



## Department of Health

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November 9, 2018

DAL: 18-15

Guidance for Adult Care Facilities to Comply with  
the Home and Community Based Settings (HCBS)  
Final Rule

Dear Adult Care Facility Operator:

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 requires the New York State Department of Health to ensure that those adult care facilities having one or more residents who receive Medicaid-funded HCBS, whether within or outside the facility, meet the established standards expressed in the HCBS Final Rule by **March 17, 2022**. Information regarding the HCBS Final Rule, and the New York State HCBS Statewide Transition Plan, is located online at:

[http://www.health.ny.gov/health\\_care/medicaid/redesign/home\\_community\\_based\\_settings.htm](http://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm).

In 2016, the Department conducted an educational webinar concerning the impact of the HCBS Rule on Assisted Living Programs (ALPs), and later that same year, licensed ALP providers completed a self-assessment to measure their existing compliance with the HCBS Final Rule. The Department will now replicate these activities for adult homes, enriched housing programs, and assisted living residences, and specifically those that house one or more residents in receipt of Medicaid-funded HCBS, to help such facilities assure compliance with the HCBS Final Rule. Proactively, the Department has developed the enclosed preliminary guidance to aid such facilities in the development of HCBS compliant policies and practices.

If you have any questions on this guidance, please contact Heidi Hayes, of my staff, at [acfHCBS@health.ny.gov](mailto:acfHCBS@health.ny.gov). We appreciate your attention to and cooperation with these requirements.

Sincerely,

Valerie A. Deetz, Director  
Division of Adult Care Facility  
and Assisted Living Surveillance

Enclosure

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HCBS Standard	HCBS Compliance Guidance
<p>The setting is physically accessible to the individual.</p>	<ul style="list-style-type: none"> <li>• Comply with all applicable regulatory environmental standards to ensure there are no inhibiting barriers preventing physical accessibility to those places where HCBS recipients live and receive services.</li> <li>• Comply with all applicable regulatory standards governing admission and retention standards.</li> <li>• Assure that each resident has a clear understanding of how to access the facility when locked (e.g. key, keypad, intercom access, etc.).</li> <li>• Train all appropriate staff on applicable admission and retention standards and this policy and procedure.</li> </ul>
<p>The program is fully integrated into, and supports access to the greater community for all individuals irrespective of payer source, and supports the ability of each individual to engage in community life.</p>	<ul style="list-style-type: none"> <li>• Document and post activities and events available in the greater community (e.g., places of worship, entertainment, shopping, educational classes, and community events).</li> <li>• Develop a process to notify each resident of the programs, activities and events available in the greater community, which may include resident council meetings and facility postings.</li> <li>• Develop a process to accommodate access to individualized and group community-based activities, including the identification and addressing of potential barriers (e.g. transportation).</li> <li>• Discuss available transportation options with the resident and facilitate arrangement for selected transportation as necessary.</li> <li>• Document the resident's understanding, choices, and any ongoing discussions and changes in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The operator supports an individual's right to receive services and supports in the community, including who provides them.</p>	<ul style="list-style-type: none"> <li>• Discuss with the resident the services and programs available in the community, and communicate how to access those services and programs.</li> <li>• Develop a process to accommodate resident choice of services and programs in the community,</li> </ul>

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	<p>including identifying any potential barriers, (e.g. transportation), and steps to address those barriers.</p> <ul style="list-style-type: none"> <li>• Discuss available transportation options with the resident and arrange for selected transportation as applicable.</li> <li>• Document the resident's choices, any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The program provides each individual opportunities to seek volunteer, vocational training, or employment opportunities in the greater community.</p>	<ul style="list-style-type: none"> <li>• Discuss with each resident his or her desire to seek volunteer, vocational training or employment in the greater community; and develop a process to assist the resident in accessing desired opportunities.</li> <li>• Identify any potential barriers the resident may encounter while seeking volunteer, vocational training or employment opportunities, and discuss with the resident steps to address identified barriers.</li> <li>• Discuss available transportation options with the resident and arrange for selected transportation as necessary.</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The operator ensures an individual's rights of dignity and respect.</p>	<ul style="list-style-type: none"> <li>• Discuss with each resident upon admission and periodically thereafter, the statement of Resident Rights and Responsibilities, with subsequent documentation of the discussion in the resident's case management notes and/or person-centered service plan.</li> <li>• Consistent with the needs and desires of the resident as documented in the resident's person-centered service plan, assist each resident with</li> </ul>

