



**Department  
of Health**

Office of  
Health Insurance  
Programs

# **Home and Community-Based Services (HCBS) Final Rule Statewide Transition Plan (STP) Webinar**

February 16, 2017

## Underlying Intent

- Today's webinar will discuss 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.
- New York State's Department of Health and its sister agencies and offices will present on each of their sections of the transition plan, providing an overview of the regulatory reviews, processes for assessing compliance with the rule, remediation plans, and timelines for completing these activities.

## Background

- On January 16, 2014, Centers for Medicare & Medicaid Services (CMS) published a final rule that included, among other things, changes to 1915(c) waivers and set new standards for settings where Medicaid-funded home and community-based services (HCBS) are provided and where people who receive HCBS live. The rule also established new person-centered planning and conflict-of-interest requirements.
- The regulation applied to 1915(c), 1915(i), and 1915(k) waivers; however, CMS has made it clear that other means for providing Home and Community-Based (HCB) long term services and supports (LTSS), including the 1115 Demonstration Waiver, will also need to meet these requirements.
- The rule became effective March 17, 2014.

# Settings Requirements

- 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.
- 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 set additional requirements for person-centered planning and for provider-owned and controlled settings.

## Person-Centered Planning

The person-centered plan should:

- Be led by the person receiving HCBS, providing support so the person can direct the process as much as possible.
- Include people chosen by the individual.
- Reflect cultural considerations, providing information in accessible, plain language.
- Detail strategies for resolving conflicts and disagreements.
- Offer real and informed choices regarding services and supports, including who provides them.
- Allow the person to have a method to request updates/modifications to the plan.
- Record the home and community-based settings considered by the individual, showing that the current setting supports full access to the greater community.
- Reflect the individuals strengths, preferences, clinical and support needs, risk factors, goals, and desired outcomes.

## Two Main Assessment Processes:

### a) Systemic (Regulatory) Review

- Within the Statewide Transition Plan there are eight systemic compliance charts which are used for the regulatory or systemic review.
- This review assessed New York's standards, rules, regulations or other requirements related to home and community-based service delivery to determine if they meet the HCBS final rule requirements.
- All standards which were **not** marked as "compliant" have remediation or corrective action plans in the "documentation" column.
- Links to supporting documentation were provided for all areas marked "compliant" or "partially-compliant."

### b) Site-Level Assessments

- In determining the level of HCBS rule compliance of all 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 be assessed.
  - NY plans to use a statistically significant sample of site visits done by State staff, as well as provider self- assessments, which are surveys providers will complete themselves.

## Statewide Transition Plan Expectations

- States have until March 2019 to make changes to existing settings where individuals who receive Medicaid-funded HCBS live and/or receive services, to come into compliance with:
  - The HCBS final rule standards for [residential and non-residential] settings; and
  - Making case-by-case changes to the required HCBS standards within the person-centered plans of HCBS recipients.
- States must develop and get feedback on their proposed STPs from all stakeholders by posting at least two forms of notice as well as the full STP, and providing at least 30 days for public comment.
- States must include a summary of public comments with their STP submission to CMS, along with an explanation of any changes made/not made to the final plan as a result.

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

## Major Themes - Public Comment

### Heightened Scrutiny (HS):

- **Understanding the HS process:** Many commenters wanted to learn more about New York's plan for heightened scrutiny assessment and asked the State to be careful while conducting this process to protect valued services and programs.
- **Collocation:** Commenters identified many HCBS settings that are located inside of, or directly next to, institutions, and asked how the rule may impact these settings.

### 1115 Demonstration Waiver:

- **Lack of clarity:** Commenters felt that the impact of the HCBS rule on the 1115 waiver, MMMC and MLTC, wasn't fully considered or described within the Statewide Transition Plan.

## Major Themes - Public Comment (continued)

### Assessments:

- **Assessment tools:** There were comments about the use of OPWDD's tool for DOH site level assessments; some commenters described why not to use it, while others supported its use.
- **Compliance and remediation:** Commenters expressed concern over the financial, staff and other resources needed to achieve full compliance with the HCBS rule and offered suggestions for corrective actions that the State could make.
- **Systemic assessment:** Commenters incorrectly understood the STP's systemic compliance charts (used for the regulatory review) as containing the results of the State's site-level assessments of HCBS settings, and were concerned that site-level assessments hadn't been completed. Some commenters requested more detail on the State's planned assessment process overall.

