



**Department
of Health**

Home and Community-Based Services (HCBS)

Final Rule Statewide Transition Plan (STP)

Agenda

HCBS and Final Rule Overview

Systemic and Site-Level Assessment of Settings

Heightened Scrutiny Overview

Next Steps

Home and Community-Based Services Defined

Per CFR 440.180(b) “Home and Community Based Waiver Services” include:

- Case management services
- Homemaker services
- Home health aid services
- Personal care services
- Adult day health services
- Habilitation services
- Respite care services
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services for individuals with chronic mental illness, subject to conditions specified in CFR 440.180(b)(8)(d)
- Other services – requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization

HCBS Final Rule – Effective March 17, 2014

The final rule states that all settings where HCBS are provided and where people receiving HCBS live must be:

- integrated in and support full access to the greater community, and
- selected from among options by the individual

HCBS settings also must:

- ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint
- optimize autonomy and independence in making life choices and
- facilitate choice about services and who provides them
- provide freedom and support to control schedules and activities
- provide access to food and visitors at any time

Key Dates



Transition Period to Achieve Full Compliance - **March 17, 2022** - pertains to:

- Settings provisions for 1915 (c), 1915 (k) (Community First Choice Option), and any 1115 demonstration
- Making any changes to/restrictions of, a persons rights given by the Final Rule, on case-by-case basis within individual Person-Centered Plans

New York's Statewide Transition Plan received initial approval in late 2018

State's have until March 17, 2022 to comply with making modifications to the additional standards within person-centered plans

ASSESSING FOR GENERAL COMPLIANCE WITH THE HCBS FINAL RULE

Two Types of Assessment Required to Determine HCBS Compliance before March, 2022:

Systemic Assessment

- CMS requires states to assess their existing standards, rules, regulations, policies, etc., related to HCBS
- States must remove any systemic barriers to meeting the rule, providing remediation plans when the settings standards are not present and when there are rules in place that are in direct conflict with the HCBS Rule
- Eight Systemic Compliance Charts within New York's STP contain our state's most recent systemic review

Site-Level Assessment

To decide whether a states settings where HCBS is provided and where individuals live are in compliance with the rule, states may use:

- Licensing reviews, provider qualification reviews
- Site visits preformed by state personnel, case managers who are not affiliated with the HCBS provider, or Managed Care Organizations (MCOs)
- A statistically significant sample of site visits of HCBS settings to determine compliance now and going forward

New York's HCBS Site-Level Assessment

The eight State agencies and offices that oversee Medicaid HCBS in New York each:

- Have their own existing surveillance and monitoring processes in place to assess for compliance with various State and Federal rules and policies
- Are building site-level assessment of HCBS compliance into their systems to achieve compliance by 2022 and monitor compliance going forward
- Are using a CMS approved process of assessing for compliance of the settings they oversee/license, such as:
 - site visits to a statistically significant sample of settings, or
 - site visits to all their settings, or
 - provider self-surveys/attestations, with validation of a statistically significant sample of settings.

UNDERSTANDING HEIGHTENED SCRUTINY

What is Heightened Scrutiny?

- It's a more intensive form of HCBS site assessment
- Settings with certain characteristics are presumed institutional by CMS
- The State must submit evidence on those settings if it wants to receive federal financial participation for those settings past the 2022 deadline
- Evidence for each setting is required to go through a public comment period

Settings Subject to Heightened Scrutiny

HCBS Rule describes three types of settings presumed institutional - subject to heightened scrutiny:

- Settings in a public/private operated facility providing inpatient institutional treatment (i.e., nursing facility, ICD/IID, IMD, or hospital)
- Settings in a building on the grounds of, or adjacent to, a public institution
- Settings having the effect of isolating individuals receiving Medicaid HCBS from the broader community

SOCIAL ADULT DAY CARE NEXT STEPS

Next Steps

- Evaluate whether to issue SADC HCBS rule guidance
- Work with plans and other entities to meet HCBS compliance, including remediation of settings where needed
- On-going monitoring plan to be determined