



Department
of Health

HCBS Final Rule Compliance Self-Assessment for ADHCPs

Agenda

- HCBS Final Rule Overview
- Assessing for Compliance with the HCBS Final Rule
- Understanding Heightened Scrutiny
- Understanding HCBS Person-Centered Planning
- Next Steps for Achieving Compliance
- Self-Assessment Question Review
- Questions and Answers

HCBS FINAL RULE OVERVIEW

Background on the HCBS Final Rule

- The HCBS Final Rule, a federal 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

Home and Community-Based Services Defined

Per CFR 440.180(b) “Home and Community-Based Waiver Services” include:

1. Case management services
2. Homemaker services
3. Home health aid services
4. Personal care services
- 5. Adult day health services**
6. Habilitation services
7. Respite care services
8. Day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services for individuals with chronic mental illness subject to conditions specified in CFR 440.180(b)(8)(d)
9. Other services – requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization

HCBS Final Rule Settings Standards

- Below are the Final Rule's *standards for all settings where HCBS are provided*. The settings must:
 - be integrated in and support full access to the greater community
 - be selected from among options by the individual (or their representative)
 - ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
 - optimize autonomy and independence in making life choices
 - facilitate true choices and options for an individual's services and who provides them



Settings Presumed Compliant With the Final Rule

- CMS and New York assume that an individual's home, or the home of a family member, is compliant with the HCBS rule
- Most people in New York who receive HCBS live in such settings

Key Dates



- The HCBS Final Rule took effect:
 - March 17, 2014 for 1915(c) waivers (TBI, NHTD, CAH, etc.)
 - July 6, 2012 for 1915(k) (CFCO) programs, and
 - December 4, 2014 for the 1115 Demonstration (Managed Care and Managed Long Term Care)
- ➔ • The Transition Period to achieve full compliance with the HCBS Final Rule is March 17, 2022, applies to:
 - The settings standards for 1915 (c), 1915 (k), and 1115 Demonstration
 - Making any modifications to, or restrictions of, a person's rights given by the Final Rule's *additional standards*, on case-by-case basis within individual Person-Centered Plans

ASSESSING FOR COMPLIANCE WITH THE HCBS FINAL RULE

New York's HCBS Site-Level Assessment

The eight State agencies and offices that oversee Medicaid HCBS in New York:

- Have their own existing surveillance and monitoring processes in place to assess for compliance with various State and Federal rules and policies
- Are building site-level assessment of HCBS compliance into their systems to achieve compliance by 2022 and monitor compliance going forward
- Are using a CMS approved process of assessing for compliance of the settings they oversee/license such as
 - site visits to a statistically significant sample of settings, or
 - site visits to all their settings, or
 - provider self-surveys/attestations, with validation of a statistically significant sample of settings.

UNDERSTANDING HEIGHTENED SCRUTINY

What is Heightened Scrutiny?

- It is a more intensive form of HCBS site-assessment required by CMS
- Settings with certain characteristics are presumed institutional by CMS
- State must submit evidence on those settings if it wants to receive Federal Financial Participation (FFP) for those settings past the 2022 deadline
- Evidence for each setting is required to go through a public comment period

Settings Subject to Heightened Scrutiny

The HCBS Rule describes three types of settings CMS presumes to be institutional and therefore subject to heightened scrutiny:

- Settings in a public/private operated facility providing inpatient institutional treatment (i.e., nursing facility, ICD/IID, IMD, or hospital)
- Settings in a building on the grounds of, or adjacent to, a public institution
- Settings having the effect of isolating individuals receiving Medicaid HCBS from the broader community

UNDERSTANDING HCBS PERSON-CENTERED PLANNING

HCBS Rule Person-Centered Plan Requirements

The HCBS Final Rule established many new standards in regards to 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)*

The Person-Centered Plan requirements are included in Section 2402(a) of the Affordable Care Act

Person-Centered Plan Requirements

Person-Centered Plans must identify individuals’:

- Strengths
- Preferences
- Needs (clinical and support)
- Desired outcomes

Person-Centered Plan Requirements

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

Person-Centered Plan Requirements

Person-Centered Plans must also:

- 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

Allowable Modifications in Person-Centered Plans

There are times when supporting the individual may require modifications of the *additional standards* of the HCBS Rule, which is allowed.

