



**Department
of Health**

Office of
Health Insurance
Programs



Home and Community-Based Services (HCBS) Final Rule Statewide Transition Plan

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August 18, 2016

Underlying Intent

- This webinar describes New York State's amended Home and Community-Based Services (HCBS) Statewide Transition Plan (STP) that is necessary to come into compliance with the HCBS Final Rule. Its focus will be on transitioning home and community-based services provided through 1915(c) waivers, the 1915(k) Community First Choice Option (CFCO) state plan amendment, and the NY Partnership Plan 1115 Demonstration.
- New York State's Department of Health and its sister agencies and offices will present on each of their respective sections of the STP, specifically providing an overview of the systemic regulatory reviews, processes for site-level and heightened scrutiny assessments, initial remediation plans, and timelines for completing these activities.

Background

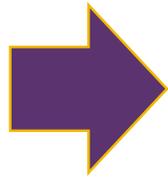
- On January 16, 2014, CMS published a final rule that included, among other things, changes to 1915(c) waivers and established new standards for approved settings for the provision of Medicaid-funded home and community-based services under covered authorities. Also established were new person-centered planning and conflict-of-interest requirements.
- The regulation defines covered authorities as 1915(c), 1915(i) and 1915(k); however, CMS has made clear that other vehicles for providing Home and Community-Based (HCB) long term services and supports (LTSS), including 1115 Demonstration Waivers, will also be subject to these requirements.
- The rule became effective March 17, 2014.

Settings Requirements

- The final rule specifies that all settings where HCBS are provided **and** where HCBS recipients live must be:
 - Integrated in and support full access to the greater community; and
 - Selected from among options by the individual.
- Appropriate HCBS residential and non-residential 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.
- The final rule stipulates additional requirements for provider-owned and controlled settings.

STP Expectations

- CMS requires states to file an STP within 120 days of submission of any 1915(c) amendment, 1915(i) amendment, or renewal; or by March 16, 2015, whichever is earlier.
- States must get stakeholder input on the proposed STP from all stakeholders, including providers, recipients, family members and policy makers, through the publication of at least two forms of notice in addition to the full STP, and provide at least 30 days for comment.
- States must include a summary of public comments with their STP submission to CMS, as well as the disposition of the input in the final plan.

 New York State posted our second draft STP on the Medicaid Redesign team (MRT) website, as well as other agency websites, listserves, the State Register, and other avenues.

Transition Period

- New waivers or state plan amendments, such as New York's 1915(k) state plan amendment, must comply with settings standards from the time of initial implementation.
- Existing settings where individuals in receipt of Medicaid-funded HCBS live and/or receive services under the covered authorities are allowed during a transition period.
- States have until March 2019 to come into compliance with:
 - Making individual modifications to settings within person-centered plans; and
 - The HCBS final rule settings standards.
- March 2019 is not that far away.

NYS 2016 Statewide Transition Plan

- The NYS STP was recently revised and submitted for public comment.
- The agencies/offices involved in the development of the STP are:
 - New York State Department of Health (DOH)
 - AIDS Institute
 - Office of Health Insurance Programs (OHIP)
 - Office of Primary Care and Health Systems Management (OPCHSM)
 - Office for Persons With Developmental Disabilities (OPWDD)
 - Office of Mental Health (OMH)
 - Office of Children and Family Services (OCFS)
 - Office of Alcoholism and Substance Abuse Services (OASAS)

Two Key Assessment Processes:

a) Systemic Review

- Within the STP there are eight systemic compliance charts used for regulatory or systemic review.
- This review assessed existing standards, rules, regulations or other requirements related to HCBS delivery to determine if they meet final rule requirements.
- Standards and regulations, which are not indicated as “compliant,” must have corresponding remediation plans, with supporting documentation provided for areas “compliant” or “partially-compliant.”
- Approved settings that are compliant under these standards must have site-specific assessments conducted to determine their degree of compliance.

b) Site-Specific Assessments

- In determining the level of compliance of individual settings, states may use:
 - licensing reviews, provider qualification reviews, and/or site visits;
 - state personnel, case managers who are not affiliated with the HCBS provider, Managed Care Organizations (MCOs), etc.; and
 - a statistically significant sample of settings to determine initial and ongoing compliance.