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	<p>activities of daily living as appropriate to the individual's preferences.</p> <ul style="list-style-type: none"> <li>• Communicate with each resident in the manner the resident has identified as preferred and as documented in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The program allows each individual to control his or her personal resources.</p>	<ul style="list-style-type: none"> <li>• Provide to and review with each applicant upon admission, and review periodically thereafter with each resident, the Statement of Resident Rights and Responsibilities, and subsequently document in the resident's case management notes and/or person-centered service plan the resident's receipt and comprehension of the Statement.</li> <li>• Notify the resident of his or her right to manage his or her own financial affairs without coercion.</li> <li>• Confirm and document in the resident's person-centered service plan, the resident's understanding that he or she is not required to designate the facility as his or her representative payee.</li> <li>• Identify any potential barriers the resident may encounter in managing his or her own financial affairs.</li> <li>• Discuss with each resident that opts for outside banking the steps to address identified barriers, including basic support with transportation and money management as needed and when desired by the resident.</li> <li>• Document the resident's choices, and any ongoing discussions and changes in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The setting should be selected from among options including a non-disability specific option. Room options are based on the individual's needs, preferences and available resources for room and board.</p>	<ul style="list-style-type: none"> <li>• Discuss with each prospective resident his or her considerations, including supportive housing, an independent senior apartment, living with family/friends, etc.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Discuss with each resident available options based upon an assessment of the resident's needs, preferences and available financial resources.</li> <li>• Notify a resident or potential resident requesting a single room of any increased cost and availability.</li> <li>• Establish and maintain a waitlist for a single occupancy room.</li> <li>• Discuss with the resident the facility's procedure for resident room requests and roommate changes, as well as the procedure for residents to check their status on the facility waitlist. Inform the resident of how the facility will accommodate resident requests based on the facility's policy and procedure.</li> <li>• Document the resident's pre-admission considerations, choices, and any ongoing discussions and changes in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The program optimizes and doesn't regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<ul style="list-style-type: none"> <li>• Provide and discuss with each resident upon admission and periodically thereafter the Statement of Resident Rights and Responsibilities, and subsequently document in the resident's case management notes the resident's receipt and comprehension of the Statement.</li> <li>• Facilitate an environment where all residents may live, learn, work and enjoy their lives according to their unique personal interests and desires.</li> <li>• Review the DOH-provided case management training archived on the Health Commerce System and consider attending regular training on person-centered practices.</li> <li>• During case management or Individualized Service Plan reviews and whenever necessary as determined by resident request or changes in condition, discuss and update documentation to reflect the resident's goals, individual routine, preferences, dislikes, strengths and weaknesses, as well as secured linkages with preferred internal and external activities based on individual choice.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Document the resident's choices, and any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The program will ensure an individual's right to be treated with dignity and respect and freedom from coercion and restraint.</p>	<ul style="list-style-type: none"> <li>• Provide to and review with each resident upon admission, and review periodically thereafter, the Statement of Resident Rights and Responsibilities, and subsequently document in the resident's person-centered service plan the resident's receipt and comprehension of the Statement.</li> <li>• Facilitate an environment where all residents may live, learn, work and enjoy their lives according to their unique personal interests and desires.</li> <li>• Review the DOH-provided case management training archived on the Health Commerce System and consider attending regular training on person-centered practices.</li> <li>• Comply with 18 NYCRR §487.5(a)(2) and/or §488.10(g)(3), which requires that the Statement of Rights and Responsibilities be posted in a public area of the facility.</li> <li>• Comply with §487.5(a)(3) and/or §488.5(a)(3) which provides residents with the right to present grievances without fear of reprisal and entitles each resident to receive courteous, fair and respectful care and treatment at all times.</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Individuals sharing units have a choice of roommates.<sup>i</sup></p>	<ul style="list-style-type: none"> <li>• Discuss with each resident available room and roommate options based upon an assessment of the resident's needs, preferences and available financial resources.</li> <li>• Discuss the facility's procedure for resident room requests and roommate changes, and the process for the facility to accommodate requests.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Document the resident's choices, any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
Individuals have the freedom to furnish and decorate their sleeping or living units within the facility. <sup>i</sup>	<ul style="list-style-type: none"> <li>• Document the resident's choices, and any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train staff on this policy and procedure.</li> </ul>
Each unit or dwelling is a specific place that can be owned, rented or occupied under a legally enforceable agreement by the individual who has, at a minimum, the same responsibilities and protections from eviction that tenants have under the jurisdiction's landlord/tenant law or equivalent. <sup>i</sup>	<ul style="list-style-type: none"> <li>• Review with each resident prior to admission and as changes necessitate, the admission agreement, and subsequently document in the resident's case management notes and/or person-centered service plan confirming the resident's receipt and comprehension of the agreement.</li> <li>• Comply with applicable laws and regulations regarding termination of the admission or residency agreement.</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
Each program will ensure an individual's rights of privacy in his or her sleeping or living unit, including lockable room/unit entrance doors and key distribution. <sup>i</sup>	<ul style="list-style-type: none"> <li>• Provide and review with each resident upon admission, and review periodically thereafter, the Statement of Resident Rights and Responsibilities, and subsequently document in the resident's case management notes and/or person-centered service plan the resident's receipt and comprehension of the Statement.</li> <li>• Discuss with each resident his or her rights to privacy regarding health information and within his or her own room, including a key or key code for the room. Periodically review with the resident his or her right for privacy and identification of any concerns or barriers and steps towards resolution.</li> <li>• Assure that any actions taken to facilitate resident privacy requests comply with applicable building</li> </ul>