The additional standards for *all settings* are:

- Freedom and support to control one's own schedule and activities
- Access to food and visitors at any time

Allowable Modifications in Person-Centered Plans

Modifications, aka “rights restrictions,” to any of the additional standards on the previous slide, cannot be made on an entire setting. They must be made on a *case-by-case basis*, and be:

- Supported by a specific assessed need; and
- Justified in the person-centered service plan

States have until March 2022 to comply with making modifications to the additional provisions within person-centered plans

Modifications to Additional Standards

Modifications to the additional standards must be documented in the person-centered plan and include the following:

- A specific and individualized need
- Positive interventions and supports used prior to any modifications
- Less intrusive methods of meeting the need that were tried and did not work
- Clear description of the condition that is directly proportionate to the specified need

Modifications to Additional Standards

Modifications to the additional standards must be done in the person-centered plan and document the following:

- Regular collection and review of data measuring the ongoing effectiveness of the intervention(s) used
- Established time limits for periodic reviews to determine if the modification is still necessary (at 3 months, 6 months, etc.)
- Informed consent of the individual being supported
- Assurance that interventions and supports will cause no harm

Modifications – A Case Example

Example: Judy struggles to manage her schedule of activities at the Adult Day Health Care where she receives services. She tends to isolate due to symptoms related to her dementia and depression.

- With Judy's, or her representative's, informed consent, staff can work with Judy and her Care/Case Manager (CM) to develop a six month plan to support her with scheduling and participating more fully in activities
- Judy, her staff, and her CM will ensure this is documented properly in her person-centered plan and updated within 6 months to see if she still needs support with this

Next Steps for Achieving Compliance

Some changes that ADHCP providers *can* and *are* making, are:

- Increasing flexibility and options for individualized activities and outings, rather than only offering on-site activities or group outings
- Adding snack cabinets/cubbies, making snacks available at any time
- Making visiting hours unrestricted, adding a visitors room with a phone
- Giving registrants who are competent access to come and go freely with key codes/cards/etc.

Next Steps for Achieving Compliance

Enhancing person-centered planning and plan implementation:

- Eliminate blanket program rules/restrictions and use required process to make modifications to HCBS standards on a case-by-case basis
- Use plain language in all documents
- Include goals important to the person (meaningful activities, relationships, etc.) balancing them with to those important for them (health, safety, etc.)

ADHCP HCBS COMPLIANCE SELF-ASSESSMENT QUESTION REVIEW

ADHCP Self-Assessment Tool

New York State Department of Health Survey Assessment for Adult Day Health Care ADHCP HCBS Self Assessment

The format for Survey Monkey is user friendly. Answer each question and support your answer with a short statement in addition to sending supporting documentation and/or photographs to ADHCP.HCBS@health.ny.gov.

If you are sending supporting documents and/or photographs, be sure to include in the subject line the program name and the question number(s) being addressed.

Your response is required by June 30, 2019.

ADHCP Self-Assessment Tool

Questions #1 - #9: Contact and Demographics

Questions for Standard 1: The setting is integrated in and supports full access to the greater community –

10. Does the site provide opportunities for regular meaningful activities in community settings with people who do not receive services, for the amount of time desired by registrants?

- If “No” explain below or send supporting documentation and/or photos to ADHCP.HCBS@health.ny.gov (this applies to all questions except #17 and #28)

11. Do the individuals served at this site regularly interact with members of the community (not staff or volunteers)?

Questions for Standard 1 (continued): The setting is integrated in and supports full access to the greater community –

12. Does the site afford opportunities for individualized activities that focus on the needs and desires of the individuals served and an opportunity for individual growth?

13. Does the site allow individuals who are known to be safe and competent the freedom to move about the setting, including the freedom to go outside as they choose?

14. Is public transportation available to/from the site?

Questions for Standard 1 (continued): The setting is integrated in and supports full access to the greater community –

15. Is information regarding transportation available to individuals in a convenient manner such as participant handbooks, handouts, or public postings?

16. Are resources other than public transportation available for individuals to access the site and/or individualized activities that registrants may wish to attend in the community?

17. Does the site restrict individuals to receive services or to engage in activities outside of the setting?

- If “Yes” explain below or send supporting documentation and/or photos to

ADHCP.HCBS@health.ny.gov

Question for Standard 2: The setting is selected by the individual from among setting options -

18. At some point in time were registrants (or their representative if they have one), given options of HCBS service settings they could choose from, including the ADHCP?

Questions for Standard 3: The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint -

19. Does the site ensure individual information (medical, diet information, etc.) is kept private/confidential?
20. Are individuals given flexibility in when they take breaks/lunch times?
21. Are activities adapted to individuals' needs and preferences?
22. Are health and personal care activities, including discussions of health or personal matters, conducted in private?

Questions for Standard 3 (continued): The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint -

23. Does the staff interact and communicate with people respectfully and in a manner in which the person would like to be addressed at all times?

24. Does site provide the opportunity for all individuals to have the space in order to speak on the telephone and visit with others in private?

