

New York State Department of Health  
Home and Community Based  
Services Settings Statewide  
Transition Plan  
August 2023



**Department  
of Health**

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# New York State HCBS Settings Transition Plan Executive Summary

## I. INTRODUCTION

New York State presents its Statewide Transition Plan (STP) to achieve compliance with the Home and Community-Based Services (HCBS) Final Rule. New York State operates one 1115 and four 1915(c) waivers across four agencies/offices that oversee programs and services to individuals with disabilities; either physical, behavioral, mental, developmental, or intellectual. Within the four agencies or offices that oversee New York's HCBS there are fourteen state entities (in some cases referred to as program areas) that oversee the programs and services described in their respective sections of this STP.

The agencies/offices which oversee New York State's home and community-based service (HCBS) provision are the: Department of Health (DOH); Office for People with Developmental Disabilities (OPWDD); Office of Mental Health (OMH); and Office of Addiction Services and Supports (OASAS). The below listed 1915(c) waivers are those waivers currently operating in New York State. The agency/office indicated to the right of each waiver operates the waiver under the oversight of the Department of Health, the State's Medicaid Agency.

- Nursing Home Transition and Diversion Waiver (DOH)
- Traumatic Brain Injury Waiver (DOH)
- Children's Waiver (DOH)<sup>1</sup>
- Home and Community Based Services (HCBS) Waiver (OPWDD)

The above noted agencies/offices offer HCBS through our Medicaid program, and DOH, OMH, and OASAS provide HCBS under the NY Medicaid Redesign Team 1115 Demonstration Waiver. While State Plan HCBS are not impacted by this regulation, per notification by the Centers for Medicare and Medicaid Services (CMS), New York has addressed the application of the HCBS Final Rule to all HCBS provided through its 1115 Demonstration, including Medicaid

<sup>1</sup> The New York State Children's Waiver combined and replaced the Care at Home (CAH), Serious Emotional Disturbance (SED), and Bridges to Health (B2H) waivers in April 2019. References to these expired waivers have been removed from the STP where applicable, as well as the related Office of Children and Family Services (OCFS) section and were replaced by DOH's Children's Waiver section.

Managed Care – referred to as Mainstream (MMC) and Managed Long Term Care (MLTC), both described fully in their respective sections of this transition plan.

The State's assessment of our HCBS delivery system indicates that the majority of individuals in receipt of Medicaid-funded HCBS are living in private homes including their own homes or sharing the homes of family members, friends, or neighbors. In addition, many Medicaid recipients may live in group homes or other settings where they enjoy the benefits of receiving services in the community, as opposed to in an institution. However, there are individuals who live in congregate housing, adult care facilities, and supportive housing where their autonomy, independence, and community integration may be less apparent, including children and youth whose rights are delegated to their parents or guardians. Also, respite care is generally provided throughout the State for thirty days or less, with a few exceptions that are noted in each agency/office/unit's Systemic Compliance Chart, linked within each agency/office/unit's Systemic Compliance section within this transition plan.

While the overall policy governing New York's Statewide Transition Plan provides a uniform framework across the agencies, and CMS guidance helped to provide a foundation for New York's systemic/overarching approaches to Rule implementation, the specific way agencies have developed their assessment methodologies, tools, and compliance approaches reflects their unique systems for quality improvement and budgetary resources.<sup>2</sup> Even though some differences in assessment methods exist, every New York State entity that sponsors a Medicaid HCBS waiver program or oversees HCBS followed or is following the required approach delineated by CMS for bringing the HCBS systems into compliance by March 17, 2023, including: (1) a comprehensive systemic review of rules, regulations, policies, etc., and the results of this activity, as well as the remedial actions required to come into full alignment with the HCBS rules; (2) a site-specific validation process for the respective service systems, and, where this was completed, the results of the assessments; (3) the remedial actions that are being implemented to achieve compliance; (4) methodology for ongoing monitoring and quality assurance; (5) training and other quality improvement activities and methods planned on-going; and (6) Heightened Scrutiny processes where applicable. Note: for state entities responsible for the site level compliance of HCBS settings, their STP sections contained all of the above areas of focus, whereas MMC, MLTC, and Community First Choice Option (CFCO) are not directly involved in oversight of HCBS settings, therefore their STP sections focused on systemic assessment, ongoing monitoring and quality assurance, and beneficiary recourse.

New York State presumed private homes, which includes the HCBS recipient's own home, as well as the home of a family member, neighbor, or friend in which they live and/or receive services, were compliant with the HCBS Final Rule settings standards. On an ongoing basis, New York will monitor the settings in which HCBS recipients live and/or receive services, including private homes, through the case management and/or surveillance process. New York has adopted required tools, including a person-centered service plan template or a life plan or other planning and/or surveillance document, that captures each of the applicable settings requirements. This tool is used during the person-centered service planning process with the

<sup>2</sup> For example, OPWDD uses its existing quality surveyors to review each program and setting on-site for compliance with the HCBS Final Rule annually because the resources already exist within OPWDD to integrate the HCBS Final Rule into existing quality processes and protocols. The NYS Mental Hygiene Law (MHL) requires review of all facilities overseen by OPWDD at least annually; this same level of infrastructure does not exist as such in other state agency HCBS systems. For many other NYS entities, it was necessary to rely on provider self-assessment processes with required validation methodologies, as specified by CMS guidance.

individual receiving services, and anyone chosen to also participate, to ensure that where the person lives and/or receives services fully complies with the HCBS Final Rule. It is updated upon reassessment or changes in the individual's social, environmental, or medical condition, at least annually. State surveillance activities will ensure that these plans are completed and updated by service authorizers and providers and that person centered service plans document compliance with the settings requirements, including any individualized modifications made to any provider owned or controlled standards allowed under 42 CFR §441.301(c)(4)(vi) (A) through (D).

The revised New York State HCBS Statewide Transition Plan that follows is the result of the work of our Interagency Workgroup. This group was convened in 2014 by the Governor's Office to address achieving compliance with the requirements of the HCBS Final Rule. DOH, as the Single State Medicaid Agency, will continue to lead and oversee the State's Interagency Workgroup. The Interagency Workgroup, comprised of agency representatives from the Executive Chamber, DOH, OPWDD, OMH, and OASAS, meet regularly to review how the respective state agencies are progressing in their efforts to achieve compliance with the HCBS Final Rule, and to establish time frames and processes for implementation activities based on internal and external stakeholder feedback and CMS guidance. Through the Interagency Workgroup and management of stakeholder outreach, DOH will continue to carry out its responsibilities related to the HCBS Final Rule.

### Single State Medicaid Agency Background

DOH has a long history of community-based care, beginning with the Long Term Home Health Care Waiver in the 1980s. Through our ongoing commitment to providing individuals the opportunity to receive HCBS, we have moved to a system where more than 62 percent<sup>3</sup> of Medicaid spending on these services and supports is on community-based care (elsewhere referred to as community-based long term services and supports) rather than institutional care. We share CMS' goal that individuals in receipt of Medicaid-funded HCBS have their needs, preferences, and goals met in a way that maximizes their independence and community integration.

The majority of individuals participating in Medicaid-funded HCBS live in their own homes or homes of family members, close friends, or neighbors, and this includes individuals living in apartments and affordable housing units through supportive housing or "at market" rent in communities across the State.

There are 285,361 individuals enrolled statewide in New York's Managed Long Term Care Demonstration, (Partial Capitation and Medicaid Advantage Plus) as of September 30, 2022, each of whom requires more than 120 continuous days of long term services and supports. Currently, approximately 99% of these individuals live in the community. A portion of the individuals enrolled in one of New York's Medicaid Managed Care Demonstration plans also receive Medicaid-funded HCBS. In addition, DOH oversees the NHTD and TBI waivers serving 6,692 individuals.

<sup>3</sup> According to 2022 Balancing Incentives Program data.

## II. NEW YORK STATE SYSTEMIC REMEDIATION

As was stated prior, each agency, office, and unit that is part of this transition plan completed their own systemic assessment and remediation processes, which are described more fully in the forthcoming program/service-specific sections. [Clicking on this sentence brings you to our 2018 Systemic Assessment Index](#), that lists New York's rules, regulations, policies and procedures that were reviewed and remediated where applicable. Each agency, office, and unit described in this STP has received substantial technical assistance, education, training, oversight, and support from DOH's subject matter experts on the HCBS Final Rule. Also, many systemic remedial activities were completed by DOH in collaboration with Interagency Workgroup members. Understanding that person-centered practice, as it relates to implementing the HCBS Final Rule's person-centered planning standards, is central to Rule implementation, New York sought to address person-centered skill and training gaps in senior- to mid- level staff tasked with overseeing HCBS in New York, in addition to HCBS providers, recipients and stakeholders. In 2018, DOH invited the Interagency Workgroup members to the Person-Centered Thinking Train-The-Champion training (1 day) and Person-Centered Thinking Organizational Management training (1/2 day), both being tailored specifically for Workgroup members. In 2019, DOH held a Learning Institute with diverse members of leadership from across New York's HCBS system to brainstorm and reach-across-the-silos to innovate approaches to furthering the person-centeredness of HCBS delivery. In 2022, we offered Interagency Workgroup Members a Person-Centered Practice and Cultural Humility online training. There was robust Interagency Workgroup attendance at all the above trainings and learning opportunities. The pre- and post- test evaluation data garnered from our internal stakeholders at these trainings was used in planning future training opportunities, as well as to inform the overarching policy for HCBS Final Rule Statewide Transition Plan implementation activities.

To address training needs at both the systemic and site level, the New York Department of Health Person-Centered Practice Statewide Training Initiative was launched in 2018. Now going on its fourth year, this 5+ million-dollar initiative has trained more than 9,000 service providers, State staff/leaders, advocates, family members, and HCBS recipients through virtual and in-person trainings and learning opportunities. This training initiative, as well as the resources New York subsequently developed or presented for the public to easily access, as described below, were created using a strong stakeholder engagement process through quarterly meetings with New York's Person-Centered Planning (PCP) Workgroup. This PCP Workgroup was developed by DOH in 2018 by HCBS Interagency Workgroup leadership nominating their staff most involved in person-centered planning activities to participate and help provide linkages to broader stakeholder groups across the State. To learn more about New York's extensive training and learning opportunities click below:

- [Clicking on this sentence brings you to the Person-Centered Planning Statewide Training Initiative page on the DOH webpage.](#)

The Person-Centered Planning and Practice Resource Library is a collection of free resources on person-centered planning and practice across all HCBS sectors in New York State. The materials are diverse, addressing every major disability/disabling condition category and include leading research papers, policy guidance, planning worksheets, and training webinars designed for HCBS recipients, their family/supporters, HCBS providers, and State staff/leadership:

- [Clicking this sentence brings you to the Person-Centered Planning and Practice Resource Library on the DOH webpage.](#)

### III. NEW YORK STATE CORRECTIVE ACTION PLAN

New York is hereby requesting that CMS provide additional flexibility, via a federal Corrective Action Plan (CAP), with its current deadline of March 17, 2023, to come into full compliance with those HCBS Final Rule Standards that are impacted by the Public Health Emergency (PHE). The contents of the CAP are preliminary and may be subject to change as a result of discussions with CMS in order for the CAP to receive CMS approval. New York will ensure stakeholders are informed of any substantive updates to the CAP. The PHE is still in effect in New York with surges in cases of COVID-19 happening in counties across the State. By far the most frequent concerns we hear expressed by stakeholders across our system has been COVID-19's impact on reducing availability of staffing and transportation options, both of which have inhibited HCBS providers ability to comply with the community integration aspects of the Rule. Our request is to receive until July 2024 to come into compliance with HCBS standards relating to community integration or *allowing full access to the greater community to the same degree as those not in receipt of HCBS*. Given that employment opportunities have been inhibited by the PHE for some parts of our State, we also request flexibility in meeting the requirement to ensure employment opportunities are made available to those HCBS recipients who are interested in them. As for the 2022 CMS guidance indicating the requirements for a state's eligibility for a CAP including states meeting eight "non-negotiable" HCBS standards: New York and its HCBS providers will be fully compliant with the following by March 17, 2023:

- Privacy, dignity, respect, and freedom from coercion and restraint; and
- Control of personal resources.

New York and its provider-owned and controlled residential settings will be fully compliant with the following by March 17, 2023:

- A lease or other legally enforceable agreement providing similar protections;
- Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit;
- Access to food at any time;
- Access to visitors at any time;
- Physical accessibility; and
- Person-centered service plan documentation of modifications to relevant regulatory criteria (or the additional standards are afforded at all times).

As you will find in this transition plan's sections for Adult Day Health Care, Social Adult Day Care, and OPWDD, these HCBS program areas/entities have all described how their policies and procedures now reflect the settings criteria as well as their substantial efforts to implement the setting's criteria to the fullest extent possible, while describing concrete, time-limited plans to come into full compliance with those criteria, as indicated in their respective transition plan CAP sections.

### IV. PUBLIC INPUT

New York State's Home and Community-Based Services Final Rule Statewide Transition Plan was posted for public input in the following locations on the dates indicated below:

- December 7, 2022 on the public facing Medicaid Redesign Team (MRT) website.
- December 7, 2022 notice was posted in the New York State Register.
- December 7, 2022 posted in hard copy at Regional Resource Development Centers, State Agency/Office Regional Offices, and electronically on various State websites.

This HCBS STP was posted electronically on the MRT website on December 7, 2022. The STP notice was then posted in the State Register on December 7, 2022. Public and tribal notice for the HCBS STP both ended on January 13, 2023. State Register notice included a Bureau Mail Log (BML) email address for electronic comments, in addition to a physical address and contact person for mailing comments. Impacted tribes were notified by letter or email depending on preference. A summary of comments received and the State's responses are below.

***Advocacy for Special Needs Assisted Living Residence (SNALR) to Remain Medicaid Eligible:***

The Department received multiple comments related to the following statement from the Statewide Transition Plan: "Based on work done thus far, we believe that there are only a small number of ACFs that do not and cannot, by definition, fully comply with the HCBS Final Rule. Those facilities are known as Special Needs Assisted Living Programs, which by definition provide services to individuals with cognitive and dementia-related concerns. Through a qualifying individualized assessment, DOH ACF team found that these settings feature delayed egress door locks to deter elopement and other potential safety breaches, so are therefore ineligible for Medicaid funded HCBS." Specifically, commenters suggested the Department's position that Special Needs Assisted Living Residences (SNALR) may not house Medicaid-enrolled residents, will result in increased nursing home placements, increase costs to taxpayers, and be detrimental to the residents' health and well-being.

***Response:*** The Department wishes to clarify and amend (by removing the quoted text) the above referenced excerpt from the Statewide Transition Plan. Special Needs Assisted Living Residence is a certification that allows for enhanced services that otherwise cannot be provided to a resident. These facilities may provide services to individuals with cognitive and dementia-related concerns through their participation in the assisted living program. While a qualifying individualized assessment by the DOH ACF team found these settings may feature safety mechanisms such as delayed egress door locks to deter elopement and other potential safety breaches, we are going to work with these providers directly and through their trade associations to provide sufficient guidance, training and support to allow individualized, person-centered care planning modifications to ensure that the setting can comply with the final HCBS Rule. For example, these SNALRs may be able to address the need for delayed egress using the allowable modifications of the Rule's standards, which the Department will be providing additional guidance on by February 2023.

***Adult Day Health Care Program (ADHCP) Medicaid Reimbursement Rates:***

Several commenters expressed concerns that current Medicaid rates for both ADHC program and ADHC transportation are below the cost of care provided to ADHCP registrants. This affects staffing, transportation, and community integration, making it difficult to be in compliance with the HCBS Final Rule, particularly staffing individualized outings. The commenters expressed the need for a substantial Medicaid increase in both program and transportation rates.



**Response:** Concerns related to Medicaid reimbursement rates are being addressed in the State Fiscal Year 2024 Executive Budget. The Department is proposing to adjust rates for Adult Day Health Care providers by a 5% across the board increase to the most recently active Operating rate in effect on March 31, 2023, for each provider effective on or after April 1, 2023. The Enacted SFY2024 Budget includes a rate increase of 7.5% that will be applied toward the ADHC and AIDS ADHC rates.

***Adult Day Health Care (ADHC) Outings and Community Integration:***

A commenter expressed concerns related to the HCBS Final Rule and compliance with regular registrant outings and community integration. The ADHCP typically schedules one outing per month as weather permits.

**Response:** Per the HCBS Final Rule New York requires ADHCPs to provide alternatives to facilitate each person's access to services or activities in the community as desired, based on available resources of the registrant and ADHCP, including access to transportation and flexible schedules. Person Centered Service Plans should reflect those choices and alternatives had been offered for community engagement, to facilitate each person's access to services or activities in the community as desired, including access to transportation and flexible schedules. NYS Department of Health has applied for a Corrective Action Plan to work with ADHCPs to remediate to become compliant with community integration requirements.

***Advocacy for Intentional Housing Community Exclusively for People with Developmental Disabilities:***

A commenter noted that the housing options that exist today for their child are not the best and do not allow for socialization exclusively with peers, much like a community for those 55 years of age or older. The commenter noted that this concept is not supported by OPWDD or HCR (Housing and Community Renewal). The commenter encourages fast tracking such creative initiatives.

**Response:** Thank you very much for your comment. OPWDD appreciates your concerns regarding housing options and will take your comment under advisement. In part to address these issues, OPWDD is using special COVID funding to assist OPWDD providers to develop and enhance supportive residential services. It is our hope that this type of service will meet the need of many people with intellectual and developmental disabilities.

***MLTC HCBS Compliance:***

One commenter was concerned that the Person-Centered Service Planning process for MLTC plan members might unfairly raise expectations that MLTC plans make available or arrange housing for MLTC plan members. The commenter emphasized that MLTC plans are responsible for identifying the goal of a more integrated home if that is what the member wishes, referring the member to organizations that can assist to obtain alternative housing, and coordinating services with those organizations.

**Response:** DOH agrees with this interpretation.

***SADC HCBS Compliance:***

One commenter identified challenges for Social Adult Day Care (SADC) sites impacted by the pandemic to fully operationalize Person Centered Service Planning and increase community outings due to SADC site closures, workforce and transportation challenges, and initiating infection control measures.

**Response:** DOH acknowledges these SADC challenges and is looking at opportunities to address them.

***Concern Over Inability to Obtain Information for Future Services:***

A commenter expressed concern that as aging parents, they are not able to proactively plan for their child's future residential services unless or until there is an emergency. The commenter also expresses concern that they have not been provided with information on services and settings they can learn more about or visit.

**Response:** OPWDD is working hard to address the issues you described and to improve internal review processes for housing access to better serve families. Also, using COVID-related special funding, OPWDD is working to enhance person-centered services and to incentivize services for people seeking to move from their family home (with a priority for those living with aging caregivers). The OPWDD Regional Office in your area can assist you and your family with getting information on options, visiting possible residential settings in your area, and helping you navigate the process to plan for future services. The OPWDD Regional Office will reach out to the commenter to set up a time to discuss your situation further.

***Concern Over High Cost of Housing:***

A commenter expressed concern that while their child is doing well, living in their own apartment, going to college and self-directing services, housing is a problem. The commenter states that the housing costs for safe and appropriate housing are rising and that they have been told that HUD housing subsidies and low-income housing are not available. The commenter feels that OPWDD services fall short when it comes to treating people as individuals.

**Response:** OPWDD acknowledges that Long Island is a particularly challenging region for housing access. In October 2022, OPWDD increased the housing stipend to the Housing and Urban Development (HUD) 2022 Fair Market Rent (FMR) level, making the subsidy consistent with HUD's Section 8 program to provide some relief to families in higher cost areas of the state.

***Support for OPWDD CAP Request but Concern Over Factors Not Within Provider Control That Could Prevent Full HCBS Compliance:***

One commenter noted support for the OPWDD CAP request to extend the deadline for compliance with aspects of the rule that include community integration and access to employment until July 2024. The commenter appreciates OPWDD's recognition of the workforce crisis and that OPWDD has made this the number one goal in the OPWDD Strategic Plan for 2023-2027. The commenter expressed concern, due to factors beyond the control of providers, with workforce and access to employment for individuals stating that a 15-month extension for compliance is not sufficient. The commenter suggests on-going technical assistance and

funding for providers and that providers should not be penalized for lack of compliance with the HCBS Rule.