## Major Themes - Public Comment

### Adult Day Health Care:

- **Fear of closure:** There were comments on the possibility of ADHC's failing financially if they cannot be collocated with nursing homes. Commenters feared ADHCs closing and wondered what other options there would be if that were to happen.
- **Institutional/non-Institutional:** Commenters described how many ADHCs operate, stating they are not institutional and provide services that prevent institutionalization.

## Public Comment Period

- After reviewing the public comment, the STP was amended.
- The amendments include:
  - Adding a HCBS Programs and Services Index and Systemic Assessment Index listing all of New York's rules and regulations reviewed for compliance.
  - Describing the systemic and site level assessment processes in more detail within the Assessment Methodology and Assessment Process sections.
  - Stating that private homes and the homes of family members, friends and neighbors are considered by NY to be compliant with the HCBS rule.
  - Adding milestones and more detail to the assessment process of OASAS' Permanent Supportive Housing.
  - Clarifying language on the assessment process used by OCFS.
  - Clarifying the description of the sampling method used for Part I Person-Centered Reviews in OPWDD's transition plan section.

# Department of Health

## **DOH: CAH I & II, TBI, NHTD, MMMC, MLTC, ADHC, SADC**

- DOH's portion of the Statewide Transition Plan describes how its waiver programs and 1115 Demonstration align 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 Waiver are:
  - Mainstream Medicaid Managed Care (MMMC) – 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:

- Individuals in New York served under 1915(k) live in their own homes or those of family members, friends, or neighbors. New York presumes that these settings are 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 these services may also receive services in non-residential settings that need to be assessed for compliance.
- The State will be conducting site visits on these non-residential settings to assess level of compliance and determine remediation or corrective action plans, where necessary.

## DOH Regulatory/Systemic Review: CAH I & II, TBI, NHTD, MMMC, MLTC, ADHC, SADC

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

- **CAH, TBI, NHTD Waivers**: Most of these regulations are compliant as recipients live in their own home, or the home of a family member, friend or neighbor.
- **1115 Waiver/Mainstream Medicaid Managed Care (MMMC)**: Regulations are “partially compliant” in some 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**: Will be revised as needed to become compliant before March 2019.
- **Social Adult Day Care/Adult Day Health Care Services**: Regulations will be revised where appropriate, and some settings will require additional level of assessment, or heightened scrutiny assessment before 2019.

## DOH: Assisted Living Programs

- **Development and implementation of survey tools and protocols to ensure compliance with HCBS rule requirements**
  - February 2017 - Provide ALP surveyor training.
  - March 2017 - Put survey protocols in place to assess ALP provider compliance.
- **Amendments to align NYS regulations with HCBS rule requirements**
  - Continue to work with key stakeholders to develop plans for changing statutes, laws and regulations to meet the HCBS settings requirements.
  - Anticipate final regulatory changes no later than January 2019.

## DOH: Adult Day Health Care (ADHC)

There will be an assessment of Adult Day Health Care compliance with the HCBS rule.

Many sites will meet the criteria for needing the higher level of assessment called heightened scrutiny.

The transition plan for ADHCs includes the following steps:

- A meeting will be held with ADHC providers to review the requirements of HCBS Rule and its impact on ADHC. Anticipated date - June 2017.
- Update & revise ADHC Survey Report and Certification provider self-assessment to plainly state the program will meet all requirements of the HCBS rule.
- 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 site visit protocols.

## DOH: Adult Day Health Care (ADHC)

Amendments to align NYS regulations with HCBS rule requirements:

- DOH will continue to work with key stakeholders to develop plans to change statutes and regulations needed to achieve compliance with the HCBS requirements.
- Final regulatory amendments are anticipated by January 2019.

## DOH: AIDS Adult Day Health Care (ADHC)

The transition plan for ensuring compliance with the HCBS rule for AIDS ADHCs includes the following steps:

- Hold a meeting with AIDS ADHCP providers regarding HCBS Setting Rule and compliance planning.
- Incorporate HCBS Rule standards/requirements into AIDS ADHC program guidelines.
- Develop and administer annual survey/attestation by which AIDS ADHC providers affirm compliance.
- Incorporate HCBS Rule standards/requirements into routine program monitoring protocols.

