



DATE: December 3, 2020

TO: 1915(c) Children's Waiver HCBS Providers

The New York State Department of Health (NYSDOH) is contacting Children's Waiver providers in regard to the Home and Community Based Services (HCBS) Settings Rule, known as the Final Rule, and the upcoming events that will occur to ensure the Children's Waiver and Children's Waiver HCBS providers are in compliance with the Final Rule.

The Final Rule became effective in March 2014 and describes how Medicaid-funded HCBS are to be delivered by states and HCBS providers in general. As part of the [HCBS Final Rule](#), CMS established requirements for settings where HCBS can be provided and the heightened scrutiny process sites would need to take if located in a building or on the grounds of a facility also providing inpatient institutional treatment, or is otherwise presumed institutional under the rule.

These settings DO NOT MEET the home and community-based definition:

- A nursing facility
- An institution for mental diseases
- An intermediate care facility for individuals with intellectual disabilities
- A hospital
- Any other locations that have qualities of an institutional setting, as determined by the Secretary

The following settings are presumed to have the qualities of an institution (and therefore likely do not meet the HCBS standard without evidence to support otherwise):

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

NYSDOH will be assessing all designated Children's Waiver HCBS providers for compliance with HCBS settings requirements of the Final Rule. **Because of the nature of the Final Rule, we do anticipate that programmatic and policy changes will be required by HCBS Children's Waiver providers. DOH will be providing education and information to support this process.** For sites the State believes meet the requirements of the Final Rule, the State will need to submit to CMS evidence ensuring all individuals served in that setting are afforded the degree of community integration desired by the individuals served in the setting. All designated Children's Waiver HCBS providers will need to be in compliance with the settings requirements of the Final Rule by March 17, 2022. Sites that are not able to come into compliance by this date will be de-designated as a Children's Waiver HCBS provider.

Below is an outline of the site assessment process that the State will undertake.



- NYSDOH will distribute a HCBS provider self-assessment survey to all designated HCBS providers to complete for each HCBS setting/address where they provide services.
 - Surveys must be completed and returned by December 31, 2020.
- NYSDOH will host an informational webinar on the Final Rule process.
 - This will be held on December 16, 2020 at the same time as the monthly HCBS provider meeting with the State. Reminder and link will be forthcoming.
- Dependent on the results of a provider's self-assessment, a follow-up documentation survey may be distributed requesting, but not limited to, credentials, policies, and licensure documentation.
 - After reviewing the returned self-assessment, NYSDOH will communicate with HCBS providers to schedule virtual onsite assessments that are to begin February 2021 with a targeted completion by April 2021.
- The State will work with those HCBS providers found to be out of compliance with the Final Rule to develop remediation plans by July 1, 2021.
- The State will make a determination to submit to CMS whether a site can or cannot meet all requirements of the HCBS Final Rule and submit to CMS by December 1, 2021, those settings that can or will come into compliance by March 17, 2022.

The HCBS provider self-assessment survey has been set up through Survey Monkey, and a link to the survey is included along with this information letter. Please ensure to complete the survey **by December 31, 2020**. The invitation for the December 16, 2020 HCBS provider webinar will be shared in a separate communication, all providers are encouraged to attend.

For additional information, please visit the HCBS Final Rule website at: https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm

Questions related the HCBS Final Rule or this provider self-assessment process can be submitted to: BH.Transition@health.ny.gov