**Response:** OPWDD appreciates the support of New York's CAP request, which is pending review by CMS. We will share more information as it becomes available. OPWDD is planning additional training and outreach for the provider community related to the CAP. Taken together, the OPWDD 2023-2027 Strategic Plan and the CAP lay a framework for OPWDD and its stakeholders to address the challenges and support the person-centered services we provide today and into the future.

***Support for the OPWDD CAP Request but Concerns About Transition Strategies:***

One commenter is concerned that the STP fails to outline a strategy to ensure a successful transformation and the \$27.76 million general fund investment and \$6.9 million per year investment targeting employment needs of people served by OPWDD is inadequate. The commenter is supportive of American Rescue Plan Act funding to make investments in the direct support workforce but concerned that providers are being cited for lack of community-based activities when individuals do participate in activities in the community that are exclusively for people with disabilities. The commenter is supportive of continuing telehealth and service provision in a wide variety of settings post PHE and is supportive of OPWDD's CAP request.

**Response:** OPWDD appreciates the support of the CAP request. The CAP request is pending review by CMS as noted above. The OPWDD impetus to request the CAP is based on the need to address the significant challenges our system faces. Many of these challenges were articulated in this submission and were also raised by stakeholders and providers during Summer 2022 when OPWDD conducted over 30 public opportunities for comment to engage in the 5.07 Plan development. The OPWDD 2023-2027 Strategic Plan details the top priorities for OPWDD including challenges and actions to improve the support we provide today and into the future. The CAP is important and necessary to ensure New York can maintain critical federal funding.

# **NEW YORK STATE DEPARTMENT OF HEALTH (DOH) OFFICE OF AGING AND LONG-TERM CARE (OALTC) ASSISTED LIVING PROGRAMS (ALP) AND ADULT CARE FACILITY (ACF) HCBS SETTINGS TRANSITION**

## **I. INTRODUCTION**

The New York State Department of Health (DOH) Adult Care Facilities' (ACF) mission is to improve and promote the health, productivity, and well-being of all New Yorkers, in part through effective public health and health care system oversight. In its health care system regulatory oversight role, DOH licenses, inspects, and investigates alleged complaints against health care providers, including ACFs, some of which operate Assisted Living Programs (ALP).

Licensed Adult Care Facilities are licensed primarily in three categories: Adult Homes (AH) or Enriched Housing Programs (EHP) and Residences for Adults (RA). AHs provide room, board, housekeeping, personal care, and supervision to five or more adults unrelated to the operator. EHPs provide room, board, housekeeping, personal care, and supervision, primarily to five or more adults, generally over the age of 65, in community integrated settings akin to independent housing units. Each of these types of ACFs may seek additional licensure as a Medicaid Assisted Living Program (ALP), or an Assisted Living Residence (ALR), with certification as Special Needs Assisted Living Residence (SNALR), or an Enhanced Assisted Living Residence (EARL). An ACF may hold additional, secondary licensure as a day program, respite program or dementia specialty provider. Many ACFs hold multiple certifications which permit the flexibilities needed in each community within a specific maximum capacity of beds in each category. Most adult care facilities do not receive any state or federal funding to support their operations and are funded privately through a resident's Supplemental Security Income (SSI) income or other sources of private income. Except in the case of Medicaid funded ALP (ALP) beds, the services provided by the adult care facility are covered by the cost of room and board. These services include room, board, housekeeping, personal care, and supervision.

The Statewide ACF capacity is 52,444 beds, of which approximately 14,695 are designated as ALP beds. The June 30, 2023 census for all facilities was 34,337. SSI and Safety Net recipients comprise 11,831 of the total ACF census. Approximately 9,182 SSI recipients occupy ALP beds.

For more information about New York's ACF services, please visit our [website](#).

The DOH's ACF Division currently oversees 553 ACFs with the capacity to provide temporary or long-term residential care and services to nearly 52,000 frail New Yorkers. These residents, although not requiring continual medical or nursing care, which would otherwise be provided by skilled nursing facilities, are substantially unable to live independently, due to physical, mental, or other limitations associated with age and other health factors. According to DOH ACF Division's 2022 second quarter quarterly statistics (QSIR), an estimated 12,000 ACF residents were deemed Medicaid eligible and in receipt of SSI. The majority of the over 12,000 Medicaid-eligible residents are currently receiving ALP services. For the small cohort of Medicaid-eligible residents residing in non-ALP certified programs, who are receiving Medicaid-funded HCB services or may receive such services from community providers pursuant to their Medicaid Managed Care Organization (MCO) or Fee for Service Medicaid through Local Departments of Social Services authorization now or in the future, the DOH ACF team will continue to assess and assure compliance with the HCBS Final Rule following the process described in the Site Validation and Ongoing Monitoring and Quality Assurance sections.

In New York, 162 ALPs (i.e., ACFs with ALP certifications) serve persons who are determined to be medically eligible for nursing home placement in a less medically intensive, less restrictive, and lower cost setting.

ALP services are covered in a bundled Medicaid rate and may include housekeeping, personal care, home health care, adult day care, and case management services. The ALP rate does not cover the cost of room and board, which is covered by the participant's SSI. In order to provide this comprehensive package of services, the ALP contracts with a Licensed Home Care Services Agency (LHCSA) and a Certified Home Health Agency (CHHA).

To qualify for the ALP, both Medicaid recipients and private-pay individuals must be medically eligible for, and would otherwise require, placement in a nursing home due to the lack of a home or suitable home environment. Eligible ALP residents must not require continual nursing care, be chronically bedfast, or be impaired to the degree that they endanger the safety of themselves or other ALP residents. Approximately 85 percent of all of New York's eligible ALP residents are Medicaid recipients.

New York's regulations require that the appropriateness of ALP services be determined by initial and periodic reassessments provided by the ALP. ALPs are required to provide a staffing plan for review by the DOH ACF team. The licensed program must also meet prescribed environmental standards, which include standards for the installation of fire prevention systems and the space provided for various types of administrative activities.

It is important to note that ACFs encompass different licensing/certification designations, and it is common to have more than one type of licensed or certification bed-types in an ACF, such as standard AH beds and licensed Medicaid ALP beds. This flexibility allows the ACF to meet evolving needs of residents, allowing them to age in place or spend down to Medicaid eligibility as their level of care requires services beyond those offered to residences in standard AH beds, for instance, but available to an ALP participant. It also allows the ACF to be responsive to community needs for the various levels of care associated with these licensed residential settings,

## **OVERVIEW OF THE TRANSITION**

New York's ALP and ACF Transition Plan was developed through the efforts of the HCBS Final Rule Interagency Workgroup and significant outreach to and input from multiple stakeholders, including association members from LeadingAge NY, Empire State Association of Assisted Living, New York State Center for Assisted Living, and Argentum NY. It includes the following components:

- Assessment of ALP and ACF provider current compliance with HCBS Final Rule requirements
- Training and education to providers on HCBS Final Rule requirements
- Regulatory amendments to align with HCBS Final Rule requirements
- Development and implementation of survey tools and protocols, and surveyor training, to ensure appropriate DOH ACF team surveillance of provider compliance with HCBS Final Rule requirements

The DOH ACF team has completed its plan. The plan's tasks have ensured that providers across the adult care facility continuum, including ALP and ACF providers, have the knowledge and tools necessary to comply with HCBS Final Rule requirements, and the DOH ACF team has its surveillance protocols in place to be able to evaluate such compliance going forward.

Over the last few decades, there are several licensed ACFs with ALPs that operate in close proximity to, and/or are adjacent to private institutional-like settings, such as nursing homes,

partly as a way to provide for a continuum of care and thereby allowing persons to age in place with the least disruption possible. The DOH ACF team remains committed to guide all of the state's licensed ACFs in which Medicaid eligible individuals receive, or may receive, HCBS, either at or outside of the facility, into compliance with the HCBS Final Rule.

## II. SYSTEMIC COMPLIANCE

In order for the DOH ACF team to come into compliance systemically with the HCBS Final Rule the following was completed:

- A systemic compliance assessment pursuant to ACFs was conducted by DOH in 2018. [Clicking this sentence brings you to the 2018 Systemic Compliance Chart on the ACF webpage that represents the results of that assessment.](#)
- Assisted Living Program Home and Community Based Settings Rule Self-Assessment issued 07/05/2016. [Clicking on this sentence brings you to Dear Administrator Letter \(DAL\) 16-15 on the ACF webpage.](#)
- Guidance for Assisted Living Programs to Comply with the Home and Community Based Setting (HCBS) Final Rule issued 11/13/2017. [Clicking on this sentence brings you to DAL 17-09 on the ACF webpage.](#)
- Adult Care Facility, Assisted Living Program Onsite Evaluation of HCBS Compliance with attachment issued 11/13/2017. [Clicking on this sentence brings you to DAL 17-16 on the ACF webpage.](#)
- Guidance for Adult Care Facilities to Comply with the Home and Community Based Settings (HCBS) Final Rule issued 11/9/2018. [Clicking on this sentence brings you to DAL 18-15 on the ACF webpage.](#)
- Educational Webinar for providers on the impact of the HCBS Rule on Assisted Living Programs- "Division of ACF/ Assisted Living Surveillance Home and Community Based Services (HCBS) Settings Rule." [Clicking on this sentence brings you to DAL 21-12 on the ACF webpage.](#) Home and Community Based Settings (HCBS) Final Rule Guidance issued 06/30/2021.
- Amendment of Adult Care Facility Regulation which will further bring the ACF and ALP into compliance systemically with all applicable HCBS Rule standards; anticipated release date is late summer of 2023, post public comment.

Table 1 details the type and number of each setting overseen by this program area as of June 20, 2023.

**Table 1: HCBS Settings as of June 20, 2023**

<b>Setting Type</b>	<b>Total Number of Settings</b>	<b>Fully Compliant with the Federal HCBS Requirements</b>	<b>Could Come into Compliance with Modifications</b>	<b>Cannot Comply with the Federal HCBS Requirements</b>	<b>Are Presumptively Institutional in Nature</b>
<b>Adult Care Facilities (non-Assisted Living Program)</b>	<b>391</b>	<b>129</b>	<b>255</b>		<b>7</b>
<b>Assisted Living Program</b>	<b>162</b>	<b>126</b>			<b>36</b>

### III. SITE VALIDATION

The DOH ACF team's transition planning team has worked thoughtfully to develop a series of comprehensive training and oversight activities that will help ACFs to fully comply with the federal HCBS site level requirements.

The first step the DOH ACF team took was to measure compliance of its existing licensed ALPs with the HCBS Final Rule requirements through provider self-assessment, using a standard tool developed by DOH based on CMS guidance "Exploratory Questions to Assist States with Assessment of Residential Settings" and with input from provider and patient advocate partners. In addition to "self-assessing" their compliance with the federal requirements, providers submitted pertinent information needed by the DOH ACF Division to determine compliance. DOH mirrored this process for remaining ACF sites which currently serve/house or may serve/house a resident who may be receiving Medicaid-funded HCBS within or outside the facility.

In addition, the DOH ACF team conducted site-specific evaluations for a statistically significant sample of ACFs using the federal requirements as a basis for the evaluation utilizing our HCBS Survey Checklist. To complement this effort, a survey protocol for annual unannounced on-site licensure inspections was developed. Upon completion, the survey protocol was utilized by survey teams across the DOH ACF team to assess each applicable program's efforts towards compliance.

**Table 2** (below) details the activities and timelines followed to ensure timely compliance by ACF providers.



## ADULT CARE FACILITY & ASSISTED LIVING PROGRAM TRANSITION ACTIVITIES

**TABLE 2**

<b>Activity</b>	<b>Completion Date</b>	<b>Comments</b>
Meet with Provider Associations to Discuss HCBS Requirements and Future Transition Activities	June 8, 2016	None
Solicit Provider Association Comments on Self-Assessment Tool	June 16, 2016	Comments received June 15, 2016, analyzed and incorporated as appropriate
Resident Advocacy Agencies to provide comments on ALP HCBS Self-Assessment Tool	June 17, 2016	Comments received June 17, 2016, analyzed and incorporated as appropriate
Dear Administrator Letter with 2016 ALP HCBS Self-Assessment Sent to Adult Care Facilities	July 5, 2016	None
Division of Adult Care Facilities Webinar for ALPs on Quality Assurance and HCBS Requirements	July 19, 2016	None
2016 ALP HCBS Self-Assessment Due to DOH	July 29, 2016	None
Regional Division of Adult Care Facilities Webinar for ALPs on Quality Assurance and HCBS Requirements	July 27, 2016	Open to all adult care and assisted living providers
State's Analysis of Self-Assessment Completed	September 23, 2016	Analysis will determine statistical sample to conduct on-site assessment
Outreach and Education Activities to Individual ALPs Begins	October 3, 2016	Site visits to a sample of ALPs
Regional Division of Adult Care Facilities Webinar for ALPs on Quality Assurance and HCBS Requirements	October, 2016	Open to all adult care and assisted living providers
Regional Division of Adult Care Facilities Webinar for ALPs and applicable ACF providers on HCBS Requirements	January 2019	Open to all adult care and assisted living providers
Issue compliance guidance to adult homes, enriched housing programs, and assisted living residences	June 2018	None
Issue self-assessment to adult homes, enriched housing programs, and	August 2018	None

Activity	Completion Date	Comments
assisted living residences		
Conduct a statistically significant sample of onsite assessments	December 2018	Setting standards were found to be largely in compliance
Developing a process to train surveyors	February 2023	Updated tools used in surveys to include settings standards and case by case modification guidance of those standards; issued guidance and met with stakeholders; scheduled Webinar for providers on Person Centered Planning and Modifications that will be posted online
Implement HCBS survey protocol	March 1, 2023	Conduct statewide surveyor training (occurred in April of 2023)

#### **IV. REMEDIATION**

The DOH ACF team determined that all ACFs required some form of remediation. The most sited areas in need of remediation were community integration, visitor access and documenting individualized modifications in the person-centered service plan. Over the past two years, the DOH ACF team provided guidance through Dear Administrator Letters and educational Webinars that are widely broadcast to all ACFs to assist providers with compliance.

#### **V. METHOD(S) TO ADDRESS PROVIDER SELF-ASSESSMENT DISCREPANCIES**

The DOH ACF team completed record reviews, onsite visits, and re-review of records from the self-assessment with the onsite assessment.

#### **VI. HEIGHTENED SCRUTINY**

Of the ACF settings that received onsite assessments, ACF program staff found 45 facilities falling under Heightened Scrutiny. Since the DOH ACF team identified these settings, two of them closed, one in July of 2022, the other in December. This leaves 43 settings that will require CMS approval of New York’s Heightened Scrutiny packages to overcome the presumption that they are institutional settings. Of these 43 identified facilities, 36 are ALP and 9 are non-ALP. To track the progress of the pending remediation plans and to ensure all settings achieved compliance by the March 17, 2023 deadline, the facilities progress was monitored via phone and email every 2-3 weeks. The coordinator received a status update and helped the facilities remain on track, providing technical assistance and additional guidance, as

needed. All open sites identified for Heightened Scrutiny have completed their remediation and DOH will be submitting packages to CMS for review after the revised regulations are final and in force.

The total number of residents in these 36 ALP and 9 Non-ALP facilities is no greater than 8442 at any one time. Each of these facilities has a subset of beds, with a total of 166 that are available to individuals with cognitive and dementia-related concerns via the Special Needs Assisted Living programming, which permits residents in need of a high level of care to be cared for in an ACF. This modest subset of individuals receiving Special Needs Assisted Living services are isolated from the greater community, consistent with features of the facility’s license to care for individuals with cognitive and dementia-related concerns and were therefore identified to receive a Heightened Scrutiny Assessment. Initially, the DOH ACF team had determined that residents living in ACFs with SNALR licensure would not be eligible for Medicaid funded HCBS. However, public comment on the Statewide Transition Plan indicated strong support for residents in these ACFs with SNALR licensed beds to be able to age in place and receive Medicaid HCBS within or outside the setting. Accordingly, the DOH ACF team has included these sites in the Heightened Scrutiny review process and worked with these providers and trade associations to train staff to make individualized modifications to the setting standards where appropriate.

The DOH ACF team will present evidence to the Secretary of Health and Human Services that the following settings have the qualities and characteristics of an appropriate home and community-based setting, and none of the qualities of an institutional setting. The following (Table 3) is a list of all Adult Care Facilities identified and categorized as Heightened Scrutiny, including the prong and a summary of how each setting will overcome the presumption that it is an institution as well as the DOH ACF team’s oversight of remediation efforts to ensure compliance with the settings criteria.

**TABLE 3**

<b>Facility Name</b>	<b>Prong</b>	<b>Summary</b>
ACF #1	2	Remediation was needed for dining room seating (residents choose their seat) and choice of roommate. Facility revised their policies and practices for dining room seating and roommate choice. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #2	1	Remediation was needed for dining room seating (residents choose their seat). Facility revised their policies and practices for dining room seating. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #3	1	Remediation was needed in the following areas: bedrooms doors were not equipped with locks for privacy and choice of roommate.  Facility has installed locks on all doors. All existing residents signed for accepting/ declining keys. All residents informed that staff have keys for access during emergency. The facility has implemented policies for “Compliance with Rule for Home and Community Based Settings” which addresses all aspects of the Final Rule. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #4	2	Remediation was needed on the following: update policy on dining room seating to allow for resident choice; and modify the visitor policy to

Facility Name	Prong	Summary
		include provisions to allow visitors at any time. Facility revised their dining room seating policy and visitor policy. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #5	2	Remediation was needed in the following areas: ensuring that changes to care plans are documented, ensure that residents can have visitors at any time, ensure that residents that share a room have choice of roommate, ensure bedrooms are lockable, ensure access to food 24 hours a day, ensure residents are able to choose where they dine. Facility needed to review and revise current policies, implement the policies, and review with staff and residents as required. Facility updated their policies on Case Management, Seating Choice at Meals, Roommate Choice, Access to Food Policy, Resident Rights Policy, and Resident Choice/Goal. Facility has also trained staff and educated residents. Facility will remediate all remaining non-compliance, including with making modifications to additional standards, by March 17, 2023.
ACF #6	1	Remediation was needed for dining room seating (residents choose their seat). Facility revised their policies and practices for dining room seating. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #7	2	Remediation was needed for dining room seating (residents choose their seat). Facility revised their policies and practices for dining room seating. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #8	2	Remediation was needed for dining room seating (residents choose their seat). Facility revised their policies and practices for dining room seating. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #9	1	Remediation was needed for dining room seating (residents choose their seat). Facility revised their policies and practices for dining room seating. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #10	1	Remediation was needed in the following areas: person-centered planning process, development of individualized care plans using person-centered planning processes. The facility has revised their policy and procedure on Person-Centered Planning, including an in-service/ training on resident Person-Centered Planning, revised the case management policy, revised their policy and procedure on in-service for staff on resident's rights and updated their resident rights in-service/ training, and updated their resident's rights. All information has been reviewed and accepted. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making

Facility Name	Prong	Summary
		modifications to additional standards by March 17, 2023.
ACF #11	2	Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.
ACF #12	1	Remediation was needed in the following areas: individuals are able to have visitors of their choosing at any time and Person-Centered Planning Polices. The facility has developed a policy titled Compliance with Rule for Home and Community Based Settings and has updated their Welcome Letter which address all areas of need. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #13	2	Remediation was needed for dining room seating (residents choose their seat) and choice of roommate. Facility revised their policies and practices for dining room seating and roommate choice. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #14	2	Remediation was needed for the following: develop person-centered care planning policies. The facility developed and implemented a policy for Person-Centered Planning and Person Directed Services. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #15	1	Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.
ACF #16	1	Remediation was needed in the following areas: person-centered planning process and privacy within the sleeping unit. The facility has completed remediation by developing and implementing person-centered policies and practices. Though all rooms are single, private rooms, the doors were not lockable. The facility has since installed locks on all bedroom doors. Facility has trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #17	2	Remediation was needed for dining room seating (residents choose their seat). Facility revised their policies and practices for dining room seating. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #18	1	Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.
ACF #19	1	Remediation was needed in the following area: Finalize, approve and implement the HCBS Policy & Procedures that are drafted. The facility has finalized, approved, implemented, and trained staff of the HCBS Policy and Procedures. Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.

