



## Department of Health

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November 13, 2017

DAL: 17-09  
Guidance for Assisted Living  
Programs to Comply with the Home  
and Community Based Settings  
(HCBS) Final Rule

Dear Assisted Living Program Administrator/Applicant:

Effective March 17, 2014, the federal Department of Health and Human Services (HHS) promulgated the Home and Community Based Settings (HCBS) Rule. The HCBS Rule requires the New York State Department of Health (DOH) to ensure that residential Assisted Living Programs (ALPs), and the entire setting in which the ALP provides services, meet the established standards expressed in the HCBS Rule by **March 17, 2022**. Information on the federal HCBS Rule, and the New York State HCBS Transition Plan submitted to the HHS in January 2017, is located 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).

The Department has conducted an educational webinar concerning the impact of the HCBS Rule on ALPs, and in 2016, licensed ALP providers completed a self-assessment to measure compliance with the HCBS Rule. It is crucial that your applicable policies and procedures are consistent with the HCBS Rule requirement. To assist you in developing compliant policies and procedures, the Department developed the enclosed preliminary guidance.

If you have any questions relating to the HCBS Rule, please email the Division of Adult Care Facility and Assisted Living Surveillance at [ACFHCBS@health.ny.gov](mailto:ACFHCBS@health.ny.gov). We appreciate your attention to and cooperation with these requirements.

Sincerely,

Valerie A. Deetz, Director  
Division of Adult Care Facility & Assisted Living  
Surveillance

Enclosure

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**Guidance for Assisted Living Programs  
to Comply with the  
Home and Community Based Settings (HCBS)  
Final Rule**

October 2017

**Division of Adult Care Facilities and Assisted Living Surveillance  
Center for Health Care Services and Provider Oversight  
Office of Primary Care and Health Systems Management**

**Guidance for Assisted Living Programs to Comply with the HCBS Final Rule  
October 2017**

<b>HCBS Standard</b>	<b>HCBS Compliance Guidance</b>
<p>The setting is physically accessible to the individual.</p>	<ul style="list-style-type: none"> <li>• Comply with all applicable regulatory environmental standards to ensure there are no barriers to exit or entrance.</li> <li>• Comply with all applicable regulatory standards governing admission and retention standards.</li> <li>• Discuss with prospective residents the Statement of Resident Rights and Responsibilities, including that participation in the program is voluntary.</li> <li>• Discuss with each resident the facility’s security measures, including times that the facility door may be locked, policies regarding visitor access, and any other security measures in place.</li> <li>• Assure that each resident has a clear understanding of how to access the facility when locked (e.g. key, key pad, intercom access, etc.).</li> <li>• Document the resident’s understanding, choices, and any ongoing discussions and changes, in the Resident’s Care Plan.</li> <li>• Train all appropriate staff on applicable admission and retention standards and this policy and procedure.</li> </ul>
<p>The program is fully integrated into and supports access to the greater community for all individuals irrespective of payer source and supports the ability of each individual to engage in community life.</p>	<ul style="list-style-type: none"> <li>• Document and post activities and events available in the greater community, e.g., places of worship, entertainment, shopping, educational classes, and community events.</li> <li>• Develop a process to notify each resident of the programs, activities and events available in the greater community, which may include resident council meetings and facility postings.</li> <li>• Develop a process to accommodate access to community-based activities, including the identification and addressing of potential barriers (e.g. transportation).</li> <li>• Discuss available transportation options with the resident and facilitate arrangement for selected transportation as necessary.</li> <li>• Document the resident’s understanding, choices, and any ongoing discussions and changes, in the Resident’s Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>

**Guidance for Assisted Living Programs to Comply with the HCBS Final Rule  
October 2017**

<b>HCBS Standard</b>	<b>HCBS Compliance Guidance</b>
<p>The operator supports an individual's right to receive services in the community.</p>	<ul style="list-style-type: none"> <li>• Discuss with the resident the services and programs available in the community, and communicate how to access those services and programs.</li> <li>• Develop a process to accommodate resident choice of services and programs in the community, including identifying any potential barriers (e.g. transportation) and steps to address those barriers.</li> <li>• Discuss available transportation options with the resident and arrange for selected transportation as applicable.</li> <li>• Document the resident's choices, any ongoing discussions and changes, in the Resident's Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The program provides each individual opportunities to seek volunteer, vocational training, or employment opportunities in the greater community.</p>	<ul style="list-style-type: none"> <li>• Discuss with each resident his or her desire to seek volunteer, vocational training or employment in the greater community; and develop a process to assist the resident in accessing desired opportunities.</li> <li>• Identify any potential barriers the resident may encounter while seeking volunteer, vocational training or employment opportunities, and discuss with the resident steps to address identified barriers.</li> <li>• Discuss available transportation options with the resident and arrange for selected transportation as necessary.</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the Resident's Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The operator ensures an individual's rights of dignity and respect.</p>	<ul style="list-style-type: none"> <li>• Discuss with each resident upon admission and periodically thereafter, the statement of Resident Rights and Responsibilities, with subsequent documentation of the discussion in the Resident's Care Plan.</li> <li>• Consistent with the needs and desires of the resident as documented in the Resident's Care Plan, assist each resident with activities of daily living as appropriate to the individual's preferences.</li> <li>• Communicate with each resident in the manner the resident has identified as preferred and as documented in their Resident's Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>

