". The signature is written in a cursive, flowing style.

Lana I. Earle
Director
Division of Long Term Care

cc: NYSDOH Waiver Unit