Facility Name	Prong	Summary
ACF #20	1	Remediation was needed in the following area: person-centered process. The facility has drafted and implemented a policy titled Individual Service Plan which incorporates person-centered planning. Staff have been in-serviced/ trained on the policy. Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.
ACF #21	1	Remediation was needed in the following area: person-centered process. The facility has drafted and implemented a policy for Case Management Services and Person-Centered Care Planning and Person Directed Services. Facility has also trained staff and educated residents. Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.
ACF #22	1	Remediation was needed for dining room seating (residents choose their seat) and that bathrooms have entrance doors lockable by the resident, with only appropriate staff having keys. Facility has revised their dining policies and practice, train staff and educate residents. The facility has also completed installation of locks on all bathrooms and shower rooms. Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.
ACF #23	2	Remediation was needed in the following areas: ensure that person-centered planning procedures are implemented and ensure that residents have a place to secure personal belongings. The facility has revised their Case Management policy, trained staff and educated residents. The facility has also confirmed that all residents have been provided with a locked cabinet to secure their personal belongings. Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.
ACF #24	2	Remediation is needed in the following areas: person-centered planning procedures and dining procedure (choice of seat). The facility has updated their person-centered planning procedures and dining room procedures policies. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #25	2	Remediation is needed in the following area: person-centered planning procedures. The facility has developed a Person-Centered Resident Care Plan Policy. Facility has trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #26	1	Remediation is needed in the following areas: Each individual has privacy in their sleeping or living unit (units have entrance doors lockable by the individual; with only appropriate staff having keys to doors). Individuals are able to have visitors of their choosing at any time, dining room seating, and person-centered planning procedures. The facility has updated their policies on Admission Policy and Procedure, Communal Dining in the Assisted Living Program, and Facility Visitation. Facility has trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.

Facility Name	Prong	Summary
ACF #27	1	Remediation was needed in the following areas: person-centered planning procedures, and dining room seating. The facility has updated their policy and procedure manual to include Person-Centered Service Plans, updated their initial pre-admission assessment, updated their case management summary report, and updated their dining room seating policy. Facility has also trained staff and educated residents. This facility closed in July 2022.
ACF #28	1	Remediation was required in the following areas: person-centered planning procedures and ensure residents can have visitors at any time of their choosing. The facility has developed a policy titled Compliance with Rule for Home and Community Based Settings, which addresses the required person-centered planning procedures and visitation. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #29	2	Remediation was required in the following areas: person-centered planning procedure and dining rooms seating. The facility has developed and updated their policies for Case Management Services, ACF Visiting Policy, Person-Centered Planning and Person Directed Services. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #30	2	Remediation was needed in the following areas: Person-Centered Planning procedures, dining room seating, lockable bathrooms, ensure residents can have visitors at any time. The facility has completed their remediation plan. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #31	2	Remediation was needed in the following area: dining room seating. The facility has updated their dining room seating policy. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #32	2	Remediation was needed in the following area: dining room seating. The facility has revised their dining room table seating policy and procedure. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #33	2	Remediation is required in the following areas: dining room seating, privacy in sleeping units (no locks on doors, no locks on bathroom doors). Installation of locks was finalized on 11/01/2022. The facility is currently updating their dining plan and will submit upon completion. Facility is in the process of completing their remediation plan. Facility will remediate all remaining non-compliance, including with making modifications to additional standards, by March 17, 2023.
ACF	1	Facility will remediate non-compliance with making modifications to

<b>Facility Name</b>	<b>Prong</b>	<b>Summary</b>
#34		additional standards by March 17, 2023.
ACF #35	2	Remediation was needed in the following area: dining room seating. The facility has updated their policy to allow for residents to sit where they like. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023. This facility closed in December of 2022.
ACF #36	2	Facility will remediate non-compliance with making modifications to additional standards by March 17, 2023.
ACF #37	1	Remediation was needed in the following area: dining room seating. The facility has updated their policy to allow for residents to sit where they like. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #38	1	Remediation was needed in the following area: dining room seating. The facility has updated their policy to allow for residents to sit where they like as well as update the section in the resident handbook to reflect this change. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #39	1	Remediation was needed in the following area: Bathrooms have entrance doors lockable by the resident, with only appropriate staff having keys. Facility will remediate all remaining non-compliance, including with making modifications to additional standards, by March 17, 2023.
ACF #40	1	Remediation was needed in the following area: dining room seating. The facility has updated their policy to allow for residents to sit where they like. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #41	2	Remediation was needed in the following area: dining room seating. The facility has updated their policy to allow for residents to sit where they like. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #42	1	Remediation was needed in the following areas: dining room seating and each resident has their own bedroom (or shares a room with a roommate of their choice). The facility has updated their policy to allow for residents to sit where they like. The facility has also updated their policy and practice to allow for residents to choose roommates, and trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #43	1	Remediation is needed in the following areas: Bedrooms have entrance doors lockable by the resident, with only appropriate staff having keys, and bathrooms have entrance doors lockable by the resident, with only appropriate staff having keys. The facility is currently working on their



Facility Name	Prong	Summary
		remediation plan. Facility will remediate all remaining non-compliance, including with making modifications to additional standards, by March 17, 2023.
ACF #44	1	Remediation was needed in the following areas: person-centered planning procedures, and dining room seating. The facility has implemented a person-centered plan of care policy as well as a dining area seating arrangement policy. Staff have been trained and residents have been informed of the policies. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.
ACF #45	1	Remediation was needed in the following area: person-centered planning procedures. The facility has developed a policy and procedure for Initiation of Resident's individual Plan of Care. Facility has also trained staff and educated residents. Facility will remediate remaining non-compliance with making modifications to additional standards by March 17, 2023.

CMS feedback will be used to further assist with remediating settings that may have the qualities of an institution. This feedback will be applied to all identified Heightened Scrutiny facilities by ensuring policies, procedures and practices in the settings meet the requirements and address the feedback received by CMS. DOH ACF Regional Office staff will ensure implementation of CMS feedback and Final Rule requirements upon conducting onsite inspections of the facilities.

## VII. NON-DISABILITY SPECIFIC SETTINGS OPTIONS

ACFs are non-disability specific settings. Not all residents within a setting are people with disabilities, though some are. Utilizing the Person-Centered Planning Process, each resident, disability or not, has a choice of provider based in the community which are non-disability specific. ACFs ensure supports and services are available in a non-disability specific setting for their residents.

## VIII. STRATEGY FOR ASSISTING PARTICIPANTS LIVING/RECEIVING SERVICES IN NON-COMPLIANT SETTINGS

We anticipate that all programs will meet full compliance of the Rule. However, if a facility is unable to comply, the Medicaid-HCBS funded resident would need to transfer into a compliant facility. The person-centered planning process will be used to ensure that services that meet the needs of residents as identified in the care plan are provided and that there are no lapses in services.

## IX. ONGOING MONITORING AND QUALITY ASSURANCE

To ensure that all settings remain fully compliant, the regional office surveillance teams include monitoring compliance with the HCBS settings rule in their full and/or follow-up inspections, as well as evaluate for HCBS compliance during pre-licensing protocols. The survey tool includes a checklist that corresponds with the HCBS Final Rule to ensure compliance in all areas continues to be met. All ACFs are monitored at least once every twelve- to- eighteen-months on an unannounced basis by the State's regional office surveillance inspector(s). During each surveillance visit the DOH ACF team tours the facility to obtain an overall picture of the environment, residents and staff, and the interaction between them. The inspectors complete a record review with the sample size as the lesser of 15 records or 15% of a facility's total census, with a minimum of 5 records. This may be expanded at the discretion of the inspector. The inspector will also observe resident rooms with a sample size based on number of facility beds (0-20 beds= 100% of bedrooms, 21-40 beds= 50% of bedrooms, 41+ beds= 25% up to a maximum of 50 bedrooms). Resident interviews are also conducted with a sample size of 5 residents. Recipients and providers may refer to New York's Person-Centered Planning and Practice Resource Library ([clicking this sentence brings you to the PCP Online Resources Library on the DOH webpage](#)) for additional information about training opportunities made available.

Residents of ACFs have free rein of the community and may come and go as they choose. However, at the height of the public health emergency (PHE), residents' community access was restricted by implemented DOH ACF team and federal guidance to ensure the health and safety of all. With the PHE now over, restrictions have lessened allowing residents to resume activities and community involvement as they were pre-PHE. Residents continue to access the community as they desire. All ACFs are "facility-based" and are not private homes or apartments, therefore, it is not applicable to have a process for monitoring private homes or apartments. Upon approval and implementation of the revised regulations, HCBS Rule compliant person-centered planning will be monitored for compliance across all settings, through the surveillance process.

## **X. STP UPDATES**

Substantive updates to the ACF 2018 transition plan section include updates to the:

- Introduction to align the document with the 2022 census figures, including the number of ALP residents served
- Number of facilities
- Heightened Scrutiny section, particularly the number of facilities identified as meeting these requirements
- Systemic compliance outcomes, site validation, remediation and beneficiary recourse

## **XI. BENEFICIARY RECOURSE**

Should a resident wish to file a grievance or complaint with the DOH ACF team they are able to call our ACF Centralized Complaint Intake Program (ACF CCIP) by calling 1-866-893-6772. The ACF CCIP business hours are from 8:30am to 4:45pm Monday through Friday, excluding holidays. Complaints made after hours may be left on the hotline's voicemail system and will be addressed within 1-2 business days. The ACF CCIP staff will triage complaints as appropriate and will open complaint investigations for the Regional Office staff to investigate. Depending on priority code (Immediate Jeopardy to Non-IJ Medium) Regional Office staff have between 72 hours and 90 days to complete an investigation. Complainants receive an acknowledgement letter of their complaint.

# NEW YORK STATE DEPARTMENT OF HEALTH (DOH) -OFFICE OF AGING AND LONG TERM (OALTC) ADULT DAY HEALTH CARE PROGRAM (ADHCP)

## I. INTRODUCTION

New York State Department of Health (DOH), Office of Aging and Long-Term Care (OALTC) Bureau of Quality Assurance and Surveillance – Adult Day Health Care Program (ADHCP) is a non-residential setting where HCBS recipients receive a variety of supportive services during the day through a program site. ADHCP is further defined as the health care services and activities provided to a group of registrants with functional impairments to maintain their health status and enable them to remain in the community. A registrant is a person who does not live in a residential health care facility, is functionally impaired and not homebound, and requires supervision, monitoring, preventive, diagnostic, therapeutic, rehabilitative, or palliative care services but does not require 24-hour-a-day inpatient care and services. The registrant's assessed social and health needs can satisfactorily be met in whole or in part by the delivery of appropriate services in the community setting.

The ADHCP's provide a range of services in a community-based setting. General medical care, including nursing care needs, rehabilitative therapy, nutritional services, case management, social services, health education, pharmaceutical services, inter-disciplinary care planning, assistance, and supervision with activities of daily living, (i.e., toileting, feeding, ambulation, bathing, etc.), therapeutic or recreational activities, religious and pastoral counseling and referral for necessary dental services and sub-specialty care are provided. Each registrant's care plan must be developed and updated in accordance with regulatory standard and must address all programs and services to meet the individual needs of each registrant (e.g., nursing services, food and nutrition, rehabilitation, leisure time activities, etc.). There are 115 ADHCPs statewide. All programs were temporarily closed in March 2020 due to the pandemic. To date, 49 of the 115 programs have reopened.

## II. SYSTEMIC COMPLIANCE

Systemic Compliance for ADHCP was achieved through issuance of sub-regulatory guidance, revised regulations, and other tools by the ADHCP team at DOH that will strengthen the alignment of ADHCP state requirements with the HCBS Final Rule. State technical assistance for ADHCP providers and ongoing monitoring activities will address the systemic compliance needs going forward, further addressed in the section Ongoing Monitoring below. The items below represent the major tasks completed to achieve systemic compliance.

The following Systemic Compliance Chart represents the results of the systemic compliance assessment conducted for ADHCP in 2018, on pages 13-18:

- [Clicking this sentence brings you to the 2018 Systemic Compliance Chart on the DOH webpage.](#) Amendment of regulation 10 NYCRR 425 to be fully aligned with 42 CFR 441.301 (c) (1 - 4) to be finalized and released by 1/2023 - removing the requirement for a program to operate at a residential health care facility's primary site and inserting applicable HCBS standards. Updated Dear Administrator Letter (DAL), sub regulatory guidance issued on March 20, 2022:
- [Clicking this sentence brings you to the March 2022 DAL on the DOH webpage.](#)

The Person-Centered Service Planning (PCSP) Guidance and PCSP Template that will now provide further support for compliant PCSP for ADHCPs were issued to providers on November 16, 2022 and added to the ADHCP webpage on November 17, 2022: ([clicking this sentence brings you to the DOH webpage where the PCSP Guidance and Template are located within the ADHCP section of the page](#)):

- [Clicking this sentence brings you to the PCSP Guidance released to ADHCP providers on 11/16/2022](#)
- [Clicking this sentence brings you to the PCSP Template released to ADHCP providers on 11/16/2022](#)

### III. SITE VALIDATION

DOH's ADHCP team conducted a series of program self-assessments (PSA's developed based on CMS guidance "Exploratory Questions to Assist States in the Assessment of Non-Residential Settings"), against the standards of the HCBS Final Rule. The ADHCP team assessed all reopened programs (post pandemic) for HCBS compliance through PSA's, record reviews, virtual onsite reviews including interviews with registrants and staff done in private using questions from the guidance listed above, observations made during virtual tours, reviewing documentation such as person-centered plans and pictures of the buildings and signage to the program, checking program addresses for accuracy and google maps images of locations. Areas assessed were indicated as either "compliant," "partially-compliant," or "non-compliant," with the standards of the Final Rule. All 49 program sites were deemed "partially-compliant," or "non-compliant," see Remediation section below for details, and were remediated through phone calls with ADHCP staff and leadership, emails, letters and providing additional guidance on regulations for compliance. Each standard of the HCBS Final Rule was analyzed in the assessment results and discussed with the facility management and staff.

Using the site validation and remediation process described in the sections above, newly opening and reopening AHCPs will be required to be in compliance with HCBS Rule standards prior to opening. A four-phase process has been developed for addressing HCBS compliance that ranges from notification of intent to open/reopen, to policy submission and review, virtual tours and interviews with staff and registrants, and remediation identification and implementation.

### IV. REMEDIATION

Through the site visit validation process described above programs that needed remediation were identified. General guidance and training on the HCBS Final Rule standards were provided to program staff (providers) to meet compliance. Policies and procedures and any remediation completed by the program to meet compliance were filed within the program's file for reference. Staff are being trained in person-centered care planning, resourced by the NYS DOH Person-Centered Planning Statewide Training Initiative and the Person-Centered Planning and Practice Resource Library, ([clicking this sentence brings you to the PCP Resource Library on the DOH webpage](#)), as well as other HCBS and ADHCP policies.

All reopened programs are fully compliant with privacy, dignity, respect, and freedom from coercion and restraint, and control of personal resources; policy and procedure development/revision to address rights of privacy, dignity, respect and freedom from coercion and restraint is being done by ADHCP providers

and validated by a review from the ADHCP team at DOH. All 49 reopened ADHCPs required remediation in the following areas:

- Community integration plans, including opportunities to seek employment in the community, and regular scheduling of outdoor community activities.
- Transportation plans and resources for alternative transportation methods for individuals to pursue community activities that reflect individual preferences.

If the Corrective Action Plan for which New York State is applying is approved, our target date for remediating the areas of noncompliance for ADHCP listed above is July 1, 2024. Progress will be tracked quarterly through regular communications with ADHCPs requiring remediation and providing technical assistance as needed and updating their program files.

## V. CORRECTIVE ACTION PLAN

For the ADHCP’s to be in full compliance with offering “access to the broader community” on a regular basis, our goal is for remediation and complete compliance to be achieved by July 1, 2024. ADHCP’s are slowly reopening after the pandemic. Transportation to community events is a challenge as transportation providers are limited. The vast majority of registrants travel to an ADHCP on transportation services that are arranged by their center and therefore need transportation to access offsite activities. Providers are receiving State guidance and assistance to address this barrier to full community integration.

## VI. ADDRESSING DISCREPANCIES WITH PROVIDER SELF-ASSESSMENTS

On May 13, 2019, the ADHCP team issued a provider self-assessment to initially identify the main gaps in ADHCP compliance with the HCBS Final Rule. Staff also identified areas where the providers answered the provider self-assessment similarly, and perhaps incorrectly, and issued Frequently Asked Questions (FAQs) to make sure providers understood the provider self-assessment questions more clearly so that they could submit a revised version, which State staff then validated through the virtual tours of each of the 49 ADHCPs. In 2021 the ADHCP team conducted virtual tours, record reviews, staff and registrant interviews for all open ADHCPs to address discrepancies between the results of the provider self-assessment and rest of the site assessment results. The State followed up by phone as needed to get additional clarity on the programs’ compliance status with all applicable HCBS standards.

## VII. HEIGHTENED SCRUTINY

Using the site validation and remediation process described in the sections above, the following list of all reopened ADHCPs were identified and categorized as requiring Heightened Scrutiny, with the prong, a summary of how each setting has or will overcome the presumption that it is an institution, and the state’s plan for oversight of remediation to ensure compliance with the settings criteria by the end of the transition period:

#	Facility Name	Prong	Summary
1	ADHCP #1	3	Remediation was completed. Program revised their policies and practices for person centered plan. Program

#	Facility Name	Prong	Summary
			has scheduled community events. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Regular outdoor community activities scheduled. Program arranges alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.
2	ADHCP #2	1	Remediation was completed for policies and practices for person centered plan and separation of services from the nursing home. Staff are trained in the HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Remediation in progress. Targeted to be in compliance by 7/1//2024.
3	ADHCP #3	2	Remediation was completed. Program revised their policies and practices for person centered plan and other HCBS requirements. All ADHC staff have been in-serviced in regard to HCBS and ADHC policies. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Program meets compliance.
4	ADHCP #4	2	Remediation was completed for policies. Program revised their policies and practices for person centered plan and other HCBS requirements. All ADHC staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Remediation in progress. Targeted to be in compliance by 7/1//2024.
5	ADHCP #5	3	Remediation was completed in the following areas: Freedom to move about in the program, Person-Centered Care Planning Process, and visitation policy. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Regular outdoor community activities scheduled. Program arranges alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.

#	Facility Name	Prong	Summary
6	ADHCP #6	2	Remediation was completed to all policies pertaining to HCBS. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Remediation in progress. Targeted to be compliant by 7/1//2024.
7	ADHCP #7	1	Remediation was completed to policies and practices for person centered plan and separation of services from the nursing home and are up to date. Staff are trained in the ADHC policies and HCBS. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Remediation in progress. Targeted to be compliant by 7/1//2024.
8	ADHCP #9	3	Remediation was completed to allow residents' choice/preference and choices policies. Staff at the ADHC are trained to the ADHC policies and HCBS requirements. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Regular outdoor community activities scheduled. Program arranges alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.
9	ADHCP#10	1	Remediation in progress. Program revised their policies and practices for person centered plan and other HCBS requirements. Program does not share office space or other administrative functions with the nursing facility. Staff working at ADHCP are HCBS and ADHC policies trained. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
10	ADHCP #11	1	Remediation completed in regard to various policies. Program revised their policies and practices for person centered plan and other HCBS requirements. Program

#	Facility Name	Prong	Summary
			does not share office space or other administrative functions with the nursing facility. Staff working at ADHCP are HCBS and ADHC policies trained. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are a constraint. Program meets partial compliance. Remediation in progress. Targeted to be compliant by 7/1//2024.
11	ADHCP #12	1	Remediation was completed to all policies. Program revised their policies and practices for person centered plan and other HCBS requirements. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor Community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are a constraint. Remediation in progress. Targeted to be compliant by 7/1//2024.
12	ADHCP #13	3	Remediation was completed. Program revised their policies and practices for person centered planning. Program has scheduled community events. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Regular outdoor community activities scheduled. Program will arrange alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.
13	ADHCP #14	3	Remediation was completed to all policies pertaining to HCBS. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Remediation in progress. Targeted to be in compliant by 7/1//2024.
14	ADHCP #15	3	Remediation was completed to all policies pertaining to HCBS. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community



#	Facility Name	Prong	Summary
			activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Remediation in progress. Targeted to be in compliant by 7/1//2024.
15	ADHCP #16	1	Remediation in progress. Program revised their policies and practices for person centered plan and other HCBS requirements. Staff are HCBS and ADHC policies trained. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
16	ADHCP #17	1	Remediation was needed to incorporate key features of the HCBS Final Rule with regard to person-centered planning. Program revised their policies and practices for person centered plan and other HCBS requirements. Staff working at ADHCP are HCBS and ADHC policies trained. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
17	ADHCP #18	1	Remediation was done to all policies including for person centered planning and other HCBS requirements. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
18	ADHCP #19	1	Remediation was completed. Program revised their policies and practices for person centered plan and other HCBS requirements. This setting is in the nursing home campus, and all ADHCP staff are trained in HCBS and ADHCP policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek

#	Facility Name	Prong	Summary
			employment within the community. Planned outdoor Community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
19	ADHCP #20	1	Remediation was completed. Program revised their policies and practices for person centered plan and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the nursing facility. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor Community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
20	ADHCP #21	3	Remediation was completed to all policies pertaining to HCBS. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Planned outdoor Community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
21	ADHCP #22	3	Remediation was completed to all policies pertaining to HCBS. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Remediation in progress. Targeted to be compliant by 7/1//2024.
22	ADHCP #23	3	Remediation was completed to all policies pertaining to HCBS. Staff at the ADHC are trained in the ADHC policies and HCBS requirements. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Regular outdoor community activities scheduled. Program arranges alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.