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	<p>and fire codes, and may require review and approval by the Department.</p> <ul style="list-style-type: none"> <li>• For any resident who has been determined unsafe through assessment to have a key to his or her room, document in the resident's person-centered service plan the reason(s) for the determination, action steps, and ongoing periodic reassessment.</li> <li>• Document in the Resident's person-centered care plan the discussion with each resident regarding the need for designated staff to have access to the resident's room in the event of an emergency or when necessary and appropriate (e.g., maintenance or housekeeping).</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Individuals have the freedom and support to control their own schedules and activities.<sup>i</sup></p>	<ul style="list-style-type: none"> <li>• Discuss with each resident his or her right to make decisions regarding his or her schedule and activities. Document the resident's preferred schedule and activities in the resident's case management notes and/or person-centered service plan.</li> <li>• Offer a forum for residents to participate in choice of activities (offered by staff both inside and outside of the setting) that goes beyond the initial admissions process, such as Resident Council.</li> <li>• Discuss with the resident available program-provided activities (e.g. meals, exercise). For those activities in which a resident wants to participate outside the established time, identify any available options and alternatives to facilitate the resident's participation.</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>



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Individuals have access to food at any time. <sup>i</sup>	<ul style="list-style-type: none"> <li>• Discuss with each resident upon admission, and periodically thereafter, the resident's preferences for meals and in-between meal snacks and incorporate those preferences into the resident's case management notes and/or person-centered service plan.</li> <li>• Discuss with each resident at the time of admission, and periodically thereafter, the availability of foods/snacks of preference 24 hours per day and how to access food outside of standard meal times, and subsequently document in the resident's person-centered service plan.</li> <li>• Provide assistance to the resident, as needed, to access food.</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the resident's case management notes and/or person-centered service plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
Individuals are able to have visitors of their choice at any time. <sup>i</sup>	<ul style="list-style-type: none"> <li>• Provide to and review with each resident upon admission, and review periodically thereafter, the Statement of Resident Rights and Responsibilities, and subsequently document in the Resident's case management notes and/or person-centered care plan the resident's receipt and comprehension of the Statement.</li> <li>• Discuss with each resident his or her right to have visitors at any time without staff interference.</li> <li>• Discuss with each resident at the time of admission, and periodically thereafter, the facility's visitor policies and procedures.</li> <li>• Discuss with each resident any visitor age requirements, identify common and private spaces for visits, accommodation of overnight visitors, applicable roommate agreements, management of disruptive or dangerous visitors, and supervision of visitors to assure safety.</li> <li>• Document the resident's choices, any ongoing discussions and changes, in the resident's case</li> </ul>

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	<p>management notes and/or person-centered service plan.</p> <ul style="list-style-type: none"><li>• Train all staff on this policy and procedure.</li></ul>

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<sup>i</sup> If an HCBS standard cannot be met for an individual resident, the facility must provide documentation of the resident's individual assessed need to support any modification to the standard. To support any modification to the HCBS standard, the following elements must be documented in **both** the resident's person-centered service plan and case management notes:

- The specific, individualized assessed need;
- The positive interventions and supports used prior to seeking the modification;
- Less-intrusive methods that did not successfully meet the resident's assessed need;
- How the modification is directly proportionate to the individualized assessed need;
- Periodic evaluation to assess ongoing effectiveness of the modification;
- The positive interventions and supports in place to help remove the modification at a future date;
- The resident's informed consent; and
- Assurance that the modification will not cause harm to any resident.