

HCBS Settings Rule Update

ADHC Compliance Step-by-Step

ADHCC Webinars

Oct. 7, 2019

March 13, 2020

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ADHC compliance step-by-step

Agenda

- HCBS regulatory requirements - QUICK
- DOH's concerns
- Assess your own program's compliance- which area of the rule is the most challenging to you?
- Update policies and procedures (samples)
- Questions

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Overview

- Published January 2014- Effective March 2014
- Applies to federal HCBS 1915c waivers, 1915i state plan, 1915k Community First Choice, 1115 Demonstrations (managed care)
- Requirements apply whether delivered under FFS or managed care
- States must ensure compliance by 2022
- This is a federal rule and impacts virtually all Medicaid beneficiaries who receive community-based long term care in New York State
- Agencies involved: OPWDD, OMH, OASIS, DOH, NYSOFA and more

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Heightened Scrutiny (HS)

The HCBS settings regulations describe three categories of residential or non-residential settings that are presumed to have the qualities of an institution requiring a heightened scrutiny review:

- Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution;
- Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

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Heightened Scrutiny, cont.

CMS intends to take the following factors into account in determining whether a setting has the effect of isolating individuals:

- Due to the design or model of service provision in the setting, individuals have limited, if any, opportunities* for interaction in and with the broader community, including individuals not receiving Medicaid-funded HCBS;
- The setting restricts beneficiary choice to receive services or to engage in activities outside of the setting; or
- The setting is located separate and apart from the broader community without facilitating beneficiary opportunity to access the broader community and participate in community services, consistent with a beneficiary's person-centered plan.

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Heightened Scrutiny process

- CMS will use the list to compile a random sample of settings to review, including any that the state requests CMS to review and any setting that generated significant public comment in opposition to the state's assessment.
- CMS will review all information presented by the state and other parties and will either approve the state's assertion or provide feedback on missing information, questions for clarity or reason(s) why CMS can't agree that the setting overcomes its institutional presumption.
- States can then provide additional information needed to support their assertion before CMS makes a final determination.
- Based on the process described in the state's STP on how CMS feedback on a particular setting will be applied to similarly situated settings, the state will use the CMS feedback to remediate settings not included in the CMS review sample.
- CMS will make final heightened scrutiny review determinations of each setting in the sample available on the [Medicaid.gov/hcbs](https://www.Medicaid.gov/hcbs) website.

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Evidentiary Packet to CMS

Looks familiar, right?

- Evidence should focus on the qualities of the setting and how it is integrated in and supports access of individuals into the broader community via the organization's policies and procedures and how the setting supports individuals consistent with their individual person-centered service plans.
- A copy of procedures and services provided that indicate evidence of access to and demonstrated support for beneficiary integration in the broader community activities consistent with individuals' person-centered service plans;
- Descriptions of processes in place or actions taken by direct support professionals to support, monitor, improve, and enhance individual beneficiary integration in and with the broader community over time;
- A summary of examples of how schedules are varied according to individual preferences and the need to integrate into the local community at times when the general community attends an activity;
- Procedures to routinely monitor individual access to services and activities of the broader community as identified in the person-centered service plans;
- ***Evidentiary packages should describe how individuals actually engage and integrate in the broader community. –CMS March 2019***

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Let's get to the regulation: Requirement #1

The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

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Requirement #2

The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

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Requirements 3, 4, 6 (3&4)

- *Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.*
- *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.*
- *Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.*
- *Individuals are able to have visitors of their choosing at any time.*
- *Facilitates individual choice regarding services and supports, and who provides them.*

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DOH shares concerns with ADHCC

- Three DOH staff dedicated to collecting evidence and measuring ADHC compliance
- About 50% through the process
- Taking much longer than anticipated—a lot of back/forth between providers and DOH
- DOH is concerned with outdated policies and procedures *a policy from 1992 will not be HCBS compliant*
- DOH is concerned that many policies don't show dates
- DOH communicates that most providers are easy to work with and want to comply- GOOD!

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What to do now?

