



Department
of Health

HCBS Final Rule Background and Compliance Review Overview for the Children's Waiver

Agenda

- ✓ HCBS Final Rule Overview and Standards
- ✓ Understanding HCBS Person-Centered Planning
- ✓ Assessment of Children's Waiver HCBS Providers for Final Rule Compliance
- ✓ Additional Resources

HCBS Final Rule Overview and Standards

HCBS Final Rule Background

- The HCBS Settings Final Rule (Final Rule), a federal Medicaid regulation effective March 17, 2014, set new standards to **promote community involvement and independence for people who receive Medicaid-funded home and community-based services (HCBS)**.
- These federal standards apply to all HCBS provided through New York's 1915(c) waivers, Community First Choice Option, and the 1115 waiver, which includes Managed Care and Managed Long Term Care.
- The Rule also set new person-centered planning and conflict of interest requirements.

HCBS Final Rule: Settings Standards

- According to the HCBS Final Rule, all HCBS providers through NY's 1915(c) waivers, Community First Choice Option, Managed Care, and Managed Long Term Care, must meet the home and community-based definition (i.e., not a nursing home, Institution for Mental Diseases, Residential Treatment Facility, etc.)
- Additionally, they cannot have the qualities of an institution defined as the following:
 - **Prong 1:** located in a building that is also a publicly or privately-operated facility that provides institutional treatment or care;
 - **Prong 2:** located in a building on the grounds of, or immediately adjacent to, a public institution;
 - **Prong 3:** has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

HCBS Final Rule Standards

The Final Rule's standards rules *for all settings* where HCBS are provided:

1. ensure that people receive services in settings that are integrated in, and support full access to, their community;
2. include opportunities to seek employment and work in competitive settings (i.e., where people receive standard wages) within the community;
3. engage in community life, control personal resources, and receive services in a similar way as individuals who do not use HCBS services;
4. be selected by the individual from among the options available;
5. ensure rights of privacy, dignity, respect, and freedom from coercion and restraint;
6. optimize an individual's autonomy and independence in making life choices;
7. facilitate an individual's informed choice about their services and who provides them;
8. are physically accessible to the individuals supported;

HCBS Final Rule Settings Standard (*con't*)

9. provide freedom and support for individuals to control their own schedules and activities; and
10. provide individuals access to food (meals and/or snacks) and visitors at any time.

The last two highlighted standards above are the only ones that may be changed or modified, and only on a case-by-case basis for a specific individual:

- When there is a specific need that has been identified that a person requires staff support for (a diagnosis alone is not enough information to support a modification)
- On a time-limited basis (reassessing periodically to see if the modification is still needed)
- After less restrictive and more positive approaches were tried and failed

Understanding HCBS Person-Centered Planning

Person-Centered Plan Requirements

- The HCBS Final Rule established many new standards regarding Person-Centered Planning (PCP), such as requiring a person-centered service plan for every person who receives Medicaid-funded HCBS – 42 CFR 441.301(c)(1).
 - *These requirements are also included in Section 2402(a) of the Affordable Care Act.*
- Person-Centered Plans must identify individuals':
 - Strengths
 - Preferences
 - Needs (clinical and support)
 - Desired outcomes
- Providers can enhance person-centered planning and compliance with this component of the HCBS Final Rule by:
 - Eliminating blanket program rules/restrictions and use required process to make modifications to HCBS standards on a case-by-case basis
 - Using plain language in all documents
 - Including goals important to the participant (i.e., meaningful activities, relationships, etc.) and balancing with goals related to health, safety, etc.

Person-Centered Plan Requirements (*con't*)

Person-Centered Plans must also:

- Assist the person in achieving outcomes they define for themselves in the most integrated community settings they desire
- Be developed through a process where individuals get the right information and support so that they can direct the process as much as possible
- Document the individual's choice of services and supports they receive and from whom
- Document settings options provided that are not specifically designed for people with disabilities
- Include people in the planning meeting that are chosen by the person served
- Be updated at least once a year at times and locations convenient to the individual
- Take into consideration the person's culture and background
- Use non-technical or plain language, adjusting language as needed
- Include strategies for solving disagreement(s) and managing risk factors
- Provide a method for the individual to request updates

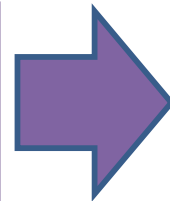
Assessment of Children's Waiver HCBS Providers for Final Rule Compliance

New York's HCBS Site-Level Assessment

- As of March 2023, DOH and State Partners assessed and determined compliance for all Medicaid HCBS providers in New York.
- State Agencies must continue to assess the compliance of any new providers AND take steps to monitor the compliance of providers that have previously been assessed.
- Assessing the compliance of new providers includes a CMS-approved process:
 - Review site address to determine if the setting is located in a building that is also a publicly or privately-operated facility that provides institutional treatment or care or is located in a building on the grounds of, or immediately adjacent to, a public institution (i.e., Prongs 1 or 2)
 - Provider self-surveys
 - Documentation review
 - Site visits as indicated

Children's Waiver HCBS Site-Level Assessment

Step 1. Determine whether the setting is prohibited under the HCBS Final Rule (i.e., Prong 1 or 2)



2. HCBS Provider Assessment Survey

3. HCBS Documentation Worksheet

4. Onsite Assessments, as indicated

5. Compliance Determinations and Remediation Efforts

DOH will work with HCBS providers to assess Final Rule compliance for all designated sites.

