



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

April 8, 2019

Re: DAL NH 19-02
Adult Day Health Care Program Home
and Community Based Settings Rule
and Compliance Notice

Dear Nursing Home/Adult Day Health Care Administrator:

Effective March 17, 2014, the federal Department of Health and Human Services (HHS) promulgated the Home and Community Based Settings (HCBS) Final Rule. The HCBS Final Rule establishes requirements for the qualities of settings where individuals live and/or receive Medicaid-reimbursable HCBS provided under sections 1915(c), 1915(i), 1915(k), 1915(b)(3), and 1115 of the Social Security Act.

As the Adult Day Healthcare Program (ADHCP) is a non-residential setting as described above, the New York State Department of Health (the Department) must ensure the ADHCP meets the established requirements set forth in the Final Rule and is in full compliance by March 31, 2022. All ADHCPs must be considered “home and community-based” as defined under Federal regulations 42 CFR 441.301 and 441.710 to continue receiving federal funding.

The HCBS requirements establish an outcome-oriented definition focusing on the nature and quality of individuals’ experiences. The rule further maximizes opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting by:

- Ensuring full implementation of person-centered care and care planning;
- Ensuring an individual’s rights of privacy, dignity, respect and freedom from coercion and restraint;
- Optimizing individual initiative, autonomy and independence in making life choices;
- Facilitating individual choice regarding services and supports, and who provides them; and
- Supporting integration in and access to the greater community.

To ensure compliance with the HCBS Final Rule, the Department will be providing a self-assessment tool to be completed by each ADHCP. The self-assessment effort will target the following criteria for each ADHCP:

Category 1: Physical Characteristics of Setting

- The setting is not located on, near or adjacent to an institutional setting
- The setting is not isolating from the community and does not have the effect of isolating people from the community

Category 2: Policies, Procedures, and Staff Competencies

- Setting policies/procedures and practices promote rights and integration
- Staff competencies, training and interactions

Category 3: Legal/Financial Rights and Protection

- Setting provides registrants with comparable legal and financial right as the general public

Responses to this self-assessment will assist the Department in measuring the ADHCP's overall compliance with the HCBS Final Rule, as well as assist in the development of ongoing education, policy guidance and updated regulations that comply with the HCBS Final Rule.

Further information regarding the HCBS Rule may be found at:

http://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm

The Department is committed to working with your program to ensure compliance with the HCBS Final Rule. The Department is sponsoring free provider trainings on person-centered thinking, planning, and practice. These trainings are strongly recommended to demonstrate movement towards regulatory compliance. More information on trainings can be found by emailing NYDOHPCPTraining@pcqus.com.

For general questions, please contact the Department at ADHCP.HCBS@health.ny.gov.

Please see attached Adult Day Health Care Program FAQ's.

Sincerely,

Sheila McGarvey
Director
Division of Nursing Homes & ICF/IID
Surveillance
Center for Health Care Provider Services
and Oversight

Attachment

**FAQ – Frequently Asked Questions
Adult Day Health Care Program (ADHCP) and
Home and Community-Based Services (HCBS) Final Rule Compliance**

Q1. What are the HCBS Rule standards that apply to ADHCPs?

1. ADHCPs must be integrated in and support full access to the broader community to the extent that the registrant desires. This includes, engaging in community life, controlling personal resources, and receiving services in the community to the same degree of access as individuals not receiving Medicaid HCBS. It also includes, where appropriate, providing education and information about opportunities that are available to seek employment or volunteer and/or work in competitive integrated settings.
2. 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 (Registrant Care Plan) and are based on the individual's needs and preferences.
3. ADHCPs must ensure registrants' rights of privacy, dignity, respect, and freedom from coercion and restraint.
4. ADHCPs must make opportunities for individuals to take initiative and enjoy independence in making life choices, including but not limited to, their daily activities, physical environment, and with whom to interact.
5. ADHCPs must facilitate registrants having a choice regarding services and supports, and who provides them.
6. ADHCPs must provide registrants with access to visitors and snacks of preference at all times.

Q2. What actions can an ADHCP take to align with these requirements?

1. Train staff at all levels in person-centered planning, thinking, and practice, including how to incorporate these practices in person-centered service planning.
 - a. Training should include techniques used to facilitate and support individuals' participation in unscheduled/scheduled community activities in the same manner as people not receiving HCBS in the community as they choose.
 - b. Provide opportunities for registrants to be involved in meal planning and preparation, if they desire.
2. Educate registrants, families and/or natural supports on the rights of the individuals served, including how to support individuals in making informed choices. Discuss any risks involved in making those choices and safeguards that may be put in place to support individuals to make such choices.
3. Ensure person-centered planning occurs at least annually for individuals served to assess their strengths, interests, preferences, and goals, making sure their activities and services reflect this process. Programs should allow the registrants to lead the process as much as possible.

4. Reorganize or reconfigure staffing resources and/or patterns to support individual choices.
5. 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.
6. 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.
7. Increase access to activities and options that are of interest to, or the preference of, individuals supported, directly soliciting the feedback of individuals served on activities in the process.
8. 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.
9. Develop and implement strategies to help foster natural and volunteer supports for individuals to access meaningful community activities that promote community inclusion and independence.
10. 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.
11. Increase access to assistive technology.
12. Allocate additional program space to promote freedom of movement within the setting, privacy, comfort, and individualized activity opportunities.

Q3. Are ADHCPs going to be defunded due to the HCBS Rule or Heightened Scrutiny?

New York is committed to working with ADHCPs to preserve the important services they offer. The Department of Health will commence State monitoring activities to verify implementation of changes required by the HCBS Final Rule beginning as early as January 1, 2020. There will be specific action steps recommended through the assessment process that will be communicated with each ADHC program.

Q4. Are there any resources to help ADHCPs come into compliance with the Rule?

Yes. Beginning in 2019 DOH is sponsoring free provider and stakeholder training sessions on person-centered thinking, planning, and practice. These sessions are strongly recommended in order to demonstrate movement towards regulatory compliance. More information on training can be found by emailing NYDOHPCPTraining@pcgus.com.