



**NEW YORK STATE CHILDREN'S WAIVER  
Designated Home and Community Based Services (HCBS)  
Provider Attestation**

Community Provider Agencies must be designated for the HCBS Children's Waiver by the New York State (NYS) Children's Provider Designation Review Team, comprised of the NYS Department of Health (DOH), Office of Mental Health (OMH), Office of Addiction Services and Supports (OASAS), Office of Children and Family Services (OCFS), and Office for People With Developmental Disabilities (OPWDD). As part of the designation process, provider agencies must complete this attestation to confirm they are familiar with the requirements of the Children's Waiver and will adhere to the standards, policies, procedures, and guidance put forth by NYS regarding the HCBS Children's Waiver.

The Children's Waiver requires provider designation to be renewed at least every three years. Providers will be required to complete this Attestation as part of that re-designation process. Additionally, providers will need to complete an Attestation each time additional services and/or sites are added to their designation.

The NYS Children's Provider Designation Review Team has designated  
for the following Children's HCBS:

- Community Habilitation
- Day Habilitation
- Caregiver/Family Advocacy and Support Services
- Prevocational Services
- Supported Employment
- Palliative Care – Pain and Symptom Management
- Palliative Care – Counseling and Support Services
- Palliative Care – Massage Therapy
- Palliative Care – Expressive Therapy
- Planned Respite
- Crisis Respite

**In order to receive authorization from the State to provide these services,  
(the Agency) must review the below information  
and the agency's CEO/Board must sign the included attestation within 30 days from  
the date of this letter. If the attestation is not received, the State will revoke  
designation approval and issue a de-designation notification.**

In order to ensure quality care and participant safety, and for the Agency to be held in good standing, the Agency must adhere to the applicable regulations, policies, manuals, and

standards of care, as well as any subsequent updates or supplemental guidance issued by the State. The Agency shall comply with:

- The [Children's Home and Community Based Services Manual](#) and subsequent releases,
- The [1915\(c\) HCBS Waiver Application NY4125 R05](#) and subsequent amendments, and
- All [Children's HCBS Provider policies](#) – the policies are posted to the [DOH website](#), along with supplemental guidance documents and resources.

Key compliance requirements include but are not limited to the following (additional details are located in the above-referenced *Children's HCBS Manual* and policies):

### **State and Federal Regulations**

Agency responsibilities:

- Maintain standing as an enrolled Medicaid provider and comply with the rules, regulations and directives pertaining to Medicaid providers including Part 504 of 18 NYCRR.
- Be enrolled as a NYS Medicaid Provider with an active provider identification number prior to commencing service delivery.
- Be in good standing according to the standards of each agency by which it is licensed, certified, designated, or approved, where applicable.
- Possess, acquire, and retain any State licensure, certification, authorization, or credential when required.
- Abiding by the [Requirements for Service Providers Delivering Children and Family Treatment and Supports Services \(CFTSS\) and Children's Home and Community Based Services \(HCBS\) and Working Collaboratively with Providers](#)
- Appropriately implement and maintain Electronic Health Record (EHR) systems
- Be compliant with Health Insurance Portability and Accountability Act (HIPPA) and other regulations to safeguard protected health information (PHI)
- Be compliant with the Centers for Medicare & Medicaid Services (CMS) [HCBS Settings Final Rule](#) and follow [State procedures](#) for ensuring compliance – including having appropriate policies in place. See Attachment A for additional information.
- Be compliant with [Electronic Visit Verification \(EVV\) requirements](#) (as applicable; see Attachment B for additional information).

### **Staff Requirements**

Agency responsibilities:

- Represent and warrant that staff, including sub-contracted/per diem staff who will be providing services, are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "federal healthcare programs"), (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services, and (iii) is not, to the best of the Agency's knowledge, under investigation or otherwise aware of any circumstances which may result in an employee or sub-contractor being excluded from participation in

the federal healthcare programs. This shall be an ongoing representation and warranty during the term of this Designation and the Agency will notify NYS of any change in the status of the representations and warranty set forth in this section.