***NY intends to use a statistically significant sample of site visits and provider self- assessments.*

DOH Transition Plan

DOH Transition Plan: CAH, TBI, NHTD, MMC, MLTC, ADHC, SADC

- DOH's portion of the STP describes how its waiver programs and 1115 Demonstration comply with the HCBS final rule.
- The DOH authorities affected by the final rule under the 1915 (c) waiver are:
 - Nursing Home Transition and Diversion (NHTD) Waiver, Traumatic Brain Injury (TBI) Waiver, and Care at Home (CAH) Waivers I and II.
- The DOH authorities affected by the final rule under the 1115 Partnership Plan Demonstration are:
 - Medicaid Managed Care (MMC) – HARP and Non-HARP HCBS; and
 - Managed Long Term Care (MLTC) - Medicaid Advantage Program (MAP), Partial Capitation (Partial Cap), and Fully Integrated Duals Advantage (FIDA). In addition, some services are affected, including Social Adult Day Care (SADC) and Adult Day Health Care (ADHC).

DOH Transition Plan:

- Individuals in New York served under 1915 (k) live in their own homes or those of family members, friends, or neighbors. These are settings presumed compliant with the HCBS final rule.
- Under the 1115 Demonstration, almost all individuals live in their own homes or those of family members, friends, or neighbors.
- However, those receiving services under these authorities may also receive services in non-residential settings (ADHCs, SADCs) that need to be assessed for compliance.
- Beginning shortly, the State will be conducting site visits on these non-residential settings to assess level of compliance and determine remediation plans, where necessary.

DOH Regulatory Review: CAH, TBI, NHTD, MMC, MLTC, ADHC, SADC

The DOH has done the regulatory review and related systemic compliance charts for:

- **CAH, TBI, NHTD Waivers**: Most regulations have a high degree of compliance in applicable areas due to recipients living in their own home, or the home of a family member, friend, relative or guardian. TBI regulations, however, will need to be revised by 2018 to reflect HCBS compliance.
- **1115 Waiver/Mainstream Medicaid Managed Care (MMC)**: Regulations have a “partially compliant” degree of compliance in applicable areas and will be updated by the end of 2018 in order to be compliant with the HCBS final rule.
- **FIDA, MAP, Partial Plan Contracts**: Most regulations are indicated as with some “compliant” and “non-compliant” areas; applicable regulations will be revised to be compliant prior to March, 2019.
- **Social Adult Day Care/Adult Day Health Services**: Regulations are primarily indicated as “compliant” or “partially compliant”; regulations will be revised and applicable settings will fall under heightened scrutiny assessment prior to 2019.

DOH Transition Plan: Assisted Living

- **Assessment of current ALP provider compliance with HCBS Rule requirements:**
 - June 2016 - ALP Self-Assessment Survey developed with input from internal and external stakeholders.
 - July 5, 2016 - Self-Assessment Survey issued to existing and future providers of ALP services.
 - September 23, 2016 - DOH anticipates release of ALP Self-Assessment Survey results.
- **Training and education to providers on HCBS Rule requirements:**
 - July 27, 2016 - DOH hosted webinar for all existing and future ALP providers on HCBS Settings requirements.
 - August 4, 2016 - HCBS Settings Q&A document distributed to all ACFs.
 - October 3, 2016 - Outreach and Education activities scheduled to begin for individual ALP providers.

