



Department of Health

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Dear Adult Day Health Care Program Administrator:

Thank you for completing the Adult Day Health Care Program (ADHCP) Home and Community Based Services (HCBS) Self-Assessment Tool. This tool was developed by the New York State Department of Health (Department) to evaluate ADHCP's compliance with the HCBS Final Rule. The Department is required to ensure that providers of ADHCP services are fully compliant with the HCBS Final Rule. Information on the Federal HCBS Rule is available [here](#).

Based on previous regulations and policies, the Department had anticipated all ADHCPs would require remediation to come in full compliance with the Final Rule.

After reviewing the responses submitted to the Self-Assessment Tool, the Department is providing further guidance regarding the HCBS standards.

Some of the Self-Assessment questions that received common responses that we have identified as either requiring 1) supporting documentation to verify the validity of the response, or, 2) the revision of the response include, but are not limited to:

1. Question #14: Is public transportation available to/from the site?
 - Center for Medicare and Medicaid Services (CMS) HCBS Standard: "The setting is integrated in and supports full access to the greater community."

Guidance: The settings should provide contact information, access, education, and support for those individual's who are deemed competent to use public transportation, such as buses, taxis, etc. The public transportation schedules and telephone numbers should be available in a convenient location. Settings should have a process in place as to how individual's will be transported such as provider vehicles, community transportation, ride sharing services, etc.

2. Question #20: Are individuals given flexibility in when they take breaks/lunch times?
 - CMS HCBS Standard: "The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint"; "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".

Guidance: Individual's adhering to a set schedule of eating, exercising, participating in activities are not given any flexibility of their rights. A facility may have rules for all individual's on when mealtimes occur or what an individual may eat preventing their involvement in choices.

Individual's should have the freedom to control their own schedules and activities and they should have access to food at any time. They do not have to follow one "set schedule."

The freedom for individuals to decide how they spend their time is an essential element. This control promotes a sense of independence and allows them to direct their own lives. Any modifications to individual's right to control their own schedule must be supported by a specific assessed need and documented in the person-centered plan.

3. Question #27: Does the site have a secure place for individual's to store personal belongings?

- CMS HCBS Standard: "The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint."

Guidance: A secure place can be a place that is accessible at any time by the individual and necessary staff (lockable locker, drawer, cabinet, or cubby). It can also be a locked room or cabinet where the possessions of multiple individuals are stored, and the individuals' can access their personal belongings upon request at any time with the presence of staff. This affords individual's the privacy and safety needed to bring wanted items with them to program.

4. Question #28: Does the site have any of the following barriers preventing individuals' movement? Gates/locked doors/fences

- CMS HCBS Standard: "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".

Guidance: If an individual is unable to open a gate, unlock a door, or leave a fenced-in area on their own, these types of instances would be considered barriers that restrict an individual's movement. If there is a restriction of movement as a result of blanket policies and procedures, rather than restrictions made on a case-by-case basis to address a person's specific assessed need, it is also considered a restriction to the individual's movement.

Barriers must be supported by an individual's specific assessed need and justified in their person-centered plan. Individual's may have the freedom to move throughout the site, based on their person-centered plan and assessed competence to manage that freedom.

It is important to know the individual, their condition(s), needs, history, and to use that knowledge to create strategies to assure that individuals are free to interact with others and the community in the most integrated way possible while still ensuring their health and safety. Home and community-based settings must demonstrate that person-centered planning drives their operations and services for each person.

5. Question #32: Do the individuals have access to food at any time?

- CMS HCBS Standard: “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.”

Guidance: A provider that makes food available only at a “specific time” when regular meals are prepared, or supplies a snack when its “snack time,” is limiting an individual’s life choices. This also applies to a provider who restricts an individual’s access to food because of a personal belief that the food choice is not appropriate or healthy.

An individual must have access to food at any time. They should be given full access to a dining area with comfortable seating, opportunity to converse with others during break or meal times, be afforded dignity i.e., not be required to wear bibs etc. The facility must be able to provide alternative meal and/or private dining if requested by the individual.

A provider may limit an individual’s access to food if there is an identified and documented risk to their health or safety that requires rights modification within their developed person-centered plan.

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

- CMS HCBS Standard: “The setting facilitates individual choice regarding services and supports, and who provides them.”

Guidance: Person-Centered Care considers individual’s spirituality, emotional well-being, medical needs, physical health, likes and dislikes, hobbies, habits, personal history and more. Personal choice and control over all aspects of life must be supported for every individual’s.

For example, if a provider has reason to believe that an individual did not select the setting or would like to select a new one (e.g., the individual says they would prefer to be elsewhere, or that someone is forcing them to be here), the provider must assist the individual enable their choice.

Providers have a principal responsibility for ensuring that all individual’s can make an informed choice from among the available options and for ensuring that these options are identified in each individual’s person-centered plan.

7. Question #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?

- CMS HCBS Standard: “The setting facilitates individual choice regarding services and supports, and who provides them.”

Guidance: All Staff (paid or unpaid) must be competent in the HCBS rule. This ensures individual's to have full access to, and enjoy the benefits of, community living by receiving services in the most integrated settings of their choosing. Staff must receive training to ensure they understand how to support registrant during their person-centered planning process.

Many sites offer staff training for new hires and continued education but many of these sites do not have the same training offerings for volunteers.

In order to support your determination of compliance with the HCBS Rule, documentation, photos, etc., are required to be submitted to the Department no later than October 15, 2019. This documentation should be no more than 20 pages in length and should include, but not be limited to:

- Photos showing physical characteristics of the setting and services: e.g. Photos of the building exterior and interior, signage related to the ADHCP, evidence you provide access to individual outings, the ability for individual's who are competent to come and go from the building, etc.
- Policies, procedures such as:
 - Legal/financial rights and protection
 - Staff training in HCBS policies (may also submit training logs)
 - Individual's access to snacks and visitors at any time
- Details of proximity to public transport or other transportation strategies to facilitate individual's community integration.
 - Documentation that the setting is selected by the individual from setting options and is documented in the person-centered plan.
 - Documents that individuals' right to privacy are ensured, as well as their dignity, respect and freedom from coercion and restraint.
 - Documentation that the program facilitates individual choice regarding services and supports and who provides them.

The Department is committed to working with ADHCP providers to ensure compliance with the HCBS Final Rule. Please forward all documentation and any questions regarding this request or the Final Rule to: ADHCP.HCBS@health.ny.gov.

Sincerely,



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