- Review/familiarize yourself with **current** policies and procedures
- Make a checklist of what you need to do (next slide)
- Start updating policies—one at a time— use your team
- Educate your team on changes
- Review policies annually (program evaluation, 425.22)
- Make sure policies have dates created and updated

Not just P&Ps for evidence:

Menus, community bulletin boards, newsletters, activity calendars, staff training/in-services

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HCBS Settings Rule checklist (from survey)

- Person-centered care plan policy and procedure
- Access to food at any time
- Access to visitors at any time
- Access and choices of public transportation
- Activities/activity questionnaire (desires/goals, age appropriate, skills, abilities)
- Community integration
- Freedom to go outside if safe and competent
- Medical information is kept private/confidential
- Flexibility in breaks/lunch times
- Activities adapted to needs and preferences
- Health and personal care conducted in private
- Space to talk on the phone or visit with others in private
- Freedom to control own schedule
- Secure place to store belongings
- Alternative meal and/or private dining if requested
- Registrant chooses with whom they spend their time while in program
- Program supports registrants to: associate with others, practice religion, make personal decisions
- Allow individuals to choose employee to provide service
- Opportunity to tour the site
- Ability to change activities based on preferences
- Site provide information to individuals about how to make a request for additional services or changes to care plans
- Staff receive new hire training related to company policies, including PC planning, practice and thinking; continuing education; sign in sheets
- Company policies regularly assessed for compliance and amended as necessary

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HCBS Settings Rule checklist (from survey)

- Person-centered care plan policy and procedure- **see ADHCC website**
- Access to food at any time – **dietary policy, menu (WRITE this on menu), registrant rights**
- Access to visitors at any time – **registrant rights/signage**
- Access and choices of public transportation- **bulletin board (WRITE this on the bulletin board)**
- Activities/activity questionnaire (desires/goals, age appropriate, skills, abilities) – **activity policy**
- Community integration – **community integration care plan, registrant rights, activity questionnaire**
- Freedom to go outside if safe and competent – **registrant rights, psychosocial assessment**
- Medical information is kept private/confidential – **registrant rights**
- Flexibility in breaks/lunch times – **dietary policy, menu (WRITE this on the menu)**
- Activities adapted to needs and preferences - **activity policy, activity questionnaire, activity calendar**
- Health and personal care conducted in private – **confidentiality policy**
- Space to talk on the phone or visit with others in private - **confidentiality policy, photo of space**
- Freedom to control own schedule – **registrant rights, activity calendar (WRITE this on the calendar)**
- Secure place to store belongings – **photo, registrant rights**
- Alternative meal and/or private dining if requested **dietary policy, menu (WRITE this on the menu)**
- Registrant chooses with whom they spend their time while in program **registrant rights**
- Program supports registrants to: associate with others, practice religion, make personal decisions **registrant rights**
- Allow individuals to choose employee to provide service **registrant rights**
- Opportunity to tour the site – **admission policy, signage**
- Ability to change activities based on preferences – **activity policy, activity calendar (WRITE this on the calendar)**
- Site provide information to individuals about how to make a request for additional services or changes to care plans – **care plan policy**
- Staff receive new hire training related to company policies, including PC planning, practice and thinking; continuing education; sign in sheets – **staff training log**
- Company policies regularly assessed for compliance and amended as necessary – **add to quality improvement**

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ABC Adult Day Health Care Program

ABC ADHC, in its objective to preserve and enhance the dignity of its registrants, has adopted a Bill of Rights to assure them that their rights as individuals are upheld and respected.

It is the policy of ABC ADHC program, in compliance with State and Federal laws, to prohibit discrimination based on age, creed, color, national origin, sex or source of payment.

This Bill of Rights also imposes responsibilities upon the recipients (and their families) to respect the stated aims and goals of ABC ADHC.

BILL OF RIGHTS

- Every registrant shall be fully informed, as evidenced by the registrant's written acknowledgment, prior to or at the time of admission, and upon request, of these rights.
- Each registrant is given a statement of rules and regulations governing conduct and responsibility. Registrants are expected to obey all reasonable regulations of ABC ADHC and to respect the personal rights and private property of other registrants.
- Every registrant shall be fully informed and given written statement prior to or at the time of admission and during stay, of the services available in the facility, and of related charges including any charges for services not covered by sources of third-party payments or not covered by ABC ADHC basic per diem rate.
- Every registrant shall receive written notification by the program at admission and following the continued stay evaluation, of the services the registrant shall receive while attending the adult day health care program.
- Every registrant shall be afforded the opportunity to participate in his/her plan of care within the program. Each registrant shall have the right to refuse medication and treatment after being fully informed and understanding the consequences of such actions.
- Every registrant shall be encouraged and assisted, throughout their period of stay, to exercise their rights as a registrant. To this end they may voice grievances, seek action for damages or other relief for deprivations or infringement of their right to adequate and proper treatment and care. Each registrant shall be free from restraint, interference, coercion, discrimination, or reprisal in the exercise of these rights.