DOH Transition Plan: Assisted Living

- **Development and implementation of survey tools and protocols to ensure compliance with HCBS Rule requirements**
 - January 2017 - Develop ALP policy guidance and survey protocol.
 - February 2017 - Provide surveyor training.
 - March 2017 - Implement survey protocols to assess ALP provider compliance.
- **Amendments to align NYS regulations with HCBS Rule requirements**
 - Continue to work with key stakeholders to develop proposals for statutory and regulatory amendments to foster conformance with the HCBS Settings requirements.
 - Anticipate final regulatory amendments no later than January 2019.

DOH Transition Plan: Adult Day Health Care (ADHC)

There will be an assessment of current ADHC compliance with HCBS rule. A significant number of sites will meet the criteria for heightened scrutiny.

- Are any settings in facilities that also provide inpatient institutional services?
 - Yes, a number of programs are located within a nursing home.
- Are any settings in facilities on the grounds of, or immediately adjacent to, a public institution?
 - Yes, a majority of the programs are located on the grounds, or immediately adjacent to, a nursing home.

DOH Transition Plan: Adult Day Health Care (ADHC)

The transition plan for ensuring compliance with the HCBS rule for ADHCs consists of the following steps:

- Meeting/Webinar will be convened with ADHC providers to review the requirements of HCBS Rule and its implications for ADHC services and expectations. Anticipated date - June 2017.
- Update & revise ADHC Survey Report and Certification provider self-assessment to explicitly state the program adheres to all requirements of the HCBS Rule. Anticipated date - September 2017; initiate January 2018.
- Update and revise the ADHC Registrant Review (survey tool used by the surveyors to ensure and document compliance with the regulations) to incorporate HCBS requirements into routine programmatic on-site monitoring protocols. Anticipated date - September 2017; initiate January 2018.

DOH Transition Plan: Adult Day Health Care (ADHC)

Amendments to align NYS regulations with HCBS Rule requirements:

- DOH will continue to work with key stakeholders to develop proposals for statutory and regulatory amendments to foster compliance with the HCBS requirements.
- Final regulatory amendments are anticipated by January 2019.

DOH Transition Plan: AIDS Adult Day Health Care (ADHC)

- Convene a meeting with AIDS ADHCP providers regarding HCBS Setting Rule and compliance planning - October 2016.
- Incorporate HCBS Rule standards/requirements into AIDS ADHC program guidelines - November 2016.
- Develop and administer annual survey/attestation by which AIDS ADHC providers affirm compliance - December 2016.
- Incorporate HCBS Rule standards/requirements into routine program monitoring protocols - April 2017.
- All dates are target dates.

DOH Transition Plan: HIV Supportive Housing (SH)

- Convene a meeting with HIV SH providers under contract regarding HCBS Setting Rule and compliance planning - October 2016.
- Revise HIV SH contract language to include HCBS Rule standards/requirements - November 2016 for contracts effective July 2017.
- Develop and administer annual survey/attestation by which HIV SH contractors affirm compliance - January 2017.
- Incorporate HCBS Rule standards/requirements into routine program monitoring protocols - July 2017.
- All dates are target dates.

OPWDD Transition Plan

OPWDD System Challenges Puts Context Around Our Transition Plan

Large and Complex System:

- > 72,000 people in waiver; approximately 40,000 people live at home
- > 6,000 certified group homes; 54 percent serve more than four persons
- > 800 certified day facilities

Extensive System Transformation:

- ✓ ICF closures by October 2018
- ✓ Sheltered workshop closures by April 2020
- ✓ Move to care coordination/managed care

Systemic Assessment

- Stakeholder Engagement and Commissioner's Transformation Panel
- HCBS Settings Steering Committee, Heightened Scrutiny Work Group and Day Settings Work Group
- Rules, Regulations, and Policy Reviewed Resulting in the Creation of Regulation Change Timeline (Appendix D)