- Comply with criminal background check requirements for providers, applicable agency employees, interns, and volunteers for the three required clearances, including all of the necessary steps for compliance, including training and documentation, as required. Additional information regarding these requirements can be found in the [Children's HCBS Provider Background Check policy](#).
- Ensure that all staff meet the qualifications of service delivery and/or supervision for the HCBS they are providing.
- Ensure that all staff have completed required training with the timeframe as outlined for the service and/or requirement. All training records are kept and maintained by the agency.
- Ensure that all staff understand the [conflict free](#) requirements, especially if the staff are working per diem at other agencies or other lines of business within your agency.

### **Confidentiality, Consent, and Participant Protections**

Agency responsibilities:

- Comply with the requirements of 18 NYCRR 431.7(a) to formulate and implement a written management plan to protect health history information related to an individual who has been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) or a Human Immunodeficiency Virus (HIV)-related illness or a HIV infection or laboratory tests performed on an individual for HIV-related illness. Require staff, to whom confidential information is disclosed as a necessity for providing services and in accordance with 18 NYCRR 431.7 and section 2782 of the Public Health Law, are fully informed of the penalties and fines for disclosure in violation of NYS law and regulation.
- Safeguard and maintain the confidentiality of all information in regard to services provided in conformity with the provisions of applicable State and Federal laws and regulations. Any breach of confidentiality by the Agency, its agents, or representatives shall be cause for NYS to terminate the Agency's Designation.
- Collect appropriate consent from participants to share information with other service providers, care managers, managed care organizations, or other parties as needed.
- Comply with all federal requirements for language access as a recipient of federal funds for the provision of Medicaid services. The Agency is obligated, under Title VI of the Civil Rights Act, to make language services available to those with limited English proficiency.

### **Fiscal Requirements**

Agency responsibilities:

- Maintain fiscal viability and complete an annual Consolidated Fiscal Report (CFR). CFRs are required by all service providers who receive funding or are designated as a HCBS provider for children/youth. Please review the document submission information at [http://www.oms.nysed.gov/rsu/Manuals\\_Forms/Manuals/CFRManual/home.html](http://www.oms.nysed.gov/rsu/Manuals_Forms/Manuals/CFRManual/home.html)

- Appropriately conduct billing for Medicaid Fee-For-Service (FFS) and Medicaid Managed Care Plans (MMCP), including following the guidelines in the [NYS Children's Health and Behavioral Health Services Billing and Coding Manual](#).
- Have appropriate MMCP contracts in place for the areas of service by the agency and the MMCP.
- Have appropriate agreements in place for any outsourced administrative functions (including billing functions), if applicable.

### **Service Delivery and Care Coordination**

Agency responsibilities:

- Ensure appropriate, [Person-Centered Service Plans](#) are developed for each child/youth receiving HCBS, including conducting assessments, developing crisis plans, and coordinating with the care manager, managed care plans, and/or other service providers as appropriate.
- Notifying Health Home care managers or C-YES regarding the determination of frequency, scope, and duration for each service provided to a child/youth.
- Notify MMCPs and care managers of changes in service (including disenrollment) and request continuing service authorization from MMCPs per the [Children's HCBS Plan of Care Workflow policy](#).
- Provide consumer information regarding their rights as well as the type of services, purpose, and how they are delivered, agency contact information, how to make a complaint or report a grievance, and participants choice of services and provider.
- Make every effort possible to accommodate all referrals. If a referral is made to an HCBS provider that does not have the capacity to serve the child/youth in a timely manner, collaboration with the Health Home care manager, Lead HH, Medicaid Managed Care Plan to assist in identifying an appropriate, available provider.
- Regularly communicate with care managers, MMCPs, and other members of the child/youth's care team, including timely responses to referrals, active participation in the development and revision of the child/youth's Plan of Care, and attending interdisciplinary team meetings.