- Every registrant shall be free from mental and physical abuse.
- Every registrant has the right to have visitors at any time while at the program.
- Every registrant is instructed in both the facility's and the Health Department's complaint procedures and is herein provided with the telephone number of the office established by the Health Department to receive complaints.
 - NYS Department of Health "Hot Line": 1-888-201-4563
- Every registrant shall be assured security and confidential treatment of their personal and medical records, and may approve or refuse their release to any individual outside ABC ADHC except as required by law or third-party payment contract.
- Every registrant shall be treated with consideration, respect, and full recognition of their dignity and individuality, including privacy in treatment and in care for personal needs.
- Every registrant has the right to privacy, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Every registrant has the right to full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
- Every registrant has the freedom to move about the building and go outside according to the plan of care.
- No registrant shall be required to perform services for ABC ADHC that are not included for therapeutic purposes in their plan of care.
- Every registrant may associate and communicate with persons of their choice, may join with other registrants or individuals within or outside of ABC ADHC to work for improvements in care.
- Every registrant has the right to choose who will perform his/her care.
- Every registrant has a right to store personal belongings.

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- Every registrant may meet with, and participate in activities of social, religious and community groups at their discretion, unless medically contraindicated, as documented by a physician in the medical record.
- Every registrant shall be assured of exercising his/her civil and religious liberties.
- Every registrant shall be transferred or discharged for medical reasons, or for their welfare or that of other registrants, or for non-payment (except as prohibited by sources of third-party payment), or for failure to comply with minimum attendance requirements per DOH regulations and shall be given reasonable advance notice to ensure orderly transfer or discharge, such actions being documented in the medical record.
- Every registrant may participate in the election of, or be elected to, the Registrant Council.
- Every registrant is assured of the right to receive, upon request, kosher food or food products prepared in accordance with the Hebrew Orthodox religious requirements when the registrant, as a matter of religious belief, desires to observe Jewish dietary laws.

The Registrant's Bill of Rights has been read aloud to me. It has been discussed and I am aware of its contents. A copy has been given to me or my next of kin.

Registrant's Signature _____ Date _____

Witness _____ Date _____

Revised 10/19

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ADULT DAY HEALTH CARE SUBJECT: DIETARY SERVICES
EFFECTIVE/UPDATED: 10/10/19

Policy:

It is the policy of the ABC ADHC program to provide nourishments and the luncheon meal through a food service vendor with modifications and supervision provided by a Registered Dietitian.

- The RD is responsible for periodic monitoring of the food service area to ensure staff practice hygienic food handling techniques and accepted principles of sanitation according to relevant codes.

Revised 10/19

Procedures:

- All registrants have diets ordered by their community physician.
- The Food Service Vendor shall provide the lunch meal for registrants. Additional alternate menu items may be available in accordance with restricted modified diets not accounted for on the House Diet.
- The ABC ADHC House Diet consists of 3 gm Na, Low Fat (60gm), NCS. If the MD orders a Renal diet, he/she must specify the gms of protein, sodium and meq of Potassium. Diabetic diets written without a calorie restriction will be written as NCS.
- The RD will modify the menu as restricted diets warrant or order special items/supplements as ordered/needed.
- Kosher meals will be provided as needed.
- Private dining will be provided if requested.
- Access to food will be available at any time. The program will maintain a supply of snacks in the event a registrant is hungry at times other than meal time. If a registrant arrives late, or is not ready to receive a meal when it is being served, the meal will be set aside for when the registrant is ready.
- The RD is responsible for monitoring the quality, quantity and temperatures of food served, and for facilitating a flexible menu with consideration of registrant preferences.
- The RD shall be a member of the interdisciplinary team and contribute to the registrant care plan.
- The RD shall ensure that the dietary records for the ADHC program are maintained in compliance with regulations and CACFP requirements.