Site Specific Assessment – Residential

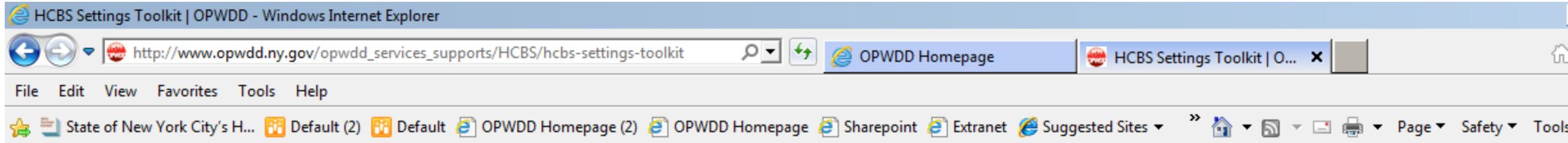
- Developed ADM #2014-04 as a basis of residential assessment, in addition to survey tools, processes and guidance document
- Sampled 2,054 certified residences
- Sampled 1,000 people residing in these residences
- Results on compliance estimates (Table 3-5)
- Systemic residential results indicate that a greater focus is needed on what is meaningful to each person in the planning and service delivery process

Remediation and Quality Improvement Plans

- Rules/regulations/policy change enhancements (e.g., person-centered planning regulations, policy guidance documents)
- Service and support enhancements
- Training, communications and workforce strategies
- Implementation of DSP competencies and Regional Centers for Workforce Transformation
- Infrastructure improvements
- Provider remediation and ongoing compliance monitoring



For more information, type “HCBS Settings Toolkit” in the search on the www.opwdd.ny.gov homepage



HCBS Home

Announcement for Public Comment on the Waiver/HCBS Transition Plan

Transition Plan

New York State HCBS Settings WebPage and Transition Plan

Stakeholder

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HCBS Settings Toolkit

Tools and Information

[Regulatory Requirements for HCBS Settings](#)

[Crosswalk POMs Comps Ethics HCBS PCP Promote](#)

Questions and Answers:

[When honoring a person's right to choose where they live, what is expected of providers?](#)

Person Centered Planning Resources:

[Person Centered Planning](#)

[DQI Person Centered Planning Checklist 10/2015 - 9/2016](#)

[CQL POMS](#)

OMH Transition Plan

NYS OMH Systemic Context

NYS OMH Children's Residential Settings and 1915c HCBS Waiver

- http://www.omh.ny.gov/omhweb/guidance/hcbs/html/section_100_1.htm
- All youth in the OMH Waiver MUST be in the community and in a home with parents or guardians.

NYS OMH Adult Residential Settings and 1115i-like HCBS Demo

- Part 595 OPERATION OF RESIDENTIAL PROGRAMS FOR ADULTS
 - Licensed Congregate Treatment Sites (Community Residences)
 - Licensed Apartment Treatment Programs
 - Community Residence Single Room Occupancy Programs (CR-SRO)

NYS OMH Systemic Context

Part 585 STANDARDS FOR FAMILY CARE HOMES

- Family Care Programs

Unlicensed Residential

- Supportive Single Residence Occupancy Programs (SP-SRO)
- Supportive Scattered-Site Housing, formerly known as Supported Housing

NYS OMH Regulatory Review

- SED 1915 c, HARP Demo – These regulations are in compliance with HCBS Final Rule.
- OMH 1115 Demo – Most regulations are in compliance in applicable areas due to recipients living in their own home. However, based upon OMH's statewide residential review, OMH will incorporate HCBS standards within 595 guidelines and Scattered-Site Supportive/Supported Housing Guidelines, where necessary, for compliance by January 2018.

OMH HCBS Adult Residential Settings Program Assessment Process

- All assessments are completed electronically and will be reviewed and approved by NYS OMH for compliance with the Federal HCBS Settings Regulation.
- Providers who own and/or operate ***Apartment Treatment, CR-SROs, and/or SP-SRO*** housing program sites MUST complete an assessment for each site.
- Providers who own and/or operate a ***Supportive Housing*** scattered site program, MUST complete only one assessment reviewing the entire Supportive Housing program. An assessment does NOT need to be submitted for each supportive housing site.