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October 2017**

<b>HCBS Standard</b>	<b>HCBS Compliance Guidance</b>
<p>The program allows each individual to control his or her personal resources.</p>	<ul style="list-style-type: none"> <li>• Provide to and review with each applicant upon admission, and review periodically thereafter with each resident, the Statement of Resident Rights and Responsibilities, and subsequently document in the Resident’s Care Plan the resident’s receipt and comprehension of the Statement.</li> <li>• Notify the resident of his or her right to manage his or her own financial affairs without coercion.</li> <li>• Confirm and document in the Resident’s Care Plan, the resident’s understanding that he or she is not required to designate the facility as his or her representative payee.</li> <li>• Identify any potential barriers the resident may encounter in managing his or her own financial affairs.</li> <li>• Discuss with each resident that opts for outside banking the steps to address identified barriers, including basic support with transportation and money management as needed and when desired by the resident.</li> <li>• Document the resident’s choices, and any ongoing discussions and changes, in the Resident’s Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Room options are based on the individual's needs, preferences and available resources for room and board.</p>	<ul style="list-style-type: none"> <li>• Discuss with each resident available options based upon an assessment of the resident’s needs, preferences and available financial resources.</li> <li>• Notify a resident or potential resident requesting a single room of any increased cost and availability.</li> <li>• Establish and maintain a waitlist for a single occupancy room.</li> <li>• Discuss with the resident the facility’s procedure for resident room requests and roommate changes, as well as the procedure for residents to check their status on the facility waitlist. Inform the resident of how the facility will accommodate resident requests based on the facility’s policy and procedure.</li> <li>• Document the resident’s choices, and any ongoing discussions and changes, in the Resident’s Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The program optimizes and doesn't regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<ul style="list-style-type: none"> <li>• Provide and discuss with each resident upon admission and periodically thereafter the Statement of Resident Rights and Responsibilities, and subsequently document in the Resident’s Care Plan the resident’s receipt and comprehension of the Statement.</li> <li>• During case management reviews and whenever necessary as determined by resident request or resident changes, discuss the</li> </ul>

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	<p>information documented in each Resident’s Care Plan. Update the information in the Resident’s Care Plan accordingly, to reflect the resident’s goals, individual routine, preferences, dislikes, strengths and weaknesses.</p> <ul style="list-style-type: none"> <li>• Document the resident’s choices, and any ongoing discussions and changes, in the Resident’s Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>The program will ensure an individual’s right to be treated with dignity and respect and freedom from coercion and restraint.</p>	<ul style="list-style-type: none"> <li>• Provide to and review with each resident upon admission, and review periodically thereafter, the Statement of Resident Rights and Responsibilities, and subsequently document in the Resident’s Care Plan the resident’s receipt and comprehension of the Statement.</li> <li>• Comply with 18 NYCRR §487.5(a)(2) and/or § 488.10(g)(3) which requires that the Statement of Rights and Responsibilities be posted in a public area of the facility.</li> <li>• Comply with §487.5(a)(3) and/or 488.5(a)(3) which provides residents with the right to present grievances without fear of reprisal and entitles each resident to receive courteous, fair and respectful care and treatment at all times.</li> <li>• Document the resident’s choices, and any ongoing discussions and changes, in the Resident’s Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Individuals sharing units have a choice of roommates.<sup>1</sup></p>	<ul style="list-style-type: none"> <li>• Discuss with each resident available room and roommate options based upon an assessment of the resident’s needs, preferences and available financial resources.</li> <li>• Discuss the facility’s procedure for resident room requests and roommate changes, and the process for the facility to accommodate requests.</li> <li>• Document the resident’s choices, any ongoing discussions and changes, in the Resident’s Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Individuals have the freedom to furnish and decorate their sleeping or living units within the facility.<sup>1</sup></p>	<ul style="list-style-type: none"> <li>• Inform each resident of his or her right to furnish and decorate his or her unit according to his or her preferences so long as the furnishings do not jeopardize the health, well-being or safety of other residents.</li> <li>• Document the resident’s choices, and any ongoing discussions and changes, in the Resident’s Care Plan.</li> <li>• Train staff on this policy and procedure.</li> </ul>

