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Office of Health Insurance Programs - Division of Long Term Care, Bureau of Community Integration and Alzheimer's Disease

Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) Waiver: HCBS Final Rule Implementation

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The New York Department of Health (DOH), Division of Long Term Care is issuing the following guidance to provide information and resources to NHTD and TBI Medicaid waiver providers regarding the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) Final Rule. It is important to note that Structured Day Programs (SDP) is a Home and Community-Based Service under federal law that falls under the purview of the federal HCBS rule. Provider owned residential settings also fall under the purview of the federal HCBS rule.

HCBS Rule Requirements for SDP & Provider Owned Residential Settings

To continue receiving federal Medicaid funding, waiver providers must ensure that settings:

- 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.

For the last two (2) standards, there cannot be restrictive rules that apply to all participants in an SDP or provider-owned residential setting. Examples of restrictive rules include: set visitor hours, and only one time slot food/snacks are available. The two modifiable standards listed above may be modified on a case-by case basis for a specific individual if it is done:

- when there is *a specific need* that has been identified that a participant requires staff support with (i.e., a diagnosis is not enough information to support modifying a standard);
- on a time-limited basis (reassessing periodically to see if the modification is still needed); and
- after less restrictive and more positive approaches were tried and failed.

Modification example: Jane D. requires assistance with managing her access to food/snacks due to her tendency to eat frequently, which raises her blood sugar levels. Staff tried counseling her but were not successful. With her (or her representative's) informed consent, staff will support her with accessing the snack cabinet for at least six months, documenting this in her plan.

In addition to the settings standards above, the federal HCBS 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; and
- identify individual's strengths, preferences, needs (both clinical and support), and desired outcomes.

To achieve these standards, the plan and/or the provider entity must obtain a social history of their participants, as the desired outcomes of participants often focus on relationships and preferred activities rather than health and safety.

Additional Standards for Residential Settings

- Individuals in residential units have legally enforceable agreements giving them the same protections and responsibilities as any tenant living in that jurisdiction.
- Privacy in sleeping or living unit.
- Units have lockable entrance doors.
- The individual served and appropriate staff have keys/codes to doors.
- There is a choice of roommates in shared units.
- Freedom to furnish and decorate sleeping or living units.

Written Notice and Other Transition Requirements

DOH is sponsoring the ***Person–Centered Planning Comprehensive System Transformation Statewide Training Initiative***. The trainings, learning opportunities, and upcoming person-centered planning online toolkit are being offered at no cost. Participation can demonstrate efforts towards compliance. For information and to register, go to: <https://nydohpcptraining.com/events>.

Additional information regarding New York’s HCBS Rule Statewide Transition Plan can be found at: https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm.

For general questions, please email: waivertransition@health.ny.gov.