#	Facility Name	Prong	Summary
23	ADHCP #24	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Staff working at ADHCP are HCBS and ADHC policies trained. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
24	ADHCP #25	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Program does not share office space or other administrative functions with the nursing facility. Staff working at ADHCP are HCBS and ADHC policies trained. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
25	ADHCP #26	3	Remediation was completed. Program revised their policies and practices for person centered plan and other HCBS requirements. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
26	ADHCP #27	3	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be in compliant by 7/1//2024.
27	ADHCP #28	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint

#	Facility Name	Prong	Summary
			are maintained. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
28	ADHCP #29	1	Remediation in progress. Program revised their policies and practices for person centered planning and other HCBS requirements. Staff working at ADHCP are HCBS and ADHC policies trained. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
29	ADHCP #30	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Staff have been in-serviced in regard to HCBS and ADHC policies. There is a clear separation from the nursing home and the program. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
30	ADHCP #31	3	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
31	ADHCP #32	1	Remediation was completed. Program was sharing staff and administrative functions from the nursing facility. Program revised their policies and practices for person centered planning and other HCBS requirements

#	Facility Name	Prong	Summary
			<p>separating policies from the nursing facility. Program does not share office space, staff, or other administrative functions with the nursing facility at this time. Staff have received in-services in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.</p>
32	ADHCP #33	1	<p>Remediation was completed to allow residents choice/preference and choices policies. Staff at the ADHC are trained to the ADHC policies and HCBS requirements. Program does not share office space, staff, or other administrative functions with the nursing facility. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Regular outdoor community activities scheduled. Program arranges alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.</p>
33	ADHCP #34	1	<p>This program is surveyed by the DOH Office of Public Health, AIDS Institute and information on its compliance and Heightened Scrutiny process can be found in this Statewide Transition Plan's (STP) section on AIDS Adult Day Health Care.</p>
34	ADHCP #35	2	<p>Remediation was completed for all policies pertaining to HCBS. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.</p>
35	ADHCP #36	3	<p>Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the</p>

#	Facility Name	Prong	Summary
			community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
36	ADHCP #37	1	Remediation was completed for all policies pertaining to HCBS. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
37	ADHCP #38	2	Remediation was completed to all policies pertaining to HCBS. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
38	ADHCP #39	1	Remediation was completed. Program revised their policies and practices for person centered plan and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
39	ADHCP #40	2	Remediation was completed to all policies pertaining to HCBS. Staff at the ADHC are trained to the ADHC policies and HCBS requirements. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Regular outdoor community activities scheduled. Program arranges alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.

#	Facility Name	Prong	Summary
40	ADHCP #41	1	Remediation was completed. Program revised their policies and practices for person centered plan and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Regular outdoor community activities scheduled. Program arranges alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.
41	ADHCP #42	1	This Program is surveyed by the DOH Office of Public Health, AIDS Institute and information on its compliance and Heightened Scrutiny process can be found in this STP's section on AIDS Adult Day Health Care.
42	ADHCP #43	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Located within the nursing home but program does not share office space, staff, or other administrative functions with the nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
43	ADHCP #44	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the co-located nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.

#	Facility Name	Prong	Summary
44	ADHCP #45	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the co located nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Registrants are assessed to include opportunities to seek employment within the community. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Regular outdoor community activities scheduled. Program arranges alternative transportation methods for individuals to pursue community activities that reflect individual preferences. Program meets compliance.
45	ADHCP #47	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the co located nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
46	ADHCP #48	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the co located nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
47	ADHCP #49	1	Remediation in progress. Program revised their policies and practices for person centered planning and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the co located nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity,



#	Facility Name	Prong	Summary
			respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
48	ADHCP #50	1	Remediation was completed to all policies pertaining to HCBS. Program revised their policies and practices for person centered planning and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the co located nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.
49	ADHCP #51	1	Remediation was completed. Program revised their policies and practices for person centered planning and other HCBS requirements. Program does not share office space, staff, or other administrative functions with the nursing facility. Staff have been in-serviced in regard to HCBS and ADHC policies. Rights of privacy, dignity, respect and freedom from coercion and restraint are maintained. Registrants are assessed to include opportunities to seek employment within the community. Planned outdoor community activities are being scheduled after the pandemic and reopening. Program needs to offer regular opportunities for registrants to go out into the community. Staffing and transportation issues are still a constraint. Program meets partial compliance. Targeted to be compliant by 7/1//2024.

The ADHCP team will be conducting public comment period of thirty days on each of the 47 of the 49 ADHCP Heightened Scrutiny packets by December 15, 2022. So as not to duplicate the public comment process, the AIDS Institute, which also has oversight of #34 and #42, will post them for public comment. Heightened Scrutiny summaries, including public comment and supporting evidence, may later be selected for review by CMS as a part of a random sample. The ADHCP team will review any feedback received from the CMS random sample process to decide whether it is applicable to similarly situated settings and additionally review if remediation is needed for settings not included in the CMS review sample, conducting further remediation activities where needed.

## VIII. ONGOING MONITORING AND QUALITY ASSURANCE

Ongoing monitoring of ADHCPs and quality assurance processes will be completed through onsite and offsite approaches. The ADHCP team will ensure all settings maintain ongoing compliance by:

- Commencing in March 2023, triennial onsite re-licensure surveys will be conducted and will include observations of the physical space, staff and registrants, program and registrant record reviews and interviews to determine ongoing compliance.
- The annual Program Survey Report has been edited to include a section asking questions that pertain to the HCBS Rule standards.
- Community integration will be reviewed yearly and during surveys.
- During the re-licensure survey, staff and registrants will be interviewed to monitor quality of care provided and that services/supports are planned and effectively implemented in accordance with each registrant's unique needs, expressed preferences and decisions concerning his/her life in the community.
- Person-centered plans will be reviewed for sampled registrants during the triennial re-licensure surveys to ensure the plans reflect individual preferences.
- ADHCP staff will be offered regular training opportunities in person-centered care planning, resourced by the NYS DOH Person-Centered Planning and Practice Resource Library ([clicking this sentence brings you to the Person-Centered Planning Resource Library on the DOH webpage](#)), as well as other HCBS and ADHCP policies.
- ADHCPs identified as in need of remediation will be followed every six months through ongoing data collection done by, and communication with, the ADHCP team to assess progress with compliance.

ADHCP does not deliver HCBS in private homes. Participants in ADHCPs may belong to a Managed Care or Managed Long Term Care program or access the program through the State Plan even though they are enrolled in a Waiver. For these individuals, the private homes in which most of the participants live will be monitored for compliance by the managed care plan or the Waiver case manager.

### NON-DISABILITY SPECIFIC SETTINGS

New York State ADHCP supports individuals who are living in the community to continue living at home despite facing challenging health conditions. It has been built into the program since its inception for ADHCP providers to connect ADHCP registrants with their regular doctors/providers, perhaps offering additional support for Activities of Daily Living (ADLs) and both onsite and offsite activities of interest to registrants. Guidance and technical assistance provided by the ADHCP team has been targeted since 2019 to address enhancing the community facing nature of the program's offerings, ensuring that providers are making resources available for registrants to be able to easily connect with non-disability specific community-based services and offerings. ADHCP surveillance tools and processes have been updated to reflect these changes.

## IX. STRATEGY FOR ASSISTING PARTICIPANTS LIVING/RECEIVING SERVICES IN NON-COMPLIANT SETTINGS

The ADHCP team does not feel that any of New York's open ADHCP providers cannot come into compliance with the HCBS Final Rule. If in the future a non-compliant program were to be discovered through ADHCP team's ongoing monitoring, NYS DOH would ensure registrants were transferred to other ADHCP providers or services using the appropriate person-centered planning process. Using the person-centered planning process will ensure the prevention of any lapse in services for individuals participating

in the ADHCP and will be supported by the ADHCP's case managers and monitored by the ADHCP team.

## **X. BENEFICIARY RECOURSE**

Recipients may report allegations of provider non-compliance to the complaints hotline (1-888-201-4563) or by completing an online complaint form 24hours a day, seven days per week ([clicking this sentence brings you to the online complaint form on the DOH webpage](#)).

All complaints and or incidents received will be reviewed, triaged and appropriate action taken by the ADHCP team and/or the ADHCP provider. Intake and/or surveillance staff may contact the facility and obtain facility records and other information to determine the setting's compliance. The ADHCP team conducts interviews, reviews medical records and other facility documentation, and performs survey activities offsite and/or onsite. Facilities determined to be out of compliance with state and/or federal regulations are cited and required to submit a plan of correction. After receiving an approved plan of correction, the ADCHP team will conduct a desk audit/post survey revisit. The revisit consists of the ADHCP submitting evidence to demonstrate that the plan of correction has been implemented. Evidence review includes, but is not limited to, review of registrant records and ensuring the person-centered plan is appropriately developed relative to the cited deficient practice. Only when the ADHCP provides sufficient evidence that the plan of correction has been fully implemented will the ADHCP be put into substantial compliance.

# **NEW YORK STATE DEPARTMENT OF HEALTH (DOH) – OFFICE OF HEALTH EQUITY AND HUMAN RIGHTS (OHEHR) AIDS INSTITUTE HCBS SETTINGS TRANSITION**

## **I. INTRODUCTION**

The AIDS Institute was created within the New York State Department of Health (NYSDOH) in 1983 to support a comprehensive public health and health care response to an emerging crisis. Public Health Law Article 27-E specifies the AIDS Institute’s responsibilities, powers and duties.

The AIDS Institute is one of four centers in NYSDOH’s Office of Health Equity and Human Rights. In recognition of the synergy among human immunodeficiency virus (HIV), sexually transmitted infections (STIs), and viral hepatitis, these services are aligned within the AIDS Institute in order to improve prevention efforts and health outcomes along with HIV/AIDS and STI surveillance.

The AIDS Institute strives to eliminate new HIV, STI, and hepatitis C virus (HCV) infections; ensure early diagnosis and linkage to quality care, support and treatment for all infected New Yorkers; provide support for those affected; and eradicate stigma, discrimination, and disparities in health outcomes.

The AIDS Institute also has major responsibilities for overall sexual health and Lesbian / Gay / Bisexual / Transgender (LGBT) and drug-user health and wellness. Although many of the health and human service needs of LGBT individuals and drug users are similar to the population at large, these individuals experience worse health outcomes than others in society. Discrimination and societal rejection based on sexual identity, gender identity, gender expression and drug use uniquely impact access to and interaction with the health and human services system.

### **Overview of AIDS Institute Service System**

The AIDS Institute’s achievements in fighting the HIV, STI, and hepatitis epidemics and serving those infected are notable and include the development of HIV financing mechanisms and client-centered service programs that serve as national models. The AIDS Institute established an HIV service delivery system that is unmatched in the nation. The continuum of services developed in New York State (NYS) includes prevention, education, outreach, screening, partner services, health care, harm reduction, and a range of support services, as well as medications and insurance continuation for persons with HIV/AIDS. The continuum includes direct services provided by NYSDOH staff, State support of local health department services, service contracts, Medicaid-supported services, and HIV care programs for the uninsured and underinsured (e.g., AIDS Drug Assistance Program).

### **HCBS Rule Transition Plan**

While the AIDS Institute has developed an extensive continuum of services, the vast majority of services under the AIDS Institute’s purview are community-based services that are compliant with the HCBS Final Rule.

Management staff identified two program areas that required further review to ensure full compliance with the HCBS Final Rule, specifically, supportive housing and AIDS Adult Day Health Care Programs (AADHCP). The transition plan sections for each program area are outlined below.

## **AIDS ADULT DAY HEALTH CARE PROGRAMS**

These programs provide a range of services in a community-based setting. General medical care including HIV/AIDS treatment adherence support, nursing care, rehabilitative services, nutritional services, case management, HIV risk reduction, substance abuse and mental health services are provided. AADHCPs complement/enhance the existing continuum of medical services through ongoing coordination with primary care and other service providers. Health maintenance/wellness activities such as supervised exercise and structured socialization are adjunct components but cannot be the sole reason for admission/continued stay in the program. The program model is grounded in a comprehensive, interdisciplinary patient-centered care planning process that serves as the basis for service utilization.

Currently there are five AADHCPs across 7 locations with a daily capacity to serve 530 registrants per day. The total number of individuals currently enrolled in AADHCP is approximately 715. The programs routinely receive on-site programmatic monitoring by the AIDS Institute (at least every 2 years but most receive annual on-site monitoring), which includes medical record reviews.

The transition process for ensuring compliance with HCBS Settings rule for AADHCP consisted of the following action steps:

- Convened a meeting with all AADHCP providers of requirements of HCBS Final Rule and its implications for AADHCP services and expectations. (October 2016).
- Updated “Guidelines for Adult Day Health Care Programs Caring for Patients with AIDS or HIV Disease” to explicitly state all HCBS Rule standards/requirements as a means of further ensuring programs adhere to these requirements. (December 31, 2018)
- Conducted Initial onsite assessment of all ten programs (i.e., the number of programs open at the time of assessment) to ascertain compliance with the HCBS Final Rule by March 17, 2019. Any indications of non-compliance required detailed explanations and corrective action plans from the provider to address the non-compliance (June 30, 2019).
- Incorporated HCBS Final Rule requirements into routine programmatic on-site monitoring protocols. Any indications of non-compliance required a detailed explanation and a corrective action plan from the provider addressing the non-compliance. (July 1, 2020).

## **SUPPORTIVE HOUSING**

The AIDS Institute funds supportive housing programs to provide housing rental subsidies in conjunction with housing retention services to homeless or unstably housed persons living with HIV (PLWH). The intent of the program is assisting these individuals to develop the skills needed to empower them to live independently and to remain in an apartment of their choice which is fully integrated into the broader community. Tenants of AIDS Institute funded supportive housing sign a legal lease document (a lease or sub-lease, see further information below), and rental subsidies are provided based on a determination of financial need consistent with Housing and Urban Development/Housing Opportunities for Persons with AIDS (HUD/HOPWA) guidance. Supportive services are provided/arranged for based on individual needs and preferences and may include but is not limited to: independent living skills training; health education, including nutrition; vocational readiness education; and care coordination, including case conferencing involving other community-based medical and social service providers.

Through contractual arrangements, DOH/AIDS Institute currently funds twelve (12) agencies to provide supportive housing services within eighteen (18) different contracts. These contracts provide rental subsidies and housing retention services to approximately 576 PLWH per year.

The transition process for ensuring compliance with HCBS Final Rule for supportive housing consists of the following action steps:

- Convened a meeting with all supportive housing contractors under contract with the AIDS Institute to inform the contracting agencies of requirements of HCBS Final Rule and its implications for supportive housing services administered within the AIDS Institute. (October 2016).
- Revised contract language and developed program guidance documents for supportive housing contracts managed within the AIDS Institute that explicitly states all HCBS Final Rule standards/requirements as a means of further ensuring programs adhere to these requirements. (Guidance issued September 2021).
- For the Housing provider contractors that were determined to be provider-owned or controlled settings (e.g., hold a master lease document with a landlord and sub-lease apartments to tenants, or own the apartments) a review of all lease/sub-lease agreements with tenants was conducted, as well as a review of all program policies, procedures, and “house rules” to ascertain compliance with HCBS Final Rule. (March 17, 2019).
- Incorporated HCBS Final Rule requirements into routine programmatic on-site monitoring protocols. (July 2022).

## II. SYSTEMIC COMPLIANCE

### AIDS ADULT DAY HEALTH CARE PROGRAMS

To ensure systemic compliance with the HCBS Rule, a comprehensive review of AIDS Institute AADHCP contracts and guidance were reviewed in 2018, with the results of that assessment being included in the following Systemic Compliance Chart: [Clicking on this sentence will bring you to the 2018 Systemic Compliance Chart \(pages 1-2\) on the AI website.](#)

AIDS Institute staff likewise provided HCBS guidance and worked with the AADHCPs to revise related policies and procedures to meet compliance with the HCBS standards. Comprehensive guidance that included all applicable standards was issued in 2019: [Clicking on this sentence will bring you to the 2019 AADHCP guidance document on the AI website.](#)

Standards that were not included due to program being non-residential:

- A lease or other legally enforceable agreement providing similar protections (residential provider-owned and controlled, not applicable)
- Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit (residential provider-owned and controlled, not applicable)

### SUPPORTIVE HOUSING

HIV/AIDS supportive housing programs managed by AIDS Institute Supportive Housing Initiative staff are unlicensed and uncertified supportive housing programs providing services through contractual arrangements. Following the systemic assessment, it was determined that in all but two settings, tenants hold leases directly with a landlord in the community (not provider owned or controlled) in settings considered private homes where individuals have the same rights and protections as someone not receiving HCBS. Two programs are located within provider-owned and controlled congregate living settings, with one being for adult PLWH and the other for lesbian, gay, bisexual,

and transexual (LGBT) young adult PLWH. The assessment confirmed that both of those settings are deemed similar to private homes in that they are located in the community, clients are free to come and go as they please and can choose their own medical and social service providers, and the leases do not contain house rules not seen in a standard lease for someone not receiving HCBS. To further ensure compliance, AIDS Institute Supportive Housing Initiative staff revised its contract related documents and program guidance documents for all HIV supportive housing contracts managed by the AIDS Institute so that the language of such documents specifically references compliance with the HCBS standards listed in the Systemic Compliance Chart, a chart which represents the results of the 2018 systemic assessment conducted for AIDS Institute funded supportive housing: [Clicking on this sentence brings you to the 2018 Systemic Compliance Chart \(pages 3-4\) on the AI webpage.](#)

To come into compliance systemically with the HCBS Final Rule HCBS guidance was incorporated into the service standards and distributed to providers in September 2021 and made available online in July 2022: [Clicking on this link brings you to the AIDS Institute Supportive Housing Services Standards on the AIDS Institute webpage.](#)

### **III. SITE VALIDATION**

#### **AIDS ADULT DAY HEALTH CARE PROGRAMS**

The AADHCP site validation process began with the AADHCP self-assessments conducted in June of 2021. The five (5) AADHCPs (inclusive of seven (7), non-residential sites) self-assessed their compliance with the applicable HCBS Final Rule areas using a provider self-assessment tool developed based on CMS guidance “Exploratory Questions to Assist States Assessment of Non-Residential Settings.”

Following the self-assessments, AIDS Institute AADHCP staff conducted in-person site visits from January to March of 2022 to assess compliance with the HCBS Final Rule through an onsite assessment tool developed using the abovementioned guidance, photos of the site, AADHCP policy/procedure review, supplemental document review (i.e., care plans, recreational calendar, group schedule, staff training materials, etc.), client and staff interviews.

AIDS Institute staff determined that all seven (7) AADHCP program sites required some form of remediation, but could come into full compliance, including the two (2) Heightened Scrutiny sites that had previously been identified. The issues identified through the review were relayed to each AADHCP via a formal site visit findings letter and AIDS Institute Corrective Action Plans (CAPs) were required to be submitted in order to remediate issues by March 17, 2023. Further details on remediation can be found in that section below.