### **Documentation and Quality Assurance**

Agency responsibilities:

- Maintain complete records and accounts directly pertinent to performance and cooperate with NYS reviews and requests for documentation to determine if service providers meet qualifications and comply with program requirements.
- Maintain documentation of child-specific outcomes.
- Conduct internal quality assurance procedures.
- Conduct regular consumer satisfaction surveys or feedback regarding services, service delivery, and agency responsiveness.
- Comply with any NYS requests for additional documentation related to Children's HCBS and annual case record reviews, including cooperating with NYS for on-site reviews.

- Participate, at the request of NYS or CMS, in any evaluation and monitoring activities including reports, monitoring visits, satisfaction surveys, quality improvement, and capacity management reporting.

### **Reporting Requirements:**

#### Agency responsibilities:

- Comply with the mandated reporter provisions governing the reporting of suspected child abuse or maltreatment, as set forth in sections 413-416 and 418 of the Social Services Law, and the requirements for State Central Register data base checks as set forth in section 424-a(3) of the Social Services Law.
- Appropriately enroll and access to report critical incidents and/or grievances/complaints within Incident Reporting and Management System (IRAMS).
- Appropriately report all service capacity, waitlist, waitlist times, and availability of the number of children/youths that can be served. Enroll and access to report HCBS provider capacity based upon any system built by NYS.
- Ensure up-to-date referral contact information and other agency contact information.
- Provide NYS DOH Capacity Management reporting RRE K-coding as requested by NYS or their designee – including Health Homes and MMCPs.
- Notify NYS of any issues with billing/claiming via MMCP including delayed receipt of payment, a significant number of denied and/or pended claims, or communication barriers if contacting the MMCP directly has not resolved the issue(s). MMCP contacts can be located here: <https://matrix.ctacny.org/>
- Notify NYS of any material change in the disclosures set forth in the designation application and/or operating certificate, including, but not limited to, a change in location where HCBS is being provided or the type of HCBS offered.

### **Maintaining Children’s HCBS Designation**

- Designation may be terminated at any time upon mutual consent of NYS and the Agency.
- NYS may terminate the Agency’s Designation, upon written notice of termination, if the Agency fails to maintain its license or otherwise comply with the terms and conditions and/or with any laws, rules, regulations, standards, policies, or procedures applicable to Children’s HCBS Providers or if the health, safety, or well-being of a child/youth is at risk or if a child/youth is injured due to the fault of the Agency. Fault shall include acts of negligence, omission, and deliberate harm or a failure to properly supervise an employee or subcontractor.
- NYS may de-designate the Agency if no HCBS is delivered within a 6-month period. The Agency has multiple avenues for discussion with NYS prior to de-designation. NYS offers technical assistance and networking support to Children’s HCBS Providers.
- In no event shall NYS be liable for expenses and obligations arising from the program(s) in the Agency’s designation after the termination date. The Agency shall not submit any claims for payment for services, expenses, or obligations incurred after the date of termination of the Agency’s designation.

Designated agencies retain all responsibility for services provided, quality of care, and assuring Medicaid compliance. Billing for HCBS should be completed using the designated agency's National Provider Identification (NPI) and Medicaid Management Information Systems (MMIS) ID. If a designated agency would like to collaborate with another designated agency to provide services they cannot provide, or to collaborate for the purposes of coordination of care, they will formally refer the child/youth directly for services to the other agency. Once the referral is made, only the designated agency providing the service will be able to bill for the referred service.

NYS will conduct a re-designation review at least every three years and issue a renewal or denial of renewal for Children's HCBS to the Agency.

## Attestation Statement

On behalf of the Designated Provider Agency (“Agency”), I (Chief Executive Officer or Designee listed below) attest that I have read the document, understand the terms and conditions as set out above, and will abide by all applicable laws, reporting requirements, and policies.

Agency Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

If unable to complete via digital signature, please print and sign.

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Please return this signed Designated Children’s HCBS Attestation (through an electronic signature/scanned PDF version) to the email below as soon as possible, and within 30 days from the date indicated on your Designation Letter issued by the NYS Children’s Provider Designation Review Team. Failure to return a signed Attestation will result in the revocation of your designation by NYS. Please retain a signed copy of this document for your records.

