



Department
of Health

Home and Community-Based Services (HCBS) Final Rule

TBI & NHTD Structured Day Site Assessment

Agenda

- HCBS Rule Standards
- Remediation – Next Steps for Achieving Compliance
- HCBS Rule Assessment
- Heightened Scrutiny
- Tools and Resources
- Next Steps
- Questions and Answers

HCBS RULE STANDARDS

Home and Community-Based Services Defined

Is integrated in and supports access to the greater community

Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources

Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS

Is selected by the individual from among setting options including non-disability specific settings

Ensures an individual's rights of privacy, respect, and freedom from coercion and restraint

Optimizes individual initiative, autonomy, and independence in making life choices

Facilitates individual choice regarding services and supports and who provides them

*There are additional standards for provider-owned and/or controlled settings

Provider-Owned and Controlled Standards

Per CMS, the additional standards for all settings, residential and non-residential are:

- 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 (*not modifiable)

The additional standards for residential settings are:

- 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
- Freedom to furnish and decorate sleeping or living units

Allowable Modifications to Provider-Owned and Controlled Standards

Modifications, aka “rights restrictions,” to any of the additional standards on the last slide cannot be made on an entire setting. They must be made on a *case-by-case basis*, and be:

- Supported by a specific assessed need; and
- Justified in the person-centered service plan.

States had until March 2022 to comply with making modifications to the additional provisions within person-centered plans.

REMEDICATION- ACHIEVING COMPLIANCE

Next Steps for Achieving Compliance

All programs can and are enhancing person-centered planning:

- Eliminate blanket program rules/restrictions related to HCBS Rule settings standards (i.e., limited visiting hours)
- Use required process to make modifications to HCBS provider-owned and controlled standards on a case-by-case basis
- Provide participants the opportunity to make program changes based on individual's needs and desired outcomes
- Use plain language in all documents
- Include goals important to the person (meaningful activities, relationships, etc.), balancing them with those important for them (health, safety, etc.)

Next Steps for Achieving Compliance

Some changes that Structured Day Program (SDP) providers *can* and *are* making, are:

- Increasing flexibility and options for individualized activities and outings, rather than only offering on-site activities or group outings as indicated and approved in the participant's service plan
- Adding snack cabinets/cubbies, offering a location for participants to store their own snacks
- Making visiting hours unrestricted, where a participant may meet privately with individuals they select

Next Steps for Achieving Compliance

- Giving individuals access to come and go freely at the program site
- Assess potential safety threat to the program and other participants and make any modifications to access on a case-by-case basis in person-centered plans

Remediation tools will provide additional options

HCBS RULE ASSESSMENT

New York's HCBS Site-Level Assessment

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

- 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-assessment of HCBS compliance into their systems to achieve compliance by March 2023, and to monitor compliance going forward
- Are using a variety of processes to assess the settings they oversee/license for compliance. The processes used include:
 - 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.

HEIGHTENED SCRUTINY & THE HCBS RULE

What is Heightened Scrutiny Assessment?

HCBS settings with certain characteristics are presumed to be institutional by CMS, and therefore require a more intensive form of HCBS site assessment. The three categories these settings fall into, often referred to as the ‘three prongs of Heightened Scrutiny,’ are:

- Settings in a publicly or privately owned facility providing inpatient, institutional treatment
- Settings on the grounds of, or adjacent to, a public institution providing inpatient, institutional treatment
- Settings with the effect of isolating individuals receiving Medicaid HCBS from the broader community

What is Heightened Scrutiny Assessment?

Heightened Scrutiny (HS) is a HCBS Rule site-assessment process that CMS requires states (or our partners) to conduct on those settings that CMS has presumed to be institutional in nature. Each Heightened Scrutiny site-assessment submitted to CMS is required to have:

- assessment of compliance with HCBS standards on slides four - six
- on-site validation of the assessment results (on-site assessment)
- a 30-day public comment period on the assessment results
- the state's determination that the setting has (or will by March 2023) overcome the institutional presumption

The state must submit evidence and the results of the public comment on those settings it wants to receive Federal Financial Participation for, past the March 2023 deadline

TOOLS AND RESOURCES

Tools and Resources

- Documentation Survey
 - This is sent to providers so that they are aware of what documentation to submit to RRDCs, for RRDCs to validate site-assessment results as “multiple methods of validation are required”
 - Applies to all HCBS site-assessments
- Non-Residential Remediation Tool
 - Providers with remediation needs complete the tool (that the RRDCs send with their remediation needs noted) by filling in action items for each area of partial or non-compliance
 - Applies to all providers with areas of non/partial compliance
- FAQs will be provided by the state, based on new questions that arise from providers

NEXT STEPS

Next Steps

- Providers must complete and submit the Documentation Survey, accompanying documentation and Remediation Tool to your RRDC contact by **June 17, 2022**
- All questions regarding the process should be sent to your RRDC contact

QUESTIONS AND ANSWERS

THANK YOU