## DOH: HIV Supportive Housing (SH)

The transition plan for ensuring compliance with the HCBS rule for AIDS Institute Supportive Housing includes the following steps:

- Convene a meeting with SH providers under contract regarding the HCBS rule and compliance planning.
- Revise SH contract language to include HCBS Rule standards/requirements.
- Develop and administer annual SH survey/attestation by which providers can affirm compliance with the rule.
- Incorporate HCBS rule standards/requirements into routine program monitoring protocols - July 2017.

# Office for People With Developmental Disabilities

# OPWDD System Challenges Puts Context Around Our Transition Plan

- **Large and complex system**

- > 72,000 people in HCBS waiver; about 40,000 people live at home
- >6,000 certified group homes; 54% serve more than 4 persons
- >800 certified day facilities
- >Workforce challenges

- **Extensive System Transformation**

- ✓ ICF closures by 10/2018 planned
- ✓ Sheltered workshop conversions to integrated settings
- ✓ 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](http://www.opwdd.ny.gov) homepage

The screenshot displays a web browser window with the following elements:

- Browser Title:** HCBS Settings Toolkit | OPWDD - Windows Internet Explorer
- Address Bar:** http://www.opwdd.ny.gov/opwdd\_services\_supports/HCBS/hcbs-settings-toolkit
- Page Header:** HOME AND COMMUNITY BASED SERVICES
- Navigation Menu (Left):**
  - HCBS Home
  - Announcement for Public Comment on the Waiver/HCBS Transition Plan
  - Transition Plan
  - New York State HCBS Settings WebPage and Transition Plan
  - Stakeholder Workgroup Resources
  - CMS Information on HCBS Settings
  - HCBS Settings Toolkit** (highlighted)
- Main Content Area:**
  - 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](#)
    - [DOI Person Centered Planning Checklist 10/2015 - 9/2016](#)
    - [CQL POMs](#)
    - [Strengths and Risks Inventory Tool](#)
  - Assessment, Survey Tools and Guidance:**
    - Residential Assessment:**
      - [ADM #2014-04 OPWDD Home and Community Based Settings Preliminary Transition Plan Implementation](#)
      - [Guidance Document for Residential Assessment](#)

# Office of Mental Health

## NYS OMH Systemic Context

### **NYS OMH Children's Residential Settings and 1915(c) HCBS Waiver**

- [http://www.omh.ny.gov/omhweb/guidance/hcbs/html/section\\_100\\_1.htm](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 1115(i)-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

- Serious Emotional Disturbances (SED) 1915(c), HARP Demonstration – These regulations are in compliance with HCBS Final Rule.
- OMH 1115 Demonstration – 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

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

## Initial Remediation Plans - Adult Residential Settings

Rest of State Adult Residential Providers.

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

# Office of Alcoholism and Substance Abuse

# NYS OASAS System Overview

## OASAS Settings:

- In-patient detox
- In-patient rehabilitation
- Residential addiction services
  - Intensive
  - Community
  - Supportive living
- Residential Addiction Programs certified under Part 820.
- Permanent Supportive Housing

## OASAS Assessment Process

- Assessment sent to all providers electronically through Survey Monkey.
- Providers asked to complete one assessment for their entire PSH program
- Assessment sent out in December 2016.
- Corrective action plans will be developed with each individual provider as necessary.
- PSH Operations Manual & Occupancy Agreements are being reviewed and updated.

# Office of Children and Family Services

## OCFS – B2H 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 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. B2H SED (2619), B2H DD (541), and B2H MedF (145).
- The B2H Individualized Health Plan (IHP) includes a person-centered and complete picture of the child and/or medical consenters' 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 Systemic / 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.

- For additional information please visit:

[https://www.health.ny.gov/health\\_care/medicaid/redesign/home\\_community\\_based\\_settings.htm](https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm)

- If you wish to provide any further comments, please send them via email to:

[HCBSrule@health.ny.gov](mailto:HCBSrule@health.ny.gov)