



# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Commissioner

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

Date: November 8, 2023  
Re: DAL NH 23-06  
Subject: Adult Day Health Care Program  
Home and Community Based  
Settings Rule and Compliance  
Notice

Dear Nursing Home Administrators, Adult Day Health Care Program Directors, Infection Preventionists:

This Dear Administrator Letter supersedes the March 25, 2021, Health Advisory requirement for ADHC programs considering reopening.

### ***Infection Control Policies and Procedures***

Effective with the date of this letter, ADHC programs planning to reopen must follow the Centers for Disease Control (CDC) Core Infection Prevention and Control Practices for all staff and registrants found at this link: <https://www.cdc.gov/infectioncontrol/guidelines/core-practices/index.html>.

ADHC programs must have infection control policies and procedures established and in place prior to reopening. Additional reopening infection control policies that address and ensure:

- Registrant, staff and visitor screening upon arrival to the program in accordance with [Department of Health](#) ("Department"), [Centers for Medicare and Medicaid Services \(CMS\)](#), and [CDC](#) guidelines;
- Staff follow Department and CMS guidance on proper use of personal protective equipment when caring for registrants;
- All registrants are free from communicable disease upon return to program; and
- All staff wear a mask during operating hours, in accordance with current State and CDC guidelines.

### ***Compliance with the HCBS Final Rule***

On March 17, 2014, the federal Department of Health and Human Services promulgated the [HCBS Final Rule](#) establishing 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 ADHC programs are non-residential settings, the Department must ensure ADHC programs are in full compliance with the HCBS Final Rule. All ADHCPs must be considered "home and community-based" as defined under Federal regulations [42 CFR 441.301](#) and [42 CFR 441.710](#) to continue to receive federal funding.

The HCBS requirements establish an outcome-oriented definition focusing on the nature and quality of individuals' experiences. The Final 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,
- Supporting integration in and access to the greater community.

ADHC program settings located in a building that is a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS is presumed to be a setting that has the qualities of an institution unless determined through the heightened scrutiny process conducted by the Department ([42 CFR 441.301](#)) to overcome these qualities.

### **Reopening Process**

To facilitate the ADHC program reopening process, the ADHC must notify the Department of the intent and submit the following to [adhcp.hcbs@health.ny.gov](mailto:adhcp.hcbs@health.ny.gov):

1. Date-stamped photographs of the entrance to the nursing home and of the ADHC program entrance.
2. Updated policies and procedures assuring the most integrated setting standards listed above will be provided to all participants, with individualized modifications made only when less restrictive methods have been tried and failed to only those standards that are allowed to be modified in the person-centered service plan.
3. Date-stamped photographs of kitchenettes, available snacks, beverages, etc.; and
4. All infection control policies and procedures.

The Department will review submitted materials for Heightened Scrutiny and request additional information as necessary. Once the Department has identified HCBS Final Rule compliance, the Department will authorize the reopening of the ADHC program.

### **Additional Resources**

Further information regarding the HCBS Final Rule may be found 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)

Person Centered Planning Guidance may be found at:  
[https://www.health.ny.gov/health\\_care/medicaid/redesign/person-centered\\_planning/index.htm](https://www.health.ny.gov/health_care/medicaid/redesign/person-centered_planning/index.htm)

Sincerely,



Stephanie E. Paton RN, Director  
Division of Nursing Homes and  
ICF/IID Surveillance