#### **SUPPORTIVE HOUSING**

Through contractual arrangements, AIDS Institute currently funds twelve (12) agencies to provide supportive housing within eighteen (18) different contracts that annually serve approximately 593 persons living with HIV. The vast majority utilize scattered site models within the community. In all cases, AIDS Institute supportive housing settings are considered community based private homes where individuals have the same rights and protections as someone not receiving HCBS.

The AIDS Institute supportive housing site validation process began with provider self-assessments based on CMS guidance “Exploratory Questions to Assist States Assessment of Residential Settings” conducted in August 2020. AIDS Institute Supportive Housing program staff distributed a

SurveyMonkey survey to all programs. The twelve (12) agencies responded on behalf of the eighteen (18) contracts and self-assessed their compliance with the applicable HCBS Final Rule areas. All providers completed the assessment within the timeframe requested, and the results were reviewed. AIDS Institute staff determined that all eighteen (18) supportive housing programs required remediation, but that all could come into full compliance with remediation.

In the vast majority of cases, discrepancies in anticipated responses only appeared when providers misunderstood or misinterpreted a question. Remediation involves conducting virtual site visit discussions for all settings to verify accuracy of provider self-assessment results, seek clarification when necessary, and give providers an opportunity to revise their responses. For example, some providers responded with “Not Applicable” for questions that they perceived to be outside of their scattered site scope and that of a private landlord. However, it is a programmatic requirement of the AIDS Institute Supportive Housing Services Standards that such considerations be taken into account when determining the most suitable placement for each client. Examples included:

- Are bus and other public transportation schedules and telephone numbers posted in a convenient location?
- Do residents shop, attend religious services, schedule appointments, have lunch with family and friends, etc., in the community, as they so choose?
- Do residents take medications privately, unless stated differently in their service/support plan and is agreed upon by the individual?
- Are residents able to have visitors of their choosing at any time?
- Do residents have a checking or savings account or other means to control his/her funds and decide how to control their own funds?

One agency was unaware that it was a programmatic requirement to conduct biannual housing reassessments and service plans to determine ongoing need for housing retention and financial assistance services, and it subsequently responded “Not Applicable” to questions involving person-centered planning. The misunderstanding was immediately addressed by the contract manager and initiative director to ensure the agency remained compliant with both HCBS expectations and the AIDS Institute Supportive Housing Services Standards.

## **IV. REMEDIATION**

### **AIDS ADULT DAY HEALTH CARE PROGRAMS**

Based on the onsite visit findings and document review, the AIDS Institute Office of Medicaid Policy and Programs, Acute and Chronic Care Unit (ACC) implemented a six (6) month collaborative Technical Assistance (TA) program with each AADHCP site. The TA program addressed unmet HCBS Final Rule components, using the submitted CAPs as a guide. During the TA period, each AADHCP participated in either monthly or bi-monthly meetings and submitted relevant supporting documentation to demonstrate progress towards meeting the unmet HCBS Final Rule requirements identified through the provider self-assessment and onsite visit. Supporting documentation submitted during these meetings included, but was not limited to, care plans, policies, procedures, etc. The AIDS Institute ACC reviewed documentation and provided feedback.

AADHCPs – seven (7) non-residential sites, inclusive of two (2) Heightened Scrutiny sites:

- Harlem United
- Housing Works Brooklyn
- Housing Works Manhattan
- Sun River Bronx
- Sun River Queens



- Richmond (Heightened Scrutiny Site)
- St. Mary's (Heightened Scrutiny Site)

**High-Level Remediation Needs Across All Sites:**

- Settings are integrated and support full access of individuals receiving Medicaid HCBS to the greater community, specifically, receiving services in the community.
- Settings are selected by the individual from among setting options including non-disability specific settings and are identified and documented in the person-centered service plan.
- Any modifications for provider-owned and controlled settings must be supported by a specific assessed need and justified in the person-centered service plan.

**Remediation Plans Across All Sites:**

- Programs have resumed community activities in advance of the public health emergency (PHE) period ending. This will be reflected in the site's operations policy and evaluated through the TA program by March 17, 2023.
- Care Managers will discuss and offer clients the choice of available services in other non-disability settings. The person-centered service plan will be updated by the care manager to document discussion and selection of confirmed settings such as community centers or senior centers, family, friends and other non-disability options that have been discussed and included in the service plan.
- Sites will incorporate program policies that outline the process to request modifications to additional provider-owned and controlled standards based on a specific assessed need and modifications to be implemented with member consent and clearly reflected in the goals and objectives to achieve the agreed upon outcome of the registrant and complies with program. This will be fully compliant by March 17, 2023.
- All ADHCPs are in the process of revising care planning documentation to be fully compliant by March 2023. The AIDS Institute ACC Unit TA program is tracking and monitoring remediation to ensure AADHCPs compliance on or before by March 17, 2023. Continuous quality monitoring of HCBS compliance has been integrated into the Comprehensive AADHCP biennial or every other year site visits, further described in the Ongoing Monitoring section below.

**SUPPORTIVE HOUSING**

All 18 supportive housing programs require some form of remediation to align programmatic policies and procedures with the HCBS Final Rule. Given that the units have the qualities of private homes, the Supportive Housing program has determined that all units can come into compliance with the HCBS Final Rule by March 17, 2023.

Ongoing training is being provided to all supportive housing providers to support remediation efforts. For example, a virtual provider meeting was held on May 5, 2022, to review the revised standards and HCBS Final Rule guidance and this presented an opportunity for providers to discuss best practices to ensure they are meeting the standards.

## **V. METHODS TO ADDRESS PROVIDER SELF-ASSESSMENT DISCREPANCIES**

### **AIDS ADULT DAY HEALTH CARE PROGRAMS**

AADHCP self-assessments were completed in June of 2021. The seven (7) AIDS ADHC program sites all submitted a self-assessment of their compliance. AIDS Institute AADHCP staff verified the accuracy and identified any discrepancies in the provider self-assessments through a policy/procedure/regulation review, and via the onsite assessment tool, which was completed in-person.

### **SUPPORTIVE HOUSING**

Discrepancies in anticipated survey responses appeared when Supportive Housing program providers misunderstood or misinterpreted a question, further described in the Site Validation section above. AIDS Institute Supportive Housing program staff are conducting virtual site validation discussions with each provider to verify the accuracy of provider-self assessments, seek clarification when necessary, and give providers an opportunity to revise their original responses. All validation and remediation activities will be completed by March 17, 2023.

## **VI. HEIGHTENED SCRUTINY**

### **AIDS ADULT DAY HEALTH CARE PROGRAMS**

AIDS Institute AADHCP staff reviewed all settings using Google Maps and the full site validation process described in detail above in order to identify AADHCPs that triggered Heightened Scrutiny (HS) and determined the following:

Prong 2: Setting is in a building on the grounds of, or adjacent to, a public institution.

- Richmond Center for Rehabilitation & Specialty Healthcare
- St. Mary's Center

HS sites are required to participate in ongoing technical assistance and have submitted a AIDS Institute Corrective Action Plan to remedy HCBS Final Rule compliance. It was determined that these site locations that trigger HS met the HCBS Final Rule regardless of their location via:

- Onsite assessment tool
- Photos
- Staff/Client Interviews

Two HS evidence packets that demonstrate their compliance with the HCBS Final Rule will be submitted to Center for Medicaid Services (CMS) for review after they have been through the required public comment period. AIDS Institute AADHCP staff will be posting the packets for public comment by January 2023. All feedback will be reviewed, and recommendations will be incorporated as appropriate for all program locations. AADHCP staff maintains detailed TA records to track all AADHCPs, including the two sites triggering HS, progress with fully aligning the policies and procedures explicitly with the HCBS Final Rule. Should CMS feedback be received for any of the settings staff will review the assessment results and TA records for the remaining HS setting,

applying any feedback to that setting as appropriate, and remediating any outstanding issues that this process makes apparent.

## **SUPPORTIVE HOUSING**

Not applicable; no supportive housing programs required Heightened Scrutiny.

# **VII. ONGOING MONITORING AND QUALITY ASSURANCE**

## **AIDS ADULT DAY HEALTH CARE PROGRAMS**

AIDS Institute AADHCP staff will continue to monitor AADHCP processes through the Medicaid Policy and Programs Chronic Care Unit TA program and Comprehensive AADHCP biennial site visits.

The TA program will continue to operate on an individual basis with each AADHCP via monthly and/or bi-monthly meetings to ensure areas deemed compliant remain as such.

Comprehensive AADHCP site assessments are conducted every two (2) years by the AIDS Institute, Office of Medicaid Policy and Programs Chronic Care Unit for each AADHCP. Site visits are being scheduled in Fall/Winter of 2023 and then every two years going forward. Quality assurance and Monitoring site visit tools are being updated to include:

- *Community Integration:* AADHCPs have already re-integrated into the community (i.e., movies, art galleries, bowling, food pantries, etc.) and have updated their operations policies to reflect the return of community events post PHE. AIDS Institute AADHCP program staff verify policies have been amended and will ensure each AADHCP updates monthly recreational schedules accordingly.
- *Process for Monitoring Private Homes /Apartments owned or Rented:* The AADHCPs assess housing needs in the initial eligibility assessment and in the Psycho-Social assessment, which each agency conducts minimally bi-annually. Clients may also discuss housing needs with their assigned care coordinator at any time. AADHCP's do not provide direct housing services, but care coordinators can assist clients with housing related issues, such as recertifying for benefits, completing applications, budgeting/bill paying, and linkage to community housing supports. These referrals are reflected in the person-centered care plans.
- *Person Centered Planning:* AADHCPs are encouraged to use the Person-Centered Planning and Practice Resource Library to ensure staff is fully trained in these areas. [Clicking on this sentence will bring you to the Person-Centered Planning Online Resource Library on the DOH webpage.](#) A Person-Centered Planning Checklist will be incorporated and monitored by the AIDS Institute AADHCP staff and will be sampled by Managed Care Organizations (MCOs) or ACC staff during routine quality monitoring activities as determined by the MCO and/or based on results of the Comprehensive AADHCP site visit or TA Program.

## **SUPPORTIVE HOUSING**

It is AIDS Institute Supportive Housing program policy that grant funded contracts be monitored every two years for comprehensive programmatic and fiscal compliance. Programmatic monitoring protocols relative to compliance with the HCBS Final Rule standards have been incorporated into routine contract monitoring for all supportive housing contracts managed by the AIDS Institute Supportive Housing program to ensure ongoing compliance with the federal rule. AIDS Institute staff have been conducting virtual programmatic monitoring protocols since the PHE began. Monitoring

protocols include the review of: agency wide policies and procedures; program oversight and personnel; program safety and accessibility; data reporting; cultural and linguistic competence; quality management and improvement; consumer involvement, linkages and coordination; staff interviews; program specific policy and procedure review; and chart reviews to confirm client eligibility and service documentation requirements. On-site monitoring and validation began in July 2022 as staff started conducting hybrid monitoring site visits consisting of both onsite documentation review and virtual administrative and programmatic meetings. This practice will continue moving forward, and compliance will be ensured during the comprehensive monitoring every two years.

AIDS Institute Supportive Housing program does not fund or oversee the provision of any HCBS services and is therefore unable to determine which clients may be receiving HCBS. However, it is expected that MCO/partners providing HCBS to clients enrolled in AIDS Institute supportive housing programs will include the supportive housing programs in their person-centered planning processes specific to the provision of housing retention or financial assistance services and will conduct the monitoring of private homes or apartments as applicable and as described in the Managed Long Term Care (MLTC) and Medicaid Managed Care (MMC) sections of this Statewide Transition Plan (STP). Supportive housing providers who are interested in learning more about person-centered planning are aware that New York's Person-Centered Planning and Practice Resource Library is available: [Clicking on this sentence brings you to the Person-Centered Planning and Practice Online Resource Library on the DOH webpage.](#)

## **VIII. NON-DISABILITY SPECIFIC SETTINGS**

### **AIDS ADULT DAY HEALTH CARE PROGRAMS**

To ensure recipients have access to non-disability specific settings, AIDS Institute AADHCP staff conducted an in-person site visit with each AADHCP in 2022. An onsite assessment tool was utilized to capture relevant information/evidence indicating community organizations and resources were available to anyone. Phone and in-person interviews for both staff and clients were also completed to verify access to such settings. Through the TA program, AADHCP care plans have been updated to include a section for community referrals and resources.

All AADHCPs have a widespread referral network with community-based organizations throughout the Greater New York City (NYC) Metropolitan Region.

### **SUPPORTIVE HOUSING**

Most supportive housing settings are non-disability specific settings in community based private homes where individuals have the same rights and protections as someone not receiving HCBS. Two settings are disability specific, with one being for adult PLWH and the other for LGBT young adult PLWH, yet both settings are located within the community, clients are free to come and go as they please and can choose their own medical and social service providers, and the leases do not contain house rules not seen in a standard lease for someone not receiving HCBS.

## **IX. STATEWIDE TRANSITION PLAN UPDATES**

## **AIDS ADULT DAY HEALTH CARE PROGRAMS**

The AIDS Institute's 2018 AADHCP transition plan section was updated by program staff in 2022 to align with the NY HCBS STP 2022 Update Outline and as follows:

- Updated to include a link to "Guidelines for Adult Day Health Care Programs Caring for Patients with AIDS or HIV Disease" which explicitly state all HCBS Final Rule Standards/requirements as of April of 2019, and the 2018 AADHCP Systemic Compliance Chart.
- Incorporated the validation process and onsite assessment results for all seven (7) program sites.
- Describes the six (6) month TA program with each AADHCP to address unmet HCBS Final Rule components, and the ongoing monitoring and surveillance process.

## **SUPPORTIVE HOUSING**

The AIDS Institute Supportive Housing program updated the 2018 transition plan section for supportive housing programs as follows:

- Included the current number of funded providers, now lower than the number referenced in the original STP.
- Updated the Supportive Housing program background information while describing in greater detail the site validation and remediation process, ongoing monitoring plans, and beneficiary recourse.

# **X. BENEFICIARY RECOURSE**

## **AIDS ADULT DAY HEALTH CARE PROGRAMS**

Registrants of AADHCPs may at any time access the NYS Medicaid Member Services Hotline to discuss issues that cannot be addressed within the program or to make a complaint regarding the AADHCP or program staff. AIDS Institute staff reviewed each AADHCP policy and procedure to confirm that a Bill of Rights and Grievance process has been shared with each registrant and their rights are clearly communicated. Through the TA Program, it has been determined that the AADHCP will update their policies and procedures to include opportunities for clients to appeal a site-specific determination, program rule, or requirement by March 17, 2023.

## **SUPPORTIVE HOUSING**

Clients (i.e., individuals enrolled in contracted supportive housing programs) receive information about their programmatic rights and responsibilities at intake for the receipt of housing retention and financial assistance services. The AIDS Institute Supportive Housing program requires a written lease or occupancy agreement be present that provides eviction protections, due process appeals, specifies the circumstances when eviction would be required, and that they be reviewed by the grant funded supportive housing program staff. Each funded supportive housing program also maintains its own grievance policies and procedures that is accessible to clients. If a client feels that there are any issues around their living situation, funded supportive housing program staff can assist clients with the process of having those heard by the private landlord and/or by helping them search for a new apartment. Clients may also contact the AIDS Institute general information number at 1-800-541-AIDS or the DOH hotline at (877) 249-5115 to discuss issues that cannot be addressed within the grant funded supportive housing program or to make a complaint regarding the funded program if

they feel their concerns have not been heard by pursuing resolution through the funded program's grievance policies and procedures.

# NEW YORK STATE DEPARTMENT OF HEALTH (DOH) OFFICE OF HEALTH INSURANCE PROGRAMS (OHIP) COMMUNITY FIRST CHOICE OPTION (CFCO) HCBS SETTINGS TRANSITION

## I. INTRODUCTION

In July 2015, New York Department of Health (DOH) implemented the Community First Choice Option (CFCO)(1915(k)). CFCO currently provides enhanced personal attendant services to eligible individuals across New York State through both Fee for Service or Managed Care delivery systems. Such services include personal care services, consumer directed personal assistance services, personal emergency response systems, home health aide and housekeeping/chore services. Under the State Plan Amendment approved by CMS, services and supports offered through CFCO continue to be offered only to eligible individuals who live in their own homes or homes of family members, friends or neighbors. Once congregate and provider-owned and controlled settings have all been assessed and, if necessary, remediated, DOH may seek an amendment to the SPA to enable individuals living in such settings to be eligible to participate in CFCO.

## II. SYSTEMIC COMPLIANCE

To come into compliance with the HCBS Final Rule systemically the following tasks were completed:

A systemic review of the rules, policies and procedures related to CFCO was conducted in 2018, the results of which are in the Systemic Compliance Chart:

- [By clicking this sentence, you will find the DOH Systemic Compliance Chart on DOH's website, with CFCO's chart located on p. 19-21.](#)

Systemic and site level compliance with the HCBS Final Rule is assured through adherence to a Person-Centered Service Planning (PCSP) process described in revised PCSP Guidance and a PCSP Template. All authorizers of CFCO services and supports (MCO and LDSS) will receive notice of revised PCSP Guidelines and Template by December 31, 2022 and be directed to use it beginning immediately. The template or another tool that covers the same content is required in order to assure consistency across the State, ease monitoring for compliance and quality, and ensure that the standards are widely known and met.

- [By clicking this sentence, you will open the PCSP Guidance on the CFCO webpage.](#)
- [By clicking on this sentence, you will open the PCSP Template on the DOH website.](#)

## III. ONGOING MONITORING

The PCSP Template outlines all the standards required to be in place for individuals in receipt of HCB services and supports through the Medicaid program. Individuals receiving CFCO services must have a PCSP that details these services and who will provide them (scope, amount, frequency and duration). The primary Care Manager for such individuals (engaged by or as a Local Department of Social Services (LDSS), a Medicaid Managed Care Organization (MMCO), a Health Home or other care management entity designated by the MMCO or the State) will ensure that the standards are met during the meeting to develop the PCSP using the Template or a tool that covers all the same content it outlines.

Upon reassessment, which occurs annually unless there is a change in condition or upon individual's request, the entity that authorizes CFCO services must have the primary Care Manager revisit and revise, as appropriate, the PCSP with the individual, and/or their representative, and anyone the individual wishes to include. The template and all of its content will be reviewed and revised, as needed.

Authorizing entities (LDSS and MMCOs) are encouraged to ensure that their primary Care Managers take free person-centered planning trainings virtually or through the webpage where recorded courses are posted: [clicking this sentence brings you to the PCP Online Resource Library on the DOH website.](#)

In addition, the State has prepared training focused specifically on the new PCSP template and process and its role in assuring that authorizers are adequately ensuring that the settings in which HCBS recipients live and/or receive services are fully compliant with the Rule. MCOs were notified regarding the revised PCSP guidelines and template November 2022 and LDSS were notified February 17, 2023, with the directions to begin using them immediately. An updated webinar to provide additional instruction on the guidance and template has been developed and will be presented, recorded, and posted by July 31, 2023.

New York has initially presumed private homes to be compliant. On an ongoing basis, New York will use the case management activities associated with authorizing CFCO services and supports to develop and monitor PCSP to ensure that recipients realize all the rights and benefits guaranteed to them by the Rule requirements. Surveillance activities will assure that these discussions are documented in the PCSP and that such plans are updated at least annually or upon more frequent reassessment.

To ensure that individuals receiving services and supports under CFCO have access to high quality care that meets their identified needs, ongoing monitoring and quality assurance are undertaken through surveillance. All surveillance efforts include a review of sample cases, including the PCSP issued by LDSS, MMCO, HH and/or contracted case management entities. For instance, LDSS review case files, including the PCSP, of the greater of 5 cases or 10% of the cases in each county (capped at 100 cases). LDSS are reviewed by the State every other year. MLTC plans audit sample cases from plans on a revolving basis in which plans are surveilled every three years. MLTC surveyors collect a statistically significant sample of case files (with a cap of 500).

## **IV. BENEFICIARY RECOURSE**

As with recipients of other long term care services, individuals receiving services and supports under CFCO have recourse if they are not satisfied with their care, need additional or different assistance, experience problems with their caregiver or have other issues or concerns. Recipients who receive authorization from LDSS can either call the district office or the DOH Bureau of Long Term Care Policy in the Division of Policy and Program Management of the Office of Health



Insurance Programs. A bulk mailbox is monitored daily. For enrollees of MMCO, there are technical assistance hotlines in both MLTC and MMC.

