



## Department of Health

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June 30, 2021

DAL: DAL # 21-12  
Home and Community Based Settings (HCBS)  
Final Rule Guidance

Dear Adult Care Facility Administrators and Operators:

Effective March 17, 2014, the federal Department of Health and Human Services promulgated the Home and Community Based Settings (HCBS) Final Rule. The HCBS Final Rule requires the New York State Department of Health ("Department") 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. In 2018, the Department replicated those 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 developed preliminary guidance to assist such facilities in the development of HCBS compliant policies and practices.

Based on Title 42 of the Code of Federal Regulations, section 441.540, the Department now provides the enclosed additional guidance to assist adult care facilities in developing an HCBS compliant person-centered planning process to incorporate into the facility's case management structure. Please be reminded that failure to meet the metrics required under the HCBS Final Rule may result in reduced federal funding to New York State and/or citation against a non-compliant adult care facility as appropriate under applicable regulation.

If you have any questions, please contact Ms. Elizabeth Beverly, of my staff, via email to [acfhcbs@health.ny.gov](mailto:acfhcbs@health.ny.gov).

Sincerely,

Heidi L. Hayes, Acting Director  
Division of Adult Care Facilities  
and Assisted Living Surveillance

Enclosure  
cc: K. Pergolino  
E. Beverly

Federal Home and Community Based Settings (HCBS) Final Rule  
Person-Centered Planning Requirements/Characteristics

| HCBS Requirement  |
|---|
| The individual will lead the person-centered planning process.  |
| All references to individuals include the participation of the individual's representative to the extent requested by the individual or required pursuant to legal authorization.   |
| If the individual has a representative, the representative should participate, to the extent that the individual requests his/her/their participation.  |
| If the individual's representative has legal authorization pursuant to State law, the individual's stated person-centered planning preferences shall be reviewed with his/her/their representative, and the individual's legal representative will have decision-making authority.  |
| <ul style="list-style-type: none"> <li>• Includes participants selected by the individual.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Is timely and occurs at times and locations of convenience to the individual.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Reflects cultural considerations of the individual and is conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Providers of Home and Community-Based Settings (HCBS) for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In these cases, the State must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.</li> </ul> |
| <ul style="list-style-type: none"> <li>• Offers informed choices to the individual regarding the services and supports they receive and from whom.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Includes a method for the individual to request updates to the plan as needed.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Records the alternative HCBS settings that were considered by the individual (e.g., if the individual agrees to receiving personal care services, the care plan documents that the individual was offered different settings to receive that service).</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Assists the individual in achieving outcomes they define for themselves.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Ensures delivery of services in a manner that reflects the individual's personal preferences and choices.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Promotes the health and welfare of those receiving services.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Indicates that what entity or person will monitor the primary or main person-centered plan.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Identifies the individual's strengths, preferences, needs (both clinical and support), and desired outcomes.</li> </ul>  |

As a reminder, adult care facilities must incorporate the following assurances, as related in Dear Administrator Letter #[18-15](#):

- Freedom and support to control one's own schedule and activities;
- Access to food and visitors at any time;
- The setting is physically accessible to the individual;
- Individuals in residential units have legally enforceable agreements giving them the same protections and responsibilities as any tenant living in that jurisdiction;
- Privacy in sleeping or living unit;
- Units have lockable entrance doors;
- The individual served and appropriate staff have keys/codes to doors;
- There is a choice of roommates in shared units; and
- Freedom to furnish and decorate sleeping or living units.