Please return signed Attestations to: [BH.Transition@health.ny.gov](mailto:BH.Transition@health.ny.gov)

## Attachment A

### **The Children's Waiver and the Home and Community Based Services (HCBS) Settings Rule**

The Home and Community Based Services (HCBS) Settings Rule, (§441.301(c)(4) and §441.710), known as the Final Rule, became effective in March 2014, and describes how Medicaid-funded HCBS are to be delivered by states and HCBS providers in general. As part of the [HCBS Final Rule](#), the Center for Medicare and Medicaid Services (CMS) established requirements for settings where HCBS can be provided and the heightened scrutiny process sites will need to take if located in a building or on the grounds of a facility also providing inpatient institutional treatment, or is otherwise presumed institutional under the rule. According to CMS, settings that DO NOT MEET the definition of being home and community based are:

- A nursing facility;
- An institution for mental diseases;
- An intermediate care facility for individuals with intellectual disabilities;
- A hospital; or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary.

In addition, the Final Rule §441.301(c)(5)(v) specifies that the following settings are presumed to have the qualities of an institution (and therefore likely do not meet the HCBS standard without documentation to support otherwise):

- Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment,
- Any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or
- Any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

To continue receiving federal Medicaid funding, it is required that HCBS settings for Children's Waiver recipients:

- Are integrated in and support full access to the greater community;
- Are selected from among options by the individual;
- Ensure rights of privacy, dignity, respect, and freedom from coercion and restraint;
- Optimize an individual's autonomy and independence in making life choices;
- Facilitate an individual's informed choice about their services and who provides them;
- Are physically accessible to the individuals supported;
- Provide freedom and support for individuals to control their own schedules and activities; and
- Provide individuals access to food (meals and/or snacks) and visitors at any time.

The last two standards are the only standards that are modifiable, [under certain conditions](#).



In addition to the settings standards, the federal HCBS Final Rule also requires a person-centered planning process. This process must:

- Provide necessary information and support to the individual to ensure that they can direct their planning process as much as possible
- Include people chosen by the individual
- Be timely and occur at least annually at times and locations of the individual's convenience.
- Assist the person in achieving outcomes they define for themselves, and in the most integrated community setting(s) they desire
- Ensure delivery of services in a manner that reflects personal preferences and choices
- Help promote the health and welfare of those receiving services
- Take into consideration the culture of the person served
- Use plain language
- Include strategies for solving disagreement(s)
- Offer choices regarding the services and supports the person receives, and from whom
- Provide a method for the individual to request updates to their plan
- Indicate what entity or person will monitor the primary or main person-centered plan
- Identify individual's strengths, preferences, needs (both clinical and support), and desired outcomes

NYS DOH must comply with the HCBS Final Rule and ensure that all HCBS designated providers and their respective sites of service are compliant. NYS DOH must follow a process to demonstrate to CMS that a review of all designated providers and their respective service sites have been assessed and deemed in compliance with the Final Rule, or will come into compliance, to continue to provide Home and Community Based Services.

All designated HCBS providers need to complete a Final Rule self-assessment survey for *each* designated site, along with documentation supporting their survey responses, and then NYS DOH will determine if a site visit review will be needed. As new providers become designated or existing providers become designated for new sites, NYS DOH must ensure that these sites have been reviewed and evaluated to comply with the Final Rule.

### **Additional HCBS Final Rule Resources**

The CMS Final Rule on the HCBS Settings Requirement can be found here:  
<https://www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>

CMS has created a Settings Requirements Compliance Toolkit that may be found here:  
<https://www.medicare.gov/medicaid/hcbs/index.html>

Inquiries regarding Children's Waiver HCBS and the Final Rule can be sent to:  
[ChildrensWaiverHCBSFinalRule@health.ny.gov](mailto:ChildrensWaiverHCBSFinalRule@health.ny.gov)

## Attachment B

### **Children's Waiver Requirements for Electronic Visit Verification (EVV)**

All Providers and Fiscal Intermediaries (FIs) who provide Medicaid Personal Care Services (PCS) and Home Health Care Services (HHCS) are required to utilize an Electronic Visit Verification (EVV) system to capture services that begin or end in the consumer's home. EVV applies to both Fee-for-Service (FFS) and Medicaid Managed Care (MMC) services.