FFS contact information is: (518) 474-5888, [services@health.ny.gov](mailto:services@health.ny.gov) or [consumerdirected@health.ny.gov](mailto:consumerdirected@health.ny.gov)

MLTC contact information is: 1-866-712-7197 or [mltctac@health.ny.gov](mailto:mltctac@health.ny.gov)

MMC contact information is: 1-800-206-8125 or [managedcarecomplaint@health.ny.gov](mailto:managedcarecomplaint@health.ny.gov)

In addition, part of the PCSP includes contact information for the care/case manager to ensure that the individual knows who to reach out should problems arise. All service denials of any kind come with appeal and fair hearing rights:

- **DOH:** MMC Plan members or their designee can contact the DOH MMC Bureau of Consumer Services (BCS) at [managedcarecomplaint@health.ny.gov](mailto:managedcarecomplaint@health.ny.gov) or 1-800-206-8125 with concerns or complaints.
- **ICAN:** Independent Consumer Advocacy Network (ICAN) is the ombudsman program for MMC plan members. Go to [www.icannys.org](http://www.icannys.org), or call 1-844-614-8800 for free independent advice about coverage, complaints, and appeals options.

# **NEW YORK STATE DEPARTMENT OF HEALTH (DOH) OFFICE OF HEALTH INSURANCE PROGRAMS (OHIP) COMBINED CHILDREN’S WAIVER SETTINGS TRANSITION**

## **I. INTRODUCTION**

Effective April 1, 2019, the children’s six 1915(c) Home and Community-Based Services (HCBS) waivers, listed below, were consolidated into one single 1915(c) Children’s Waiver (CW) to ensure all children/youth eligible for HCBS receive services via a streamlined administrative eligibility process:

- Office of Mental Health (OMH) Serious Emotional Disturbance (SED) waiver #NY.0296
- Department of Health (DOH) Care at Home (CAH) I/II waiver #NY.4125
- Office for People with Developmental Disabilities (OPWDD) Care at Home waiver (CAH III/IV) #40176
- Office of Children and Families Services (OCFS) Bridges to Health (B2H) SED waiver #NY.0469, B2H Developmental Disability (DD) waiver #NY.0470, and B2H Medically Fragile waiver #NY.0471

The goal of this consolidation was to streamline the above services and to have more consistent eligibility processes and benefits across all populations. The consolidation also allowed New York to provide a single HCBS benefit package to children/youth meeting institutional level of care (LOC) functional criteria. Part of the now single HCBS benefit package provides Health Home care management to children/youth eligible for HCBS and an administrative alternative for children/youth who may opt-out of the Health Homes model of care management. Transition for children/youth previously enrolled in one of the six 1915(c) waivers took place January 1, 2019 through April 1, 2019. In terms of stakeholder engagement, person-centeredness and adherence to the HCBS Final Rule has always been a key component of the CW; the CW Team of DOH, Office of Health Insurance Programs (OHIP) has hosted informational webinars and stakeholder feedback sessions on these topics, hosts a series of person-centered planning trainings, and elicited feedback from other State agencies (i.e., OCFS, OPWDD, OMH, and Office of Addiction Services and Supports (OASAS)) regarding the HCBS Final Rule guidance documents and to gather input that helped CW Team incorporate the federal requirements into programmatic policies and procedures.

HCBS included in the CW are designed to offer support and services to children/youth in non-institutionalized settings that enable them to remain at home and in the community or are for children/youth being discharged from an institutional setting who require these services to safely return to their home and community. The CW provides a family-driven, youth-guided, culturally and linguistically appropriate system of care that accounts for the strengths, preferences, and needs of the individuals, as well as their desired outcomes. Services are individualized to meet the physical health, developmental, and behavioral health needs of each child/youth. Participants, (i.e., child/youth receiving services and/or their parent/caregiver), have independent choice among an array of service options and providers. These services are provided in a flexible, complimentary package that evolves over time to meet the changing needs of the child/youth. These CW services include Community Habilitation, Day Habilitation, Caregiver/Family Advocacy and Support Services, Respite (Planned and Crisis), Prevocational Services, Supported Employment, Palliative Care – Expressive Therapy, Palliative Care – Massage Therapy, Palliative Care – Bereavement Services, Palliative Care – Pain and

Symptom Management, Adaptive and Assistive Technology, Vehicle Modifications, Environmental Modifications, and Non-Medical Transportation.

HCBS through the CW is provided in the setting that best meets the needs of the child/youth and family/caregiver and reflects the child/youth and family/caregiver's choice of setting. CW HCBS may be provided in residential or non-residential settings. Non-residential settings may include a location/site that is operated by the CW HCBS provider, or a setting located in the community. The setting is selected in alignment with the service needs/goals and reflective of the participants' choice in setting; all CW HCBS can be provided in non-residential settings where participants may choose to receive services onsite. Participants do not live at these settings, and only come to the site for service-specific activities, such as coming onsite to participate in skill-building activities, attend a family support group, complete a job application, etc. Not all CW HCBS providers operate a non-residential site; there are 66 designated provider sites, and all of them only provide services in the home and/or community and do not operate an onsite location where participants can choose to receive services.

Residential settings include provider-owned and controlled buildings where participants may sleep overnight that is not the home of the parent/caregiver and is operated by a provider agency. Of the various CW HCBS, only Respite Services (Planned and Crisis) can be provided in residential settings where children/youth may sleep overnight. Planned or Crisis Day Respite services can be provided in the home of an eligible child/youth or a community setting. Community settings may include areas where a child/youth lives, attends school, works, engages in services and/or socializes.

Note: a provider can be designated for Crisis or Planned Respite without an overnight setting; however, they will only be authorized to provide Respite that does not include an overnight stay or overnight service provision. If the Respite service is provided overnight, it can only be done so in an authorized overnight setting, and that setting must be a licensed/certified facility as outlined below.

Planned or Crisis Overnight Respite settings include those licensed or certified by OCFS, OMH, or OPWDD and designated to provide Respite services. Please note there is an exemption in the HCBS Final Rule (March 17, 2014) for allowable Respite care settings.

- OMH licensed Community Residence (community-based or state-operated), including Crisis Residence, which has an OMH Operating Certificate demonstrating compliance with 14 NYCRR 594
- OCFS Licensed agency boarding home, a group home, a group residence, an institution, or certified foster boarding homes
- OPWDD certified residential setting where the individual does not permanently reside (i.e., Family Care Home; Intermediate Care Facility for Individuals with Intellectual and Developmental Disabilities (ICF/IDD); Individualized Residential Alternative (IRA) or Community Residence (CR); or Free-Standing Respite facility under the auspices of OPWDD)

## **II. SYSTEMIC COMPLIANCE**

To bring the CW into compliance systemically, the program conducted the following tasks, which are described and linked below:

- **Systemic Compliance Charts:** Contains 2018 systemic review results from DOH OHIP Division of Long Term Care (DLTC), OCFS, and OMH within the following systemic compliance charts that were developed prior to the consolidation of the CWs:
  - [Clicking on this sentence will bring you to the 2018 systemic compliance charts for CAH \(pages 1-10\) on the CW webpage](#)
  - [Clicking on this sentence will bring you to the 2018 systemic compliance charts for SED \(pages 1-3\) on the CW webpage](#)
  - [Clicking on this sentence will bring you to the 2018 systemic compliance charts for B2H \(pages 1-30\) on the CW webpage](#)

The CW did not conduct the original systemic reviews; however, the CW team issued the remainder of the sub-regulatory guidance listed below that includes all HCBS Final Rule standards, guidance, and modifications:

- **CW HCBS Program Manual:** [Clicking on this sentence will bring you to the HCBS Program Manual \("CMS Final Rule on HCBS Settings" and Appendix B\) on the CW webpage issued in 2109 and last updated August 2022](#) that contains summary information regarding the settings requirements and standards of the HCBS Final Rule and an Appendix specific to the HCBS Final Rule that outlines person-centered planning requirements and guidance related to modifications of provider-owned and controlled standards.
- **CW HCBS Final Rule Policy:** [Clicking on this sentence will bring you to the HCBS Final Rule Policy on the CW webpage](#) issued in October 2022 that outlines providers' responsibilities in complying with the HCBS Final Rule, the Children's HCBS Waiver Team's process for conducting HCBS Final Rule compliance reviews for newly designated Children's HCBS providers, and the Children's HCBS Waiver Team's ongoing compliance monitoring process.
- **CW HCBS Final Rule Informational Letter:** [Clicking on this sentence will bring you to the CW HCBS Final Rule Informational Letter on the CW webpage](#) that was disseminated to all providers on December 3, 2020 prior to conducting the provider self-assessment (PSA) and onsite reviews.

### III. SITE VALIDATION

The CW team has initially presumed private homes in which children/youth and their families/caregivers live and may receive HCBS to be compliant with the Rule. On an ongoing basis, the CW team will monitor continued compliance and assure that all the rights and benefits required by the Rule are afforded to the HCBS recipients living in private homes, as well as those living in provider-owned or controlled settings. The care management process and its annual case reviews will be used to assure compliance, as described below in VII. Ongoing Monitoring and Quality Assurance. Collaboration between HCBS providers and Health Homes or other entities that authorizing HCBS under the CW will assure that all PCSP or individualized service plans are updated and document adherence to the settings requirements.

To validate compliance for all categories of settings listed in the table on the next page, the CW team employed a standardized process to conduct reviews and determine compliance for all designated residential and non-residential settings overseen by the CW, as described in the introduction. First, the CW Team reviewed the address of each designated Children's HCBS provider site using Google Maps to visually search for proximity to location in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or location in a building on the grounds of, or immediately adjacent to, a public institution. An additional Google search was performed for each address to ensure that search results did not

also yield results for those settings that do not meet the definition of being home and community-based, such as a nursing facility, institution for mental diseases, intermediate care facility for individuals with developmental disabilities, a hospital, and/or residential treatment facility. All designated providers and addresses were also compared against State Agency lists to further ensure that no providers were operating out of a restricted setting. These initial determinations were further validated during the virtual onsite review where reviewers requested to observe via video conferencing all aspects of the sites, both inside and outside, to verify that the sites were not restrictive/isolating settings. Photos and videos of the settings were taken to support the reviewers' observations.

Next, provider self-assessment surveys, developed based on CMS guidance "Exploratory Questions to Assist State's in the Assessment of Residential [and Non-Residential] Settings," were sent to all designated CW HCBS providers via the Survey Monkey tool. The CW Team hosted an informational webinar prior to disseminating the survey to walk through the entire compliance review process and answer provider's questions. The CW Team also discussed the provider self-assessment during monthly meetings with CW HCBS providers to provide information, collect stakeholder input and answer questions. Providers were instructed to complete one survey for each location (site) where they are designated to provide CW HCBS. [Clicking on this sentence will bring you to the self-assessment survey on the Survey Monkey webpage.](#) After receiving a 100% response rate to the surveys, the CW Team analyzed all responses and flagged initial instances where follow-up would be indicated, particularly those responses that indicated potential non-compliance.

To validate the survey responses, the CW Team instructed providers to submit documentation for each designated CW HCBS site. In much the same manner as educating providers about the provider self-assessment process, the CW Team hosted an informational webinar to walk through the provider documentation tool, the types of documentation required for submission, and fielded provider questions. Documentation was requested for each HCBS Final Rule standard; examples of applicable documentation were provided, including but not limited to, policies, procedures, and other forms of supporting documentation that demonstrates compliance with HCBS Final Rule standards. [Clicking on this sentence will bring you to the documentation template and instructions.](#) [Clicking on this sentence will bring you to a recording of the informational webinar.](#)

After reviewing each site's self-assessment and documentation submission, the CW conducted virtual onsite reviews to further validate the provider self-assessment responses and contents of provider documentation. All providers received an agenda that outlined the onsite review process and expectations prior to each site review. In many instances, a portion of the virtual onsite reviews was devoted to discussing elements of the submitted documentation that were unclear and instances of lack of alignment between the provider self-assessment survey responses and the submitted documentation. During these reviews, the CW Team also provided instructional guidance as to how providers can come into compliance. As part of the site review, the CW Team conducted interviews with provider representatives (administration and staff) to understand how the program/residence is structured. Whenever possible, children/youth and/or families/caregivers were either involved in an interview portion of the onsite review or were sent a participant survey to further ensure that all standards were being met. The CW Team conducted interviews with children/youth and/or families/caregivers without program staff present to ensure children/youth and/or families/caregivers could speak freely regarding the services received. Reviewers also conducted interviews with at least one program staff to establish if the setting has the effect of isolating individuals receiving CW HCBS from the broader community and determining compliance with all applicable standards.

The findings for all designated CW HCBS settings are depicted in the table below. The total number of sites also includes sites that have since de-designated since the review process concluded.

<b>Table 1: HCBS Settings</b>					
<b>Setting Type</b>	<b>Total Number of Settings</b>	<b>Number of Settings Fully Compliant with the Federal HCBS Requirements</b>	<b>Number of Settings that Could Come into Full Compliance with Modifications</b>	<b>Number of Settings That Could Not Comply with the Federal HCBS Requirements</b>	<b>Number of Settings That Are Presumptively Institutional in Nature</b>
<p>1) Setting(s):            HCBS recipients choose where services will be provided. Services are provided in the community and/or the participant's home.</p> <p>2) HCBS:            Community Habilitation, Day Habilitation, Caregiver/Family Advocacy and Support Services, Planned Respite, Crisis Respite, Prevocational Services, Supported Employment, Palliative Care – Expressive Therapy, Palliative Care – Massage Therapy, Palliative Care – Bereavement Services, Palliative Care – Pain and Symptom Management)</p>	66	66	0	0	0

<p>1) Setting(s): Residential Respite located in buildings integrated into the community</p> <p>2) HCBS: Planned Respite, Planned Overnight Respite, Crisis Respite, and Crisis Overnight Respite</p>	6	3	0	3*	0
<p>1) Setting(s): Provider's multiuse agency building which may be a standalone, community integrated building run by non-profits, an office in a commercial building, and/or multipurpose, community integrated state or county run buildings</p> <p>2) HCBS: Community Habilitation, Day Habilitation, Caregiver/Family Advocacy and Support Services, Planned Respite, Crisis Respite, Prevocational Services, Supported Employment, Palliative Care – Expressive Therapy, Palliative Care – Massage Therapy, Palliative Care – Bereavement Services, Palliative Care – Pain and Symptom Management)</p>	128	128	0	0	0



*\*Further information regarding the three settings that were determined to be presumptively institutional in nature is located in the “Heightened Scrutiny” and “Strategy for Assisting Participants Living/Receiving Services in Non-Compliant Settings” sections.*

Many sites required some form of remediation before the CW Team could determine full compliance; a description of the remediation process is described in the “Remediation” section below.

## **IV. REMEDIATION**

The CW Team confirms that at the time of the issuance of this STP, all designated CW HCBS provider sites have fully remediated and are in full compliance with the HCBS Final Rule. After site reviews were completed, “Review Findings/Remediation Reports” were drafted for each provider/site that described a comprehensive account of the findings and overall compliance determination based on the provider self-assessment responses, submitted documentation, and the virtual onsite review. The Review Findings/Remediation Reports detailed the findings of HCBS Final Rule standards and determined whether the provider/site was in compliance for each standard by noting whether 1) no action was needed (fully compliant) 2) action was recommended, or 3) corrective action/remediation was required. The CW Team detailed next steps and guidance in Review Findings/Remediation Reports for instances where corrective action/remediation was required and/or recommended for the provider/site to be determined compliant with the HCBS Final Rule. Providers were required to return a signed copy of the Findings/Remediation Reports acknowledging receipt and understanding of the contents of the report and corrective actions, if applicable. Provider/sites were given one month to address any necessary corrective actions/remediations and provide additional/updated documentation.

Additional/updated documentation submitted by providers in response to corrective actions was reviewed and tracked. A Corrective Action Addendum to the Findings/Remediation Report was drafted to detail whether the provider/site was in compliance for each standard where a remediation was indicated in the Findings/Remediation Reports by noting whether 1) no action was needed (fully compliant) 2) action was recommended, or 3) corrective action/remediation was required. If the submitted documentation did not fully satisfy the corrective actions, the CW Team again provided next steps/guidance for those standards still not in compliance. This Corrective Action Addendum process was conducted until the provider/site came into full compliance with all standards. The CW Team offered additional support should the provider/site have any outstanding questions or need clarification.

## **V. METHODS TO ADDRESS PROVIDER SELF-ASSESSMENT DISCREPANCIES**

Following the methods described in the “Site Validation” section, the CW Team validated survey responses through review of provider documentation and during the virtual onsite review. The CW Team referenced each provider’s survey during the review of documentation and during the onsite review. An explanation was requested in instances where there was a lack of alignment between the survey response and the documentation and/or aspects of the onsite review. All

instances of incongruence were resolved and documented; no instances of incongruence resulted in a final determination of non-compliance with any HCBS Final Rule standards.

## VI. HEIGHTENED SCRUTINY

All currently designated CW HCBS providers/sites were researched to determine Prong 1 (*settings in a public/private operated facility providing inpatient institutional treatment, i.e., nursing facility, ICD/IID, IMD, or hospital*) or Prong 2 (*settings in a building on the grounds of, or adjacent to, a public institution*) using the below process:

- completed a review of self-reported data submitted by survey and did not identify any sites meeting the definition of Prongs 1 and 2
- viewed the address of each designated provider site on Google Maps, engaging satellite view to determine if the location is inside of on the grounds of or adjacent to an inpatient institutional setting
- performed a Google search of each designated provider address to determine if that address yielded results for any other facility types that may not have been able to be determined through Google Maps
- researched facilities that were on the grounds of, or adjacent to, the designated CW HCBS site to verify whether these facilities met the criteria of an institution

Note: Through consultation with State Partners and review of pertinent CMS information, it was determined that Residential Treatment Facilities (RTFs) do qualify as “inpatient institutional treatment;” OMH’s list of RTF addresses was cross-referenced with site addresses of all designated CW HCBS providers.

After a review of self-reported data submitted by survey, site assessment data of a statistically representative sample (sample size of 100, with 95% confidence interval), and review of documentation submitted by all CW HCBS providers (i.e., policies and procedures), three CW HCBS residential sites, operated by the same provider (Martin de Porres), were identified as Prong 3 (*settings having the effect of isolating individuals receiving Medicaid HCBS services from the broader community*).

Table 2

<b>Provider Agency</b>	<b>Site Name</b>	<b>Site Location</b>	<b>HS Prong</b>
Martin de Porres	Ozone Park Group Homes	Ozone Park, NY 11416	3
Martin de Porres	Queens Village Group Homes	Queens Village, NY, 11427	3
Martin de Porres	Springfield Gardens Group Homes	Springfield Gardens, NY, 11413	3

The CW Team took following steps for all sites identified for Heightened Scrutiny:

- In collaboration with OCFS, the CW Team reviewed virtual site assessment findings report with provider, including remediation next steps to become compliant with the HCBS Final Rule (August 2021).
- The provider agency mentioned above addressed Prong 3 findings by ceasing to provide CW HCBS to children/youth residing at all three sites (August 2021).
- The provider agency shifted their model to provide CW HCBS to children/youth who reside in the community, at a home and/or community setting of the child/youth's choosing and not in the agency's residential program (September 2021).
- Agency submitted documentation to support their CW HCBS's program's redesign (October 2021, updated February 2022).
- Eligible children/youth previously receiving CW HCBS were assessed and determined that Children and Family Treatment and Support Services (CFTSS) would meet their service goals and needs (August 2021).
- The CW Team and the provider agency collaborated to confirm the CW HCBS that residents were receiving would be covered through all service provision in the residential program and the CFTSS program (August 2021).
- The CW Team and HCBS Final Rule Lead confirmed with CMS that reporting of these Heightened Scrutiny settings could be done as part of New York's Statewide Transition Plan (STP) and did not require individual evidence packets to be put out for a separate public comment process (January 2022).

## **VII. ONGOING MONITORING AND QUALITY ASSURANCE**

Following this initial compliance review, the CW Team will continue to monitor providers' compliance with the HCBS Final Rule on an ongoing basis. Ongoing monitoring of compliance with the HCBS Final Rule will be included in the CW HCBS case record review process, which is conducted on a yearly basis. A HCBS Final Rule attestation component will also be added into the CW Team's current attestation survey where providers attest to compliance with background checks, education, and training. CW HCBS providers will be required to sign the attestation and attest to compliance with all HCBS Final Rule standards, including but not limited to compliance with person-centered planning every year and every three years during CW's redesignation process. Additionally, participants will be periodically surveyed for satisfaction with CW HCBS service delivery and ensuring services are delivered in a person-centered and community integrated manner. The processes described here apply to all CW HCBS setting types.