25. Are registrants given freedom and support to control their own schedule and activities and have access to food and visitors at any time, with any modifications or restrictions made based on a registrant's specific assessed need, and done on a time-limited basis after other positive interventions have failed, which is documented in the registrant's care plan?

Questions for Standard 3 (continued): The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint -

26. Does the setting ensure that one or more person's behavior supports do not impede on the rights of other individuals?

27. Does the site have a secure place for registrants to store personal belongings?

Questions for Standard 4: The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact -

28. Does the site have any of the following barriers preventing individuals' movement?

- Gates
- Locked doors
- Fences
- Other (please specify: _____)

- If “Yes” explain below or send supporting documentation and/or photos to ADHCP.HCBS@health.ny.gov.

Questions for Standard 4 (continued): The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact -

29. Does the site afford the opportunity for tasks and activities that match to the following attributes for individuals?

- desires/goals
- age
- skills
- abilities

30. Is the site physically accessible to the registrants, including access to bathrooms and break rooms?

Questions for Standard 4 (continued): The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact –

31. Does the site provide for an alternative meal and/or private dining if requested by the individual?

32. Do the individuals have access to food at any time?

33. Does the site allow registrants to choose with whom they spend their time while at the setting?

34. Does the site allow registrants to have visitors of their choosing at any time?

Questions for Standard 4 (continued): The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact –

35. Does the site support registrants to do the following?

- Associate with others
- Practice their religion
- Make personal decisions

Questions for Standard 5: The setting facilitates individual choice regarding services and supports, and who provides them –

36. Does the site allow individuals to choose which of the site's employees provide his/her services? Example: An individual requests that all personal care services for her be conducted by female employees. Is that individual's request met?

37. Does the site allow prospective individuals the opportunity to tour the site?

38. Does the site afford individuals the opportunity to update or change their work/daily activities based on their preferences?

Questions for Standard 5 (continued): The setting facilitates individual choice regarding services and supports, and who provides them –

39. Does the site have person-centered policies to ensure individuals are supported in developing specific plans to support his/her needs and preferences?

40. Does the site provide information to individuals about how to make a request for additional services or changes to their registrant care plans?

Additional Required Information

41. Do all staff (paid and unpaid) receive new hire training related to company policies, including HCBS specific policies and person-centered planning, practice, and thinking?

42. Do all staff (paid and unpaid) receive continued education related to company policies?

43. Are company policies regularly reassessed for compliance and effectiveness and amended as necessary?

44. Does the site have documentation indicative of staff's adherence to policies, such as HCBS specific training documentation and sign-in sheets for relevant activities?

QUESTIONS AND ANSWERS

Questions Submitted – DAL and FAQ

Q1 What is the timeline for the self-assessment survey?

- **Self-assessment surveys must be completed June 30, 2019.**

Q2 Can you walk through some examples of legal/financial rights that would be different in ADHC compared to the general public?

Q3 *The ADHCP must be selected by the individual receiving HCBS from setting options, including non-disability specific settings. These options are identified and documented in the person-centered service plan and are based on the individual's needs and preferences.*

- Please clarify how this will be implemented in our managed care environment?

Questions Submitted – DAL and FAQ

Q4 Update/revise policies and procedures applicable to the setting, such as removal of “blanket restrictions” that apply to all individuals served in the setting, relying instead on an individualized person-centered planning process for any needed individual restrictions.

- Please provide examples of what are considered, “blanket restrictions.”

Q5 Train staff, registrants, families, on creating an environment where individuals have a right to come and go at any time. This includes making appropriate modifications of these rights within the Registrant Care Plan if someone is unable to manage this right.

- Please provide additional information regarding how this will be operationalized.

Questions Submitted – DAL and FAQ

Q6 Reallocate/revise/increase transportation resources to ensure individual transportation needs are met to ensure access to the community at times and dates of their choosing.

- Please provide additional information regarding how this will be operationalized.

Q7 Modify the physical environment, if needed, to include a locking mechanism such as a key pad entry system that allows more independent registrants to come and go freely, and/or remove locks, barriers, or obstructions that restrict movement within the setting.

- Does DOH consider a locked or gated outdoor space a barrier that restricts movement?
- Is the intent to remove locks/barriers/obstructions within the ADHC setting or does this include the nursing home setting too (for programs that share space)?

Q8 Increase access to assistive technology

- Please clarify this requirement.

Additional Resources

- To learn more and register for training opportunities that will support your organization's HCBS Final Rule compliance activities, go to:
nydohpcptraining.com/events
- For more information on New York's HCBS Statewide Transition Plan to come into compliance with the HCBS rule go to:
health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm
- For additional questions about the assessment, please email us at:
ADHCP.HCBS@health.ny.gov



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Thank You