The federal [21<sup>st</sup> Century Cures Act](#), signed into law on December 13, 2016, requires all state Medicaid programs to implement an Electronic Visit Verification (EVV) system for personal care services (PCS) by January 1, 2021 and Home Health Services (HHCS) by January 1, 2023. As such, the New York State Department of Health (NYSDOH) required providers of Medicaid-funded PCS to select and implement compliant EVV systems that meet the requirements of the 21st Century Cures Act by January 1, 2021. Providers of Medicaid-funded HHCS will be required to select and implement compliant EVV systems by January 1, 2023. Since the Children's Waiver 1915(c) Home and Community Based Services (HCBS) are impacted, the New York State Department of Health (Department) is providing the following guidance regarding this compliance requirement.

#### **What is EVV?**

EVV is a system that may include multiple point-of-care verification technologies, such as telephonic, mobile, and web-based verification inputs. The system electronically verifies the occurrence of home or community-based service visits, identifying the time that service provision begins and ends to ensure accurate claims disbursement and safeguarding that beneficiaries who are authorized to receive services get the expected care.

#### **Does EVV apply to the Children's Waiver?**

EVV applies if the service meets the following criteria:

- Is considered a Medicaid Personal Care Service (PCS)
- The services begin or end in the home
- The services are not provided in a congregate facility
- The service supports Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL)

For the Children's Waiver, EVV requirements always apply to Community Habilitation, and may apply to Respite. EVV requirements do not apply to Day Habilitation. All Children's HCBS providers should self-assess as to whether they meet the EVV criteria and, if necessary, take steps internally to become EVV compliant. Children's Waiver HCBS providers that might also serve the OPWDD Waiver will need to comply with OPWDD Guidance.

After self-assessment, some HCBS providers will determine that they do not meet EVV requirements for any of the HCBS enrolled children they serve, while other HCBS providers may meet the EVV requirement for *some or all* the enrolled children they serve.

Since EVV may be applicable to Planned and Crisis Respite, Respite providers **must** complete the [Children's Waiver EVV Declaration Form](#) to confirm they understand the EVV requirements and have determined if they meet EVV requirements. All Planned and Crisis Respite that meet

EVV, and Community Habilitation providers will be required to complete an EVV Attestation via eMedNY ensuring they have obtained the appropriate systems for Electronic Verification.

### **How can providers learn more about EVV?**

Additional information regarding EVV, including technical assistance resources, are available on the DOH EVV website: [https://health.ny.gov/health\\_care/medicaid/redesign/evv/index.htm](https://health.ny.gov/health_care/medicaid/redesign/evv/index.htm)

- **Join the EVV Listserv**
  - Subscribe to the NYS EVV Listserv at [listserv@listserv.health.state.ny.us](mailto:listserv@listserv.health.state.ny.us). Please be sure to include the following in the body of your email sign-up request:  
SUBSCRIBE EVV-L Your First Name Your Last Name
- Review the [NYS EVV Website](#), [EVV FAQs \(including information on EVV attestation, devices, technology, and data submission\)](#) and [Document Repository](#) for the latest published EVV documentation and policies.
- Check out past [Children's Waiver webinars](#) to learn more about the EVV, compliance requirements, and billing procedures
- Reach out for [Technical Assistance](#) to learn more about EVV data submission

Please send EVV inquiries to [EVVHelp@health.ny.gov](mailto:EVVHelp@health.ny.gov) and questions regarding the Children's Waiver to [BH.Transition@health.ny.gov](mailto:BH.Transition@health.ny.gov).