Since providers may elect to become designated CW HCBS providers on a rolling basis, post-March 2023, the CW Team will continue to conduct HCBS Final Rule compliance reviews for all newly designated CW HCBS providers following the process described in the Site Validation section.

For private homes or apartments owned or rented where children/youth live with family/caregivers, the CW Team will continue to ensure that HCBS Final Rule standards are followed through the monitoring processes described in this section to ensure that CW HCBS providers are following principles of person-centered planning and delivering services in a participant-driven manner, which is part of the yearly case review. If the CW team finds during monitoring that a CW participant is living with an unrelated paid caregiver, then the additional provider-owned and controlled settings standards and the full site assessment process, described in the Site Validation section above, apply. Should services be delivered to a CW HCBS participant in a manner inconsistent with person-centered planning, the State has several

incident reporting processes and mechanisms to guard against coercion and abuse, which are outlined in the Beneficiary Recourse section. Further, children/youth and/or families/caregivers are provided CW HCBS Participants Rights at the onset of services by the Health Home Care Manager, which outlines the rights of a CW HCBS participants and provides information regarding courses of action to take if those rights are not being upheld. The Health Home Care Manager must communicate with children/youth and/or the family/caregiver at least once each month and will assess whether these rights are being upheld. [Clicking on this sentence will bring you to the CW Participant: Rights & Responsibilities document on the CW webpage.](#)

HCBS Final Rule compliant person-centered planning will be monitored for compliance across all settings described in the introduction, including through yearly case record reviews and the grievance and complaint reporting processes when person-centered planning principles are not followed. Further, a section specific to compliance with person-centered planning will be added to the attestation. CW HCBS providers are required to maintain documentation that describes how person-centered planning is executed, and staff are required to be trained in principles of person-centered planning. The State maintains a person-centered planning online resource library and encourages providers to leverage the training and resources contained on this site. [Clicking on this sentence will bring you to the Person-Centered Planning Online Resource Library on the DOH webpage.](#) Since the CW Team confirmed that all CW HCBS providers in all settings have reintegrated participants into the community, future verification will be managed through the standard ongoing monitoring process as described above.

## **VIII. NON-DISABILITY SPECIFIC SETTINGS**

The CW Team ensured that CW HCBS participants have access to non-disability specific settings (i.e., community organizations and resources applicable to anyone, both residential and non-residential) through a policy and procedure to assess CW HCBS settings against the integration standards annually, see Ongoing Monitoring section for further detail, as well as including community integration questions in the provider self-assessment and documentation review.

The 2020-2021 onsite tours of CW HCBS settings and documentation reviews also confirmed that CW HCBS providers encourage and support the involvement of families/caregivers in the services and care of the child/youth. Family involvement was found to be a key component of CW HCBS providers' service model and philosophy, and family engagement activities typically brings children/youth into their communities. Through the ongoing monitoring process described above, the CW Team will continue to ensure that children/youth are encouraged to access non-disability specific resources, services, and supports in their community. The CW Team is has planned for a series of regional stakeholder meetings to include the participation of HHs and CW HCBS providers to facilitate increased collaboration, communication, and connection to community resources. In addition, the CW Team holds monthly meetings with CW HCBS providers to discuss topics related to the provider community, including how programs can support families to be involved in care and services.

## **IX. STRATEGY FOR ASSISTING PARTICIPANTS LIVING/RECEIVING SERVICES IN NON-COMPLIANT SETTINGS**

In the instances when the CW Team's review determines that participants were living or receiving services in non-compliant settings, such as those settings listed above in the Heightened Scrutiny section, the CW Team, along with other state partner agencies (i.e., OCFS, OMH, OPWDD, OASAS), engage in conversations with the provider to confirm the team's assessment, explain why the setting is non-compliant, and review potential options for remediation. The CW Team discusses with the provider the need to employ case management and person-centered planning to ensure that participants who were receiving CW HCBS in non-compliant settings would have their service needs met through alternate services and settings in the geographic region of preference to the child/youth and/or family/caregiver. Providers are responsible for coordinating the transition of children/youth residing in non-compliant settings with Health Home Care Managers and the Managed Care Plan. All parties must work together to locate an available service provider in the geographic region of the child/youth's and family/caregiver's preference. Once an appropriate alternative setting and service(s) are identified, the CW Team and its state partners confirm that comparable and appropriate services are available to children/youth currently residing in non-compliant settings before the transition occurs.

## **X. BENEFICIARY RECOURSE**

The 1915(c) Children's Waiver requires that participants are informed of their Freedom of Choice and Participant's Rights and Responsibilities ([Clicking on this sentence will bring you to the Freedom of Choice Form on the CW webpage](#)) ([Clicking on this sentence will bring you the Participant's Rights and Responsibilities Document on the CW webpage](#)) regarding their options to receive care, how to report a complaint and/or grievance, how to report abuse or suspected abuse, and when and how to request a Fair Hearing should they not agree with the decision indicated on the Notice of Decision (NOD). [Clicking on this sentence will bring you to the Notice of Decision on the CW webpage](#). Furthermore, the CW Team requires that Health Homes Serving Children (HHSC) and CW HCBS providers have policies in place to handle any reportable incidents in compliance with the standards outlined in the 1915(c) Children's Waiver. [Clicking on this sentence will bring to you to these policies and procedures on the CW webpage, which are also outlined below.](#)

- Identify, document, report, and review incidents within specified timelines
- Enter Reportable Incidents within the Incident Reporting and Management Systems (IRAMS)
- Evaluate individual incidents against HH policies and procedures to confirm quality care coordination activities are provided
- Review individual incidents to identify appropriate preventive or corrective action was taken to ensure health and safety of the member
- Identify incident patterns and trends through the compilation and analysis of incident data
- Review incident patterns and trends to identify appropriate preventive or corrective action, technical assistance, or training
- Implement preventative and corrective action plans
- Identify policy and/or procedure changes

As required of the 1915(c) Children's Waiver, CW HCBS participants are informed of the process for submitting a grievance or complaint related to their CW HCBS, care coordination, and/or participation in the CW. All complaints/grievances and critical incidents are timely

documented within IRAMS, which is used to ensure the health, safety, and well-being of the children/youth served.

CW HCBS Providers and HHSCs report grievances/complaints and critical incident for CW HCBS participants as outlined in the CW and issued policies. HHSCs, which provide oversight in their network of Care Management Agencies (CMAs), ensure appropriate reporting and actions are taken according to policies and standards. For grievances/complaints, once a participant or the participant's representative files a grievance/complaint, the HHSC/CW HCBS provider enters the issue into IRAMS. The participant must be updated within 72 hours from the reported grievance/complaint as to the status. The HHSC/CW HCBS provider must then try to resolve the participant's complaint/grievance to the participant's satisfaction; otherwise, if the participant is not satisfied with the resolution, the participant can escalate the complaint/grievance with their lead Health Home, the State, the Medicaid Managed Care Plan Complaint line (if applicable), or to the Medicaid Help Line.

Please refer to [Participants Rights and Protections](#) section of the HCBS Manual and the or the HCBS Provider Grievances and Complaints Policy for further details regarding the guidance protocols and reporting requirements put in place to ensure the safety and well-being of Children's Waiver participants.

## **XI. RESPONSE TO MAY 16 LETTER**

In New York's 2019 iteration of its HCBS Final Rule STP OCFS noted that "virtually all of its participants in the Bridges to Health Waivers live in family homes, however at any given time a number of participants may live in foster care Group Homes and Agency Operated Boarding Homes (p. 264)." Clarification was later requested regarding this statement as to whether foster care Group Homes or Agency Operated Boarding Homes are providers of HCBS services and how these settings will be assessed for compliance with the regulatory criteria. While CW providers acknowledged that CW HCBS for the foster care population typically included a trauma-informed component, otherwise no differences in observation from site reviews and/or documentation reviews were observed between foster care CW HCBS providers and non-foster care CW HCBS providers. The CW Team reviewed foster care providers designated to provide CW HCBS using the same tools as non-foster care providers (i.e., review of physical address; provider self-assessment via Survey Monkey; documentation review; virtual onsite review and corrective action report/remediation process). Foster Care Group Homes and Agency Operated Boarding Homes are eligible to become CW HCBS providers. Additionally, children/youth living in these settings may be eligible to receive CW HCBS. As such, the CW Team tracked which designated CW HCBS provider sites were also foster care providers and collaborated with OCFS on corrective actions and next steps, where indicated. As noted in the Ongoing Monitoring and Quality Assurance section, if the CW team finds during monitoring that a CW participant is living with an unrelated paid caregiver, then the additional provider-owned and controlled settings standards and the full site assessment process, described in the Site Validation section, apply.

OCFS also stated within New York's 2019 HCBS STP that "the OCFS Site Level Assessment Timeline and Process Steps (p. 265) did not include site-specific assessment of Day Habilitation, Pre-Vocational and Supported Employment services offered under the Bridges to Health Waivers." Federal feedback received regarding this stated that all settings that group or cluster individuals for the purposes of receiving HCBS should be assessed and validated by the state for compliance with the settings criteria, including site-specific assessment strategies for non-residential settings in the updated STP. To clarify, the CW Team reviewed CW HCBS providers designated to provide Day Habilitation, Prevocational Services, and Supported

Employment settings using the same tools as providers designated for services other than Day Habilitation, Prevocational Services, and Supported Employment. The CW Team collaborated with OPWDD on corrective actions and next steps, where indicated, for Day Habilitation providers. Questions and documentation regarding money management and job/volunteer opportunities were required for providers/sites designated for Prevocational Services and Supported Employment.

# **NYS DEPARTMENT OF HEALTH (DOH) OFFICE OF HEALTH INSURANCE PROGRAMS (OHIP) MANAGED LONG TERM CARE (MLTC) HCBS SETTINGS TRANSITION**

## **I. INTRODUCTION**

The New York State (NYS) Department of Health (DOH) offers Managed Long Term Care (MLTC) programs for eligible members within NYS through the Medicaid Advantage Plus (MAP) and MLTC Partial Capitation (MLTCPC) programs. The DOH has contracted with the MLTCPC and MAP plans to provide services. The Home and Community-Based Services (HCBS) provided by the MLTC plans include the following:

- Home Care (including home health aide, skilled nursing care, physical, speech and occupational therapy, and medical social services)
- Personal Care Services (PCS)
- Private Duty Nursing (PDN)
- Consumer Directed Personal Assistant Services (CDPAS)
- Adult Day Health Care (medical only, or medical and social together)
- Social Adult Day Care (SADC)
- Personal Emergency Response System (PERS)
- Home-Delivered Meals and Congregate Meals
- Medical Equipment, Durable Medical Equipment (DME), Eyeglasses, Hearing Aids, Home Modifications
- Podiatry, Audiology, Dentistry, and Optometry
- Non-Emergency Medical Transportation
- Physical, Speech, and Occupational Therapy (outside the home - limited to 40 visits, which the plan may increase due to medical necessity)

The MLTC plans are responsible for providing services consistent with the compliance requirements of the HCBS Final Rule. In turn, the DOH MLTC Surveillance Unit is responsible for monitoring the MLTC plans for compliance and ensuring the MLTC plans are providing high-quality services to members that are compliant with all state and federal regulations, including the HCBS Final Rule.

DOH regularly engages and seeks feedback from the MLTC plans and stakeholder groups, maintaining open, bi-directional lines of communications. Separate monthly meetings are held with both groups to provide updates, discuss items of concern, and seek feedback which is used to develop more effective regulatory implementation approaches. Webinars have also been held with plans and SADC sites, policies and resources have been posted on the DOH website, and SADC HCBS Final Rule compliance specific and MLTC Plan information email boxes are active to receive and resolve inquiries. MLTC plans also work directly with a DOH Plan Manager, who they may contact as needed.

The information below details efforts undertaken and planned to ensure the MLTC plans are monitored and compliant with the HCBS Final Rule.



## II. SYSTEMIC COMPLIANCE

In order to come into systemic compliance with the federal requirements the following activities were completed:

- The MLTC Systemic Compliance Chart represents the results of the systemic assessment conducted in 2018 related to MLTC plans: [clicking here brings you to the 2018 MLTC Systemic Compliance Chart on the DOH webpage](#). For MAP go to pages 4-6 and for MLTCPC, pages 7-9. Please note:
  - The NYS Fully Integrated Duals Advantage (FIDA) program, pages 1-3 of the chart, ended December 31, 2019.
  - MLTC Social Adult Day Care (SADC), pages 10-12, and Adult Day Health Care (ADHC), pages 13-18, are described in their separate sections within this NYS Statewide Transition Plan (STP).

The list below includes all guidance released and updated to ensure MLTC plan compliance with the HCBS Final Rule.

- **MLTC Policy 21.05: SADC HCBS Final Rule Implementation**
  - [Clicking here brings you to MLTC Policy 21.05 on the DOH website.](#)
  - Release Date: 12/3/2021 and ongoing
  - Description: Policy 21.05 was issued to all MLTC plans and details all SADC requirements and provides resources for ensuring compliance with the HCBS Final Rule standards. Additionally, fact sheets, a timeline, assessment tools and Frequently Asked Questions (FAQ) documents were listed as detailed in the separate SADC section of this STP.
- **MAP and MLTCPC Model Contracts**
  - [Clicking here brings you to the MAP Model Contract on the DOH website.](#)
  - [Clicking here brings you to the MLTCPC Model Contract on the DOH website.](#)
  - Description: The current MLTC MAP Model Contract and the current MLTC Partial Capitation Model Contract were amended to correct the HCBS Final Rule citation. The 2022-2026 Model Contracts are in process now, which will incorporate all amendments to the 2017-2021 Model Contract versions.
- **Person Centered Service Plan (PCSP) Dear MLTC Health Plan Administrator Letter, Guidance, and Template**
  - [Clicking here brings you to the Person Centered Service Planning Dear MLTC Health Plan Administrator Letter on the DOH website.](#)
  - [Clicking here brings you to the PCSP Template on the DOH website.](#)
  - [Clicking here brings you to the PCSP Guidance document on the DOH website.](#)
  - Release Date: 1/22/2019
  - Description: The PCSP Template, which includes all required elements, and Guidance were released for use by the MLTC plans. The letter was sent to all MLTC plans detailing the requirement that the plans must be adherent to all

person-centered planning specifications. Additionally, the letter provides guidance for ensuring person-centered planning requirements are met and the PCSP is complete and captures all necessary information.

- **Revised 2022 MLTC PCSP Template and Guidance**
  - [Clicking here brings you to the 2022 PCSP Template on the DOH website.](#)
  - [Clicking here brings you to the 2022 PCSP Guidance document on the DOH website.](#)
  - Release Date: 11/16/2022
  - Description: This is an updated version of the PCSP Template created and the corresponding guidance. A webinar will also be conducted to share the revisions and new versions with the MLTC plans. The webinar will focus on proper use of the template and education of MLTC plans on the correct provision of person-centered planning.

### III. ON-GOING MONITORING AND QUALITY ASSURANCE

The Bureau of Managed Long Term Care (BMLTC) provides oversight, maintains regulatory compliance, and ensures consistency with industry standards through review of MLTC plans' service delivery and education given by MLTC plans to their providers. These efforts are detailed below. The BMLTC is organized into four sub-units including plan management, systems support, the technical assistance consumer and provider call center and the compliance surveillance unit. These units work collaboratively on policy development and interpretation, contract implementation, plan, consumer and provider inquiries, enrollment and disenrollment transactions, and plan compliance and reporting. The BMLTC also works with other State agencies including the fair hearing office, the policy department, and the Office of Medicaid Inspector General (OMIG) to ensure that policies are developed in alignment to state and federal rules and regulations, and that members have rights to pursue complaints and appeals and that allegations of fraud, waste and abuse are reported and investigated. Additionally, the BMLTC publicly shares the official policies, guidance documents, tools, contracts, and webinars which are described in more detail below.

- **References and Resources:** Provide tools, resources, guidance, policies and procedures and timelines to MLTC plans, as needed based on changes or updates. The DOH website contains a section titled "MLTC Policies" with HCBS MLTC references and resources.
  - [Clicking here brings you to the MRT Policies and Guidance on the DOH website.](#)
  - [Clicking here brings you to the MRT Policy Documents on the DOH website.](#)
- **Communication Channels:** BMLTC supports an open two-way communication channel with all MLTC plans. The BMLTC has an active program specific mailbox that MLTC plans, and stakeholders may submit inquiries to. This email is [MLTCInfo@health.ny.gov](mailto:MLTCInfo@health.ny.gov).
- **MLTC Surveillance Unit:** DOH has a dedicated surveillance unit charged with the continuous monitoring and oversight of the MLTC plans operating in NYS. This is achieved through on-going surveys of the service delivery and education of the MLTC Plan providers. The MLTC Surveillance Unit also maintains an active mailbox to which

MLTC plans may submit inquiries: [MLTCSurvey@health.ny.gov](mailto:MLTCSurvey@health.ny.gov). See bottom of page for added detail on the MLTC Surveillance Unit efforts.

- **Plan Management Unit:** BMLTC has a dedicated Plan Management Unit that provides continuous support to MLTC plans with their provision of services through the MAP and MLTCPC programs. This is achieved through active engagement with plan contacts to resolve questions regarding updating or interpreting policies and procedures including, but not limited to, network questions, review of member materials, resolution of member issues, and inquiries regarding service area expansions, mergers, and acquisitions.
- **Reporting and Systems Units:** BMLTC also has a unit that reviews reporting from health plans on an annual, monthly, and quarterly basis, and handles necessary member specific systems' inquiries/transactions which may occur daily. The Reporting and Systems Units also maintain active mailboxes to which MLTC plans may submit inquiries. The email address is [mltc.compliance.reporting@health.ny.gov](mailto:mltc.compliance.reporting@health.ny.gov).

Whereas oversight and guidance of MLTC is provided through numerous avenues, as referenced above, monitoring of the MLTC program is primarily through the activities of the MLTC Surveillance Unit. The MLTC Surveillance Unit has developed multiple assessment methodologies, tools and compliance approaches that have been in place prior to the advent of the HCBS Final Rule. BMLTC will continue to initiate new efforts and expand upon existing practices, which have already begun or are being planned, to verify compliance for MLTC settings. For the MLTC, the MLTC Surveillance Unit assessment of HCBS settings is focused on of the person-centered planning process performed by MLTC plans, with an additional detailed review for SADC sites.

**Note:** All HCBS MLTC services are provided within members' private homes, or in the case of SADC and ADHC services, members access these services within their community. SADC and ADHC ongoing monitoring and quality assurance processes are described in their sections of this STP.

As previously stated, the monitoring being performed to ensure a member's access to the rights afforded by these federal requirements will focus on the MLTC plans' utilization and correct administration of the PCSP Guidelines, PCSP Template, and the person-centered planning process at enrollment, reassessment and through care management provision. These tools, particularly the PCSP Template, specifically document adherence to the settings standards, as well as any individualized modifications that may be made in residential or non-residential provider owned or controlled settings in which the member may live or receive services. MCOs were notified regarding the revised PCSP guidelines and template November 2022 and LDSS were notified February 17, 2023, with the directions to begin using them immediately. An updated webinar to provide additional instruction on the guidance and template has been developed and will be presented, recorded, and posted by July 31, 2023. The surveillance process assures that MLTC plans are documenting that the requirements are being met during the PCSP discussions with HCBS recipients during the person-centered planning process.

The HCBS recipients' own home or the home of a family member, friend, or neighbor, who does not provide HCBS services, were not planned for site-level assessment, as these are presumed to be compliant. However, should the MLTC Surveillance Unit find that the residential setting resembles a congregate care residential situation that allegedly is provider owned or controlled, then a process of further investigation, assessment and remediation would be implemented. The appropriate entity would conduct this investigation and MLTC eligibility will be reviewed by the BMLTC.