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Therapeutic Activities Initial Questionnaire

Registrant name: MR #: Admission date: DOB:
Marital status: Hometown:
Social contacts (family/friends):
Current community involvement:
Desires for increased community involvement:
Former occupation(s):
Education level: Languages: Degree of involvement:
Religious affiliation:
Orientation: ☐ person ☐ place ☐ time
Decision making ability: ☐ independent ☐ needs assistance
Comments:
Hard of hearing? ☐ Yes ☐ No
Mobility: ☐ independent ☐ with assist ☐ cane ☐ walker ☐ w/c
Needs assist getting to and from groups? ☐ Yes ☐ No
Dominant Hand: ☐ right ☐ left

Adaptations needed for activities

Yes No Yes No
☐ ☐ hearing aid ☐ ☐ sit adjacent to group leader
☐ ☐ glasses ☐ ☐ Braille
☐ ☐ magnifier ☐ ☐ high contrast
☐ ☐ large print ☐ ☐ special/task lighting
☐ ☐ glare control other:

Community Outings

Yes No
☐ ☐ Elopement risk (see Elopement Risk Decision Tree)
☐ ☐ Needs wheelchair in community

Freedom to move about the building and outside (see Mini-Mental State Examination)

Yes No
☐ ☐ Freedom to move about the building unattended
☐ ☐ Freedom to go outside unattended

☐ ☐ Freedom to go outside with supervision
Registrant's desire for community outings:

Registrant name: MR#:

Present social/recreational activities

Activity Preference

| Current | Past | No interest | Activity |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Cards |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Table games |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Exercise/sports |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Music |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Reading/writing |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Spiritual/religious |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Educational |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Cognitive |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Sensory |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Gardening or plants |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Talking/conversing (social parties) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Walking/wheeling outdoors |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Movies, puzzles, hobbies |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Cooking |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Arts and Crafts |

Activities registrant expresses interest is not listed:

Physical limitations (specify):

Special needs (problem behaviors, developmental disability, etc):

Comments:

Signature: _____ Date: _____

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DOH requesting person-centered care plans

- Have you implemented person-centered care planning in your program?
- Use checklists to make sure you are covering new requirements
- Be sure to include community-integration care plan OR incorporate community integration in other care plans
- This is a focus of DOH; attend free DOH trainings

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Person-centered PROCESS checklist

- Insert “person-centered” into care plan documents and policies
- Must be driven by individual- **care plan cover sheet**
- Includes people chosen by registrant – **care plan cover sheet**
- Provides necessary information and support so that registrant directs the process and is enabled to make informed choices and decisions
- Is timely and occurs at times and locations convenient to registrant (and family)
- Written in plain language and in manner accessible to people with disabilities or persons with limited English
- Must include a strategy for solving conflict or disagreement
- Offers choice to individual regarding services and supports and from whom **care plan cover sheet**
- Includes a method for the individual to request updates to the plan, as needed
- Records alternative HCBS settings that were considered **care plan cover sheet**

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- Must reflect the services and supports that are important for the individual (based on the assessment) and services and supports important TO the individual
- Must reflect that the setting resides was chosen by the individual (care plan cover sheet/policy)
- Reflect registrant strengths and preferences
- Reflect clinical and support needs as identified through UAS
- Include identified goals and outcomes
- Reflect services and supports (paid and unpaid) that will assist individual to achieve identified goals
- Risk factors and measures in place to minimize them
- Must be understandable to the individual and individuals important in supporting him/her. Must be written in plain language and accessible to people with disabilities
- Identify person responsible for monitoring the plan (care plan cover sheet)
- Be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for implementation (care plan cover sheet)
- Distribute to the registrant and other people involved in the plan
- Include the services the registrant elects to self-direct (care plan cover sheet)
- Prevent unnecessary or inappropriate services and supports

| Date | Preferences | Strengths | Goal | Intervention | Resp. Dept. | Outcome |
|------|-------------|-----------|------|--------------|-------------|---------|
| | | | | | | |

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In closing

- Get organized
- Don't create new policies, just amend the ones you have
- DOH appreciates timely response to phone calls/emails
- If DOH hasn't contacted you yet, they will
- DOH is expecting you to take initiative on care plans and policies
- Remember, amending policies is a team approach
- Ask for help if you need it
- Attend regional meetings! Your colleagues can help you
- Attend ADHCC trainings, conferences, DOH trainings

Questions?

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