

Children's Waiver COVID-19 Ineligible HCBS/LOC Clarification

The following is to clarify previously issued COVID-19 Children's Waiver HCBS (Home and Community Based Services) Eligibility Guidance and Frequently Asked Questions (FAQ).

Due to the COVID-19 State of Emergency, New York State Department of Health (NYS DOH) submitted and received approval of an Appendix K from the Center for Medicare and Medicaid Services (CMS) to afford the Children's Waiver participants and providers flexibility for Waiver requirements. As such, the [Elements of the Approved Appendix K](#) and [FAQ to Address Appendix K COVID-19 Questions](#) were provided, which included the following:

Appendix K outlines that:

The annual HCBS/LOC (Level of Care) Eligibility Determination reassessment requirement is **suspended**. Any annual re-assessment HCBS/LOC Eligibility Determination that is due and cannot be completed, is waived and will be extended up to one year past the due date of the re-evaluation.

Additionally, from the FAQ question # 9:

What happens if the HHCM conducts the annual HCBS/LOC re-assessment and the child is no longer found eligible?

Answer:

If a Children's Waiver participant is found ineligible after a HCBS/LOC re-assessment has been completed, the care manager should properly document the decision to discharge from HCBS after discussion with the child/youth (if age appropriate), the family, HCBS providers, other involved professionals, and the Managed Care Plan (if enrolled). The care manager may consult with the Department on individual cases and request a temporary override as necessary so that the child/youth can continue to receive HCBS.

*If the participant's Medicaid is dependent upon Children's Waiver eligibility and enrollment (Family of One Budgeting) and is no longer HCBS eligible, then the participant **should not** be discharged and will receive another year of eligibility unless the participant, parent, guardian, or legally authorized representative would like the participant to be disenrolled.*

It is encouraged that the entire FAQ is read and reviewed

During COVID-19, when an HCBS child/youth is found ineligible:

If an annual HCBS/LOC re-assessment is due for a child/youth and is able to be completed, but the child/youth is found HCBS/LOC ineligible **AND**

1. There is a concern of a potential risk of institutionalization (hospital/nursing home/residential) in absence of the waiver services during the State of Emergency, **OR**
2. The child/youth Medicaid eligibility was determined on Family of One budgeting and should not be disenrolled unless otherwise directed by the member/family

The attached **HCBS/LOC Review Request Form** must be completed by the Health Home care management agency.

Please Note: Health Home Care Manager (HHCM) assessors should not complete HCBS/LOC assessments/re-assessment multiple times after the child/youth is found ineligible to obtain a different outcome. Conducting multiple HCBS/LOC assessments for a child/youth in a short period of time may put the HH Care Management Agency (CMA) at audit risk.

Required Steps for Requesting a Review of Ineligible Determination

The HHCM will complete and submit the “**HCBS/LOC Review Request Form**” to the lead Health Home for which the child/youth is enrolled for review and notification to the Health Home. The Health Home will notify the HH care manager of the acceptance or denial of the request and submit a copy of the **HCBS/LOC Review Request Form** to NYS DOH Capacity Management for future auditing purposes and verification of appropriate R/RE: K-code. The **HCBS/LOC Review Request Form** will be submitted to NYS DOH through the capacitymanagement@health.ny.gov HCS Secure File Transfer mailbox due to sharing personal health information (PHI) with the subject: *HCBS Ineligible Review*. Please submit only one email **HCBS/LOC Review Request Form** per child/youth.

Child and Youth Evaluation Services staff will submit the **HCBS/LOC Review Request Form** directly to NYS DOH capacitymanagement@health.ny.gov HCS Secure File Transfer mailbox.

After Submission to the Lead Health Home

Once received, the lead Health Home will review the request for continue HCBS/LOC eligibility and verify that the child/youth’s HCBS eligibility is properly noted with appropriate K-code. Within three (3) to five (5) business days, the Health Home will notify the HHCM and NYS DOH with their findings.

During the review process outlined above, the HHCM should continue to serve the child/youth, continue HCBS, and should not issue a Notice of Decision (NOD) until the decision is made.

If review request IS Granted:

- The HHCM/C-YES will notify the child/youth/family of HCBS eligibility and issue the appropriate Notice of Decision (NOD), following the process established.
- The HHCM/C-YES will notify the Medicaid Managed Care Plan, if the child/youth is enrolled, and all HCBS providers and other involved Care Team providers.
- The HHCM/C-YES will document in the case record the **approval** granted and a copy of the granted decision on the **HCBS/LOC Review Request Form**.
- NYS DOH will ensure the R/RE: K-code is placed/continues on the members file
- NYS DOH will enter in the UAS under the Fair Hearing/State Override assessment node to document that the child/youth is approved for continued HCBS

K-code will remain on the child/youth’s file to notify Medicaid Managed Care Plans, Health Homes, HCBS providers, and other providers that the child/youth remain HCBS enrolled even with the HCBS/LOC ineligibility outcome.

If the review is NOT Granted:

- The HHCM/C-YES will notify the child/youth/family of HCBS denial and issue the appropriate discharge NOD, following the process established.
- The HHCM/C-YES will notify the Medicaid Managed Care Plan, if the child/youth is enrolled, and all HCBS providers and other involved Care Team providers of discharge of the child/youth.
- The HHCM/C-YES will document in the case record the **denial** and a copy of the denial on the **HCBS/LOC Review Request Form**.
- The HHCM/C-YES will notify NYS DOH Capacity Management of the disenrollment and the need for the removal of the R/RE: K-code.
- NYS DOH will verify the R/RE: K-code removal.

Note: HHCM/C-YES should ensure they are following the NOD process according to the [Children's HCBS Manual](#) and provide proper notification to NYS DOH Capacity Management for the removal of the K-codes once the child/youth is officially discharged from HCBS Waiver.

Any questions regarding this policy should be directed to the NYS DOH Health Home Serving Children's mailbox at HHSC@health.ny.gov with the subject line: HCBS Ineligible Review.