Initial Remediation Plans - Adult Residential Settings

NYC Adult Residential Providers - In Process

- July 1, 2016 - OMH sends assessment access information to housing programs identified as in need for further review for compliance.
- September 1, 2016 - Housing providers will complete program assessment within 60 days of guidance receipts.
- November 1, 2016 - OMH will contact provider to confirm compliance of specific sites to discuss next steps and corrective action plans to ensure compliance where necessary.

Rest of State Adult Residential Providers - November 1, 2016.

- November 1, 2016 - OMH sends assessment access information to housing programs identified as in need for further review for compliance.
- January 1, 2017 - Housing providers will complete program assessment within 60 days of guidance receipts.
- March 1, 2017 - OMH will contact provider to confirm compliance of specific sites and to discuss next steps and corrective action plans to ensure compliance where necessary.

All dates are target dates.

OCFS Transition Plan

OCFS – B2H Systemic Overview

- Bridges to Health (B2H) Medicaid Waiver Program is designed to support the health care needs of children with Serious Emotional Disturbance, Developmental Disabilities or Medically Fragile and in the care and custody of a Local Department of Social Services (LDSS) or the Office of Children and Family Services (OCFS).
- Since inception in 2008, B2H offers 14 services that are based in the principles of freedom of choice, and are person centered and trauma focused.

OCFS – B2H Systemic Overview

- B2H is approved to serve no more than 3,305 children at one time across the three B2H Waivers, B2H Serious Emotional Disturbance (SED) Waiver, B2H Developmental Disabilities (DD) Waiver, and Medically Fragile (MedF).
- B2H opportunities are presently allocated to the different populations. Included are children in B2H SED at 2619, B2H DD at 541, and B2H MedF at 145.
- The B2H Individualized Health Plan (IHP) includes a person-centered and complete picture of the child and/or medical consenter's history, risk factors, needs, strengths and preferences.

B2H Site Level Assessment

- The majority of B2H-enrolled children live in family homes.
- A small number of participants (approximately 60) live in foster care group homes and agency-operated boarding homes.
- OCFS monitors placements of all children enrolled in B2H, including children placed in group homes and agency-operated boarding homes.
- OCFS attests that these settings have all the features of a typical private home, including kitchens with cooking facilities, community dining areas, living space for leisure activities, and bedrooms. The homes are located in the community and there is ready access to activities also available to the general population. The children attend school within their communities, utilize services freely, and have the opportunity to build meaningful relationships with community members and organizations.

B2H Regulatory Review

- OCFS has reviewed existing New York State codes, rules, and regulations, provider qualifications, and practices to confirm that there are no systemic barriers to the implementation of the new HCBS settings requirements.
- As part of the Statewide Transition Plan, OCFS is assessing residential and non-residential settings through provider and participant surveys, and validating self-assessments by State staff.
- OCFS has determined partial compliance with the requirement mandating that the setting is selected by the individual. Options including non-disability specific settings and an option for a private unit in a residential setting.
- OCFS is developing a process for reviewing the group home and agency-operated boarding home placements. When a child is placed in a group home or agency-operated boarding home, the HCIA staff will complete the **Bridges to Health (B2H) site-specific and Systemic Compliance Guidance tool** and conduct an assessment of that setting to attest it meets the settings requirements. OCFS will validate the findings on a statistically significant sample of cases.

Timeline for Public Comment

- The revised STP was posted on July 19, 2016 on the MRT website at:
http://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm
- A notice also appeared in the State Register on August 3, 2016
- Public comments are encouraged:
 - Email:
HCBSrule@health.ny.gov
 - Mail:
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99 Washington Avenue
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Please send comments by September 9, 2016.