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<p>Each unit or dwelling is a specific place that can be owned, rented or occupied under a legally enforceable agreement by the individual who has, at a minimum, the same responsibilities and protections from eviction that tenants have under the jurisdiction's landlord/tenant law or equivalent.</p>	<ul style="list-style-type: none"> <li>• Review with each resident prior to admission and as changes necessitate, the admission agreement, and subsequently document in the Resident's Care Plan confirming the resident's receipt and comprehension of the agreement.</li> <li>• Comply with applicable laws and regulations regarding termination of the admission agreement.</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the Resident's Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Each program will ensure an individual's rights of privacy in his or her sleeping or living unit, including lockable entrance doors and limited key distribution.<sup>i</sup></p>	<ul style="list-style-type: none"> <li>• Provide and review with each resident upon admission, and review periodically thereafter, the Statement of Resident Rights and Responsibilities, and subsequently document in the Resident's Care Plan the resident's receipt and comprehension of the Statement.</li> <li>• Discuss with each resident his or her rights to privacy regarding health information and within his or her own room. Periodically review with the resident his or her right for privacy and identification of any concerns or barriers and steps towards resolution.</li> <li>• Assure that any actions taken to facilitate resident privacy requests comply with applicable building and fire codes, and may require review and approval by the Department.</li> <li>• For any resident who has been determined unsafe through assessment to have a key to his or her room, document in the Resident's Care Plan the reason(s) for the determination, action steps, and ongoing periodic reassessment.</li> <li>• Document in the Resident's Care Plan the discussion with each resident regarding the need for designated staff to have access to the resident's room in the event of an emergency or when necessary and appropriate (e.g., maintenance or housekeeping).</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the Resident's Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Individuals have the freedom and support to control their own schedules and activities.<sup>i</sup></p>	<ul style="list-style-type: none"> <li>• Discuss with each resident his or her right to make decisions regarding his or her schedule and activities. Document the resident's preferred schedule and activities in the Resident's Care Plan.</li> <li>• Discuss with the resident available program-provided activities (e.g. meals, exercise). For those activities in which a resident</li> </ul>

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October 2017**

HCBS Standard	HCBS Compliance Guidance
	<p>wants to participate outside the established time, identify any available options and alternatives to facilitate the resident's participation.</p> <ul style="list-style-type: none"> <li>• Document the resident's choices, and any ongoing discussions and changes, in the Resident's Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Individuals have access to food at any time.</p>	<ul style="list-style-type: none"> <li>• Discuss with each resident upon admission, and periodically thereafter, the resident's preferences for meals and in-between meal snacks and incorporate those preferences into the resident's plan of care.</li> <li>• Discuss with each resident at the time of admission, and periodically thereafter, the availability of food 24 hours per day and how to access food outside of standard meal times, and subsequently document in the Resident's Care Plan.</li> <li>• Provide assistance to the resident, as needed, to access food.</li> <li>• Document the resident's choices, and any ongoing discussions and changes, in the Resident's Care Plan.</li> <li>• Train all appropriate staff on this policy and procedure.</li> </ul>
<p>Individuals are able to have visitors of their choice at any time.<sup>1</sup></p>	<ul style="list-style-type: none"> <li>• Provide to and review with each resident upon admission, and review periodically thereafter, the Statement of Resident Rights and Responsibilities, and subsequently document in the Resident's Care Plan the resident's receipt and comprehension of the Statement.</li> <li>• Discuss with each resident his or her right to have visitors without staff interference.</li> <li>• Discuss with each resident at the time of admission, and periodically thereafter, the facility's visitor policies and procedures.</li> <li>• Discuss with each resident any visitor age requirements, identify common space for visits, accommodation of overnight visitors, applicable roommate agreements, management of disruptive or dangerous visitors, and supervision of visitors to assure safety.</li> <li>• Document the resident's choices, any ongoing discussions and changes, in the Resident's Care Plan.</li> <li>• Train all staff on this policy and procedure.</li> </ul>



## Guidance for Assisted Living Programs to Comply with the HCBS Final Rule October 2017

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<sup>i</sup> If a HCBS standard cannot be attained for an individual resident, the ALP must provide documentation of the resident's individual assessed need to support any modification to the standard. The following elements must be documented in both the Resident's Service Plan and case management notes to support any modification to the HCBS standard:

- The specific, individualized assessed need;
- The positive interventions and supports used prior to seeking the modification;
- Less-intrusive methods that did not successfully meet the resident's assessed need;
- How the modification is directly related to the individualized assessed need;
- Periodic evaluation to assess ongoing effectiveness of the modification;
- The positive interventions and supports in place to help remove the modification at a future date;
- The resident's informed consent; and
- Assurance that the modification will not cause harm to any resident.