Step 1: Determine Compliance with Settings Standard

- DOH will review the provider's address for proximity to an institutional setting (i.e., Prong 1 or Prong 2) and ensure the site address is not also the same address as an institutional setting.
- If meeting criteria for Prong 1 or Prong 2, DOH will conduct outreach to the provider to learn more about the setting and how HCBS is provided before proceeding with designation.
 - If site is administrative only and HCBS is provided solely in the home and/or the community, this *may* be permissible
 - Respite providers are not subject to the settings component of the HCBS Final Rule

This step is conducted as part of the provider designation application review.

Step 2: Provider Self-Assessment

- A link to the HCBS Provider Self-Assessment [survey](#) will be provided to all newly designated providers upon submission of their signed Provider Designation Attestation.
- Survey responses will flag whether potentially isolating characteristics are present at any of the HCBS provider's sites and will also indicate whether an onsite review may need to be conducted.

This step is conducted upon the provider's submission of the Designation Attestation, with a due date of one month from submission of the Designation Attestation.

Step 3: Documentation Worksheet

- Children's Waiver HCBS provider must submit documentation to support compliance with the HCBS Final Rule and validate responses to the HCBS Provider Self-Assessment Survey.
- Providers will complete a [documentation worksheet](#) for each site designated to provide Children's HCBS. One site tab should be completed for **EACH** HCBS designated site where the agency provides HCBS services.
 - All providers are strongly encouraged to view the 'Instructions' tab of the worksheet prior to completion of the worksheet.
- The documentation worksheet denotes which standards are applicable to all HCBS providers, regardless of type of HCBS provided.
- While examples are listed on the documentation worksheet, providers can submit a variety of documentation to confirm compliance.

This step is conducted upon the provider's submission of the Designation Attestation, with a due date of six months from submission of the Designation Attestation.

Snapshot of the HCBS Documentation Worksheet

HCBS Provider Final Rule Documentation Worksheet			
HCBS Provider (Name, contact email, and phone number):		Insert Provider Name Here	
Site Name and Address (as it appears in the email accompanying this spreadsheet)		Insert Site Name and Address Here	
Please list the type of setting: (i.e., residential, non-residential, in-home/community services only)			
HCBS Final Rule Standard as noted in the Children's HCBS Manual, Appendix B	Question	Response	Examples of documents to submit based on the HCBS provided at this site
		Providers are to select their answer from the drop down for each row	Please note this list is not exhaustive of all documents that may be provided
The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities for individuals to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS. § 441.530(a)(1)(i)	Does this site provide transportation services or access to transportation?		<ul style="list-style-type: none"> - Policies that describe transportation services and/or access to transportation [e.g. policies for children/youth using public transportation] - Copies of transportation schedules and/or logs
	Do individuals at this site manage their own money and possessions?		<ul style="list-style-type: none"> - Policies/procedures that describe how individuals manage their money/possessions - Policies/procedures that describe how staff help individuals manage their money/possessions
	Do individuals at this time have job/volunteer opportunities and supports?		<ul style="list-style-type: none"> - Policies/procedures that describe how staff help individuals manage and/or access job/volunteer opportunities and

Please input information for your site here

Please input the name of the document(s) you will be submitting to support compliance with the standard; cells will turn yellow or black based on "yes" (yellow) or "no" (black) responses



Step 4: Conduct Onsite Review (if needed)

- DOH will identify which settings may require an onsite review to fully validate compliance with the HCBS Final Rule.
- Onsite reviews may be conducted in-person or virtually, using secure video conferencing.
- The site review will require, among other measures:
 - A meeting with the provider and touring the setting for observations as to any potential institutional and/or isolating qualities the site may possess
 - Interviews with provider representatives (administration and staff) to understand how the program/residence is structured
 - Interviews with at least one individual (residents or program participants) to establish if the setting has the effect of isolating individuals receiving HCBS from the broader community
- Not all sites/providers will require an onsite review.

Step 5: Remediation Efforts (i.e., Findings and Remediation Report)

- Once information from the Provider Self-Assessment Survey, completed documentation worksheet/submitted documentation, and onsite review (if applicable) have been reviewed, DOH will formally present findings to the provider via the HCBS Finding and Remediation Report. One report will be submitted for each designated site.
- This report will indicate the provider's compliance status for each standard; any areas where documentation/information did not sufficiently demonstrate compliance will be listed as a corrective action listed on the report.
- DOH will work with providers to submit responses/documentation to address corrective actions; failure to remediate corrective actions will result in de-designation from the Children's Waiver.

Additional Resources

Additional Resources

- Children's Waiver HCBS Final Rule Policy:
 - https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/docs/hcbs_settings_final_rule_compliance.pdf
- DOH's Final Rule Website:
 - https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm
- To learn more about person-centered planning:
 - https://www.health.ny.gov/health_care/medicaid/redesign/person-centered_planning/index.htm
- CMS Resources:
 - <https://www.medicare.gov/medicaid/home-community-based-services/guidance/home-community-based-services-final-regulation/index.html>



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Thank You