## Current and Ongoing Surveillance Activities for MLTC plans:

Please note, any non-compliance may result in a Statement of Deficiency (SOD) to the applicable MLTC Plan. The types of surveys conducted are as follows:

- Comprehensive Operational Surveys are being conducted on a rolling schedule for all MAP and MLTCPC plans that focuses on plan administration activities in addition to quality and delivery of services to enrollees.
- Focused Surveys are conducted on targeted issues and may be across plans. Monitoring frequency can vary based on identified, emergent or trending issues. These focused surveys are not pre-planned and typically there are six or less surveys conducted per year.
- Focused Surveys are conducted on more specific issues identified as complaints by the Technical Assistance Center (TAC).

Person-centered planning compliance monitoring will be achieved through the surveys described below:

- Revised MLTC Operational Survey
  - Timing – Survey Expanded to Include HCBS: 10/2022
  - Frequency: Ongoing – All MLTCPC and MAP plans reviewed on a rolling schedule. MLTC Survey is currently working towards reviewing all plans within a 3-year cycle.
  - Description: Expansion of the review of PCSPs for enrolled members that is currently being performed during the Comprehensive Operational Survey on a rolling schedule for all MLTCPC and MAP plans that focused on quality and delivery of services to members. This expansion will focus on the documentation retained, services provided and the utilization of the just released revised PCSP Guidelines and PCSP Template. These surveys will conduct a review of 50 member case files for a multiple month timeframe and review care management notes, enrollment documents, PCSPs, assessments and reassessments, the provision of services, and notices sent during the survey timeframe.
- Focused Survey of the MLTC Plan PCSP Policies and Procedures, Performed on All MLTC plans
  - Timing: 10/2022
  - Frequency: One-Time Plan Education
  - Description: This is a survey focused on obtaining and confirming the PCSP template and guidance currently in use by MLTC plans. At the conclusion of this review, interviews will be held with MLTC plans to discuss the survey findings, review the person-centered planning process being provided and advise of the requirements as well as the resources available to plans in the person-centered planning online resource library and recommend any identified process improvements.
  - [Clicking here will bring you to the Person-Centered Planning and Practice Resource Library on the DOH website.](#)
- Focused Survey of MLTC Plan Person-Centered Planning, Performed on All MLTC

plans

- Timing – Initial Survey: Estimated 10/2023
  - Frequency: As Needed – with PCSP Template and/or Guidance Updates
  - Description: This is a survey focused on person-centered planning process utilization by MLTC plans and compliance with HCBS requirements on services provided. A statistically valid sample size of members will be chosen for review. This survey will review the enrollees PCSP, documentation, and corresponding care management notes.
- Implementation of MLTC Monitoring and Oversight Practices for SADC Sites – as described in separate section of this STP.
    - Initiated: 2015 and now ongoing

### Monitoring and Oversight of MLTC Services

The following HCBS are provided by MLTC and monitored for HCBS Final Rule compliance:

- Home Care
- Personal Care, including Consumer Directed Personal Care
- Adult Day Health Care (ADHC)
- Social Adult Day Care (SADC)
- Personal Emergency Response System (PERS)
- Home-Delivered/Congregate Meals
- Social and Environmental Supports
- Assistive Technology

### Community Reintegration Post COVID-19 Public Health Emergency (PHE)

Since MLTC members live in their own private home or that of a family member, neighbor or friend within the community, residential community integration is not an issue. If, through active case management, the case manager determines the member's residence is limiting their integration with the community, the case manager will coordinate with the member and appropriate other agencies, as necessary, to remediate the situation. Members may also travel outside their homes for SADC and ADHC services. During the COVID-19 PHE, many of these SADCs and ADHCs temporarily or permanently closed or delivered meals to member's private homes. In 2021, SADC and ADHC settings began to reopen under the guidance of their local health departments and members have already begun to reintegrate into the community to receive these and other medical services. Continued monthly case management and the annual reassessment are opportunities to verify PCSP and enhanced community integration as the COVID-19 PHE officially ends.

## IV. NON-DISABILITY SPECIFIC SETTINGS

The HCBS services provided through MLTC are not provided in disability specific settings. Members who receive these services have a variety of situations, disabilities and/or functional impairments, which may be temporary or not. Eligibility and need for all services are verified through the person-centered planning process. To become a HCBS MLTC service provider, each provider must apply to contract with the MLTC plans to provide a specific service and are non-disability specific. In addition, to ensure adequate network capacity, MLTC plans must meet

network adequacy requirements for all HCBS, per their contracts with NYS. This requirement is a minimum number of contracts with providers per county and proposed MLTC membership.

All MLTC members receive the same provider directory document which lists HCBS providers for members to choose from. These directories are also all required to be publicly available on the MLTC plans' websites. During the person-centered planning process members are educated about and linked with these services/programs that are available to the general public.

**NOTE:** This MLTC transition plan section focuses primarily on oversight of private homes where the member lives with a relative, neighbor or friend. The other NYS programs that oversee provider-owned and controlled residential or non-residential settings where MLTC members may receive services, or the partners that oversee them, are addressing access to non-disability specific settings within their respective sections of this STP.

In order to ensure that members have access to non-disability specific settings, the MLTC Surveillance Unit provides oversight and monitoring of the MLTC plans' person-centered planning processes through the surveillance process of the MLTC plans. The MLTC plans provide oversight and monitoring of their contracted ADHC and SADC sites. Additionally, the MLTC Surveillance Unit, BMLTC, and MLTC plans are supporting and encouraging the previously COVID-19 PHE impacted and closed ADHC and SADC sites, where applicable, to reopen with full HCBS Final Rule and all state and federal standards in compliance. This also helps meet network standards, expanding member options of where to receive these non-disability specific community-based services.

## V. BENEFICIARY RECOURSE

If a member or their designee feels a MLTC plan is non-compliant or wishes to issue a grievance or voice a concern, they may do so in several ways. Additionally, MLTC service providers may report any issues or grievances regarding a MLTC Plan directly to DOH for investigation. The methods of reporting below are documented in the member handbook, which all members receive upon their enrollment in MLTC, are available publicly on websites, and/or included on member notices, as applicable to the reporting method. Complaints are tracked and reported in the member's case file, the technical assistance database for plan response and resolution and/or through an ombudsman process. All entities often work collaboratively to investigate and resolve the member's complaint, grievance, and/or appeal rights.

- **DOH:** MLTC Plan members or their designee can contact the DOH MLTC Technical Assistance Center (TAC) at [mltctac@health.ny.gov](mailto:mltctac@health.ny.gov) or 1-866-712-7197 with concerns or complaints. This contact is also utilized by service providers who wish to report an issue with a MLTC Plan.
- **MLTC Plan PCSP Care Manager:** Members may notify their MLTC Plan Care Manager, who is responsible for their MLTC PCSP, of any concerns.
- **MLTC Plan:** Notify their MLTC Plan directly via members' services contact.
- **ICAN:** Independent Consumer Advocacy Network (ICAN) is the ombudsman program for MLTC plan members. Members may go to [www.icannys.org](http://www.icannys.org), or call 1-844-614-8800 for free independent advice about coverage, complaints, and appeals

options.

- **Reporting Information – MLTC Website:** Members may also obtain information on reporting an issue on the MLTC website.
  - [Clicking here will bring to you the MLTC complaint page on the DOH website.](#)

# NYS DEPARTMENT OF HEALTH (DOH) OFFICE OF HEALTH INSURANCE PROGRAMS (OHIP) - MEDICAID MANAGED CARE (MMC) HCBS SETTINGS TRANSITION

## I. INTRODUCTION

The New York State (NYS) Department of Health (DOH) offers Medicaid Managed Care (MMC) programs for eligible members within New York State through MMC plans, including Health and Recovery Plans (HARP) and HIV Special Needs Plans (SNPs). The DOH contracts with MMC plans to provide home and community-based (HCBS) and other services. MMC plans are responsible for providing services consistent with the compliance requirements of the HCBS Final Rule. In turn, the DOH is responsible for monitoring the MMC plans for compliance and ensuring the MMC plans are providing high-quality services to members that are compliant with all State and Federal regulations, including the HCBS Final Rule. These services are: Private Duty Nursing, Home Health Service, Personal Care Service, Personal Emergency Response System, Consumer Directed Personal Assistance Services, Adult Day Health Care, and AIDS Adult Day Health Care. The information below details efforts undertaken and planned to ensure the MMC plans are monitored and compliant with the HCBS Final Rule.

In addition to the HCB services listed above available to all enrollees, effective October 1, 2019, eligible MMC Plan members under age 21 receive access to these HCBS from their MMC plan:

- Community Habilitation
- Day Habilitation
- Caregiver/Family Support and Services
- Community Self Advocacy Training and Support
- Prevocational Services- *must be age 14 and older*
- Supported Employment- *must be age 14 and older*
- Respite Services (Planned Respite and Crisis Respite)
- Palliative Care
- Environmental Modifications
- Vehicle Modifications
- Adaptive and Assistive Equipment
- Youth Peer Support Services and Training
- Crisis Intervention

In addition to the services above, individuals with serious behavioral health issues who are enrolled in HARPs and HARP-eligible individuals enrolled in HIV SNPs who are identified as eligible by an assessment will have access to the following Behavioral Health HCBS (also known as Adult Behavioral Health HCBS, Adult BH HCBS):

- Habilitation Support Services
- Education Support Services
- Peer Support Services
- Pre-Vocational Services
- Transitional Employment
- Intensive Supported Employment
- Ongoing Supported Employment



Note: Behavioral Health HCBS/Adult BH HCBS is overseen by OMH and OASAS, and in OMH's Ongoing Monitoring transition plan section, page 100, the oversight of Adult BH HCBS, which encompasses Habilitation Support Services, Pre-Vocational Services, Transitional Employment, Intensive Supported Employment, and Ongoing Supported Employment are described, but are not included in their Site Validation/Remediation sections since these services came into being after March 17, 2014 and had to be compliant from day one.

## II. SYSTEMIC COMPLIANCE

For MMC come into systemic compliance with the federal requirements the following was completed:

- Amendment to the Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract with the addition of section 10.44, effective March 31, 2019:
  - [Clicking this sentence will bring you to contract 10.44 on the DOH webpage: Settings for Home and Community Based Services](#)
- Guidance regarding PCSP was revised to include all applicable HCBS Rule standards:
  - [Clicking this sentence brings you to the Person-Centered Service Planning Guidelines on the DOH MMC webpage released November 17, 2022](#)
- PCSP template was revised to include all applicable HCBS Rule standards
  - [Clicking this sentence brings you to the Person-Centered Service Planning Template on the DOH MMC webpage released November 17, 2022](#)
- The results of the MMC 2018 systemic assessment can be found in the MMC Systemic Compliance Chart:
  - [Clicking this sentence brings you to the MMC systemic compliance chart on the DOH webpage](#)

## III. ONGOING MONITORING & SURVEILLANCE

The Bureau of Managed Care Certification and Surveillance, (BMCCS), is within the Division of Health Plan Contracting and Oversight (DHPCO) and is responsible for ongoing oversight and compliance monitoring of MMC plans, inclusive of the application of Home and Community Based Services and Quality Assurance in accordance with regulations and guidance. The BMCCS Unit coordinates the surveillance of the MMC plans through the administration of various activities created to assess and monitor compliance. The survey unit collaborates and partners with subject matter experts from other units within BMCCS, the Certification Unit and the Utilization Review Unit, other Divisions within DOH including AIDS Institute, Office of Patient Quality and Safety (OPQS), in addition to others offices within the State, Office of Mental Health (OMH) and Office of Addiction Services and Supports (OASAS), to conduct standard surveillance activity through the Operational Survey and the Focus Survey, in addition to Ad Hoc Focus Surveys. BMCCS has developed multiple assessment methodologies, tools and compliance approaches that have been in place prior to the advent of the HCBS Final Rule. BMCCS has initiated new efforts and expanded upon existing practices, which have already begun or are being planned, to verify compliance with the HCBS Final Rule for MMC plan members by March 17, 2023.

The BMCCS Surveillance assessment of HCBS Final Rule is focused primarily on the person-centered care planning process completed by the MMC plans, either through Primary Care Management or Secondary Care Management, (also known as Care Coordination). Managed Care members may be eligible for a variety of HCBS dependent upon individual needs and assessment. BMCCS Operational surveillance includes standardized tools developed for each of the specific components included in HCBS Final Rule guidance. HCBS are authorized by the MMC plans and provided within the member's home or a community-based setting. The HCBS recipients' own home or the home of a family, friend, neighbor or relative, were not planned for site-level assessment, as these are presumed to be compliant by New York. Should BMCCS or its partners find through a rare review finding that the setting an individual lives in, which was anticipated to be a private home, resembles a congregate care residential situation requiring assessment, then a process of further investigation, assessment and remediation would be implemented for such a possible provider-owned and controlled setting, as applicable. The appropriate entity would conduct this investigation and MMC eligibility will be reviewed by the BMCCS and/or its partners. Covered non-residential services authorized by MMC plans, including, Adult Day Health Care Program (ADHCP) and Structured Day site validation and remediation are described within their respective sections of this Statewide Transition Plan (STP).

As previously stated, the monitoring described here is being performed to ensure a member's access to the rights afforded by these federal requirements by focusing on the MMC plans' utilization and correct administration of the person-centered service planning (PCSP) Guidelines, PCSP Template, and the person-centered planning process at enrollment, reassessment and through care management. These tools, particularly the PCSP Template, specifically document adherence to the settings standards, as well as any individualized modifications that may be made in residential or non-residential provider owned or controlled settings in which the member may live or receive services. The surveillance process assures that MMC plans are documenting that the requirements are being met during the PCSP discussions with HCBS recipients during the person-centered planning process, and through coordination with HCBS service providers, where indicated.. MCOs were notified regarding the revised PCSP guidelines and template November 2022 and LDSS were notified February 17, 2023, with the directions to begin using them immediately. An updated webinar to provide additional instruction on the guidance and template has been developed and will be presented, recorded and posted by July 31, 2023.

#### Current And Ongoing Surveillance Activities for Medicaid Managed Care Plans:

The surveillance and compliance process and protocols have been in place for several years. The surveillance and monitoring are completed during the Operational Survey of the MMC plans. There are two types of Operational Surveys, the first being the Comprehensive, which includes monitoring and completion of all the surveillance tools, the second is a Target review, or a follow-up to ensure the areas of noncompliance identified during the Comprehensive Survey have been corrected and the Plan of Correction has been implemented. The Operational Survey cycle is generally completed within two- to- three years. There have been reviews and revisions completed by the Division periodically, the most recent in 2019 through the Oversight Committee. The Oversight Committee was chaired by the Director of DHPCO and included representatives from all Bureaus, Divisions, and Departments involved in the surveillance requirements. BMCCS has identified the need to review and revise the survey tools and plans on resuming the Oversight Committee review and approval process in January 2023, to implement the new changes by the March 2023 federal deadline for HCBS Final Rule monitoring to commence. The current Operational Comprehensive Survey completed every other year, includes a request for the MMC plans to provide a list of all members receiving Care Management, in addition to all members in receipt of the various types of

HCBS. These lists are reviewed to assess compliance with HCBS guidance, as well as to identify and choose case files for review. BMCCS reviews comprehensive case files for 35-50 members enrolled in Care Management, BH reviews 10-25 members indicated to need Care Management, and the AIDS Institute reviews comprehensive case files for 10-15 members enrolled in Care Management. When Care Management issues of noncompliance are identified during the Comprehensive Operational Survey, a follow-up review of Care Management is included as part of the Target Operational Survey, (completed the year following the Comprehensive Operational Survey) to ensure the Plan of Correction was implemented and the program is compliant with regulations and guidance.

The Care Management case files reviewed by BMCCS for the mainstream members include a random sample across the categories of Disease Management and services received, for example, Personal Care Assistance or Skilled Nursing. The BMCCS review includes primary Care Management, the MMC Plan staff develop the PCSP and are the primary and secondary Care Management or Care Coordination. The review for Care Coordination is based on the principles of the MMC plan Care Manager maintaining communication with both the member and the Primary Care Manager, for example for a member enrolled in a Health Home, the Health Home is considered the Primary Care Manager. The MMC Plan responsibilities include a review of the PCSP developed by the Primary Care Manager and assisting as needed for the member and/or the Primary. The current Operational Survey includes the following survey component tools that are specific to or include assessment of the requirements of the HCBS Final Rule. The current plan for revision is to further expand the review of Person-Centered Planning and to explore the integration of the survey tools into one comprehensive tool.

- Current Operational Survey Tools related to or inclusive of HCBS Final Rule
  - Long Term Support Services/Hospice/Nursing Home: created in 2019
  - Health Home: created in 2019
  - Behavioral Health: created in 2019, with concentration on members in HARP
  - AIDS Institute: revised in 2019, with focus on HIV and SNP programs
  - Case Management Review Tool: revised in 2019, revised 2022
  - Utilization Review: revised in 2019, authorization and denial process and rights
  - Complaints and Grievances: revised in 2019, reviews process and rights
  - Quality Assurance: revised in 2019, includes Care Management review
- PCSP Template
  - Release Date: January 2023
  - Description: DOH revised a template that includes all items and details to be incorporated into a complete person-centered plan. BMCCS is reviewing the template and guidance, revising the mainstream process to align with these documents as indicated above. The start date is March 2023.

BMCCS surveillance activity specific to the HCBS Final Rule requirement is to assess the members access to the HCBS identified as needed in accordance with the PCSP. BMCCS completes this oversight responsibility by ensuring the MMC plan providers include those that can deliver or provide HCBS, that services requested are reviewed and authorized in accordance with regulations and guidance, that members have access to Primary Care Management or Care Coordination, to ensure that the member or member representative is actively involved in the development of the PCSP. BMCCS surveillance activity and compliance review does not include direct provider oversight or visits.

#### Community Reintegration Post COVID-19 Public Health Emergency (PHE):

As previously stated, the monitoring being performed to ensure a member's access to the rights afforded by these federal requirements will focus on the MMC plans' utilization and correct administration of the PCSP Guidelines, PCSP Template, and the person-centered planning process at enrollment, reassessment and through care management provision. The HCBS recipients' own home or the home of a family, friend, neighbor or relative, was not planned for site-level assessment, as these are presumed to be compliant. However, should the BMSCC Unit or through active case management it is discovered that the residential setting resembles a congregate care residential situation that allegedly is provider owned or controlled, then a process of further investigation, assessment and remediation would be implemented. The appropriate entity would conduct this investigation and MMC eligibility will be reviewed by the BMCCS.

Continued case management and the annual reassessment are opportunities to verify the PCSP and enhanced community integration as the COVID-19 PHE officially ends. At this time, DOH has removed all restrictions on services settings and has instructed MMC plans and providers to follow any local health department guidance. Members identified by MMC plans to meet criteria for HCBS are referred to Health Homes enrollment to provide the opportunity for in person, face to face interactions with the assigned Care Manager. Members enrolled in Health Homes receive Primary Care Management from the Health Home, with Care Coordination provided by the MMC Plans.

## **IV. NON-DISABILITY SPECIFIC SETTINGS**

MMC plans fund services that are non-disability specific, community-based providers, as well as those that specialize in specific conditions. Members that receive HCBS are provided with information for the full array of available providers, the same as those who are not receiving HCBS. For more detail:

Pursuant to Section 13.2 a) – d) of the Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract:

- The Plan (i.e., MMC plan) shall maintain and update, on a monthly basis, a listing by specialty of the names, addresses and telephone numbers of all (community-based) Participating Providers, including facilities. Such a list/directory shall include names, office addresses, telephone numbers, board certification for physicians, information on language capabilities and wheelchair accessibility of Participating Providers. The list should also identify providers that are not accepting new patients.
- The Plan shall update applicable records contained in the electronic version of such provider listing no later than thirty (30) days after it receives updated provider information.
- New Members must receive the most current complete listing in hardcopy, along with any updates to such listing. Alternatively, new Members may be provided written notification that a complete listing/directory is available and will be provided upon request either in hardcopy, or electronically if the Plan has the capability of providing such data in an electronic format and the data is requested in that format by a Member.

The MMC plan is also required to post the provider directory on the MMC plan's website. The MMC plan's member service staff is also trained to assist an individual with finding appropriate providers.

## V. BENEFICIARY RECOURSE

If a member or their designee feels a MMC plan is non-compliant or wishes to issue a grievance or voice a concern regarding their HCBS, they may do so in several ways listed below. The methods of reporting below are documented in the member handbook, which all members receive upon their enrollment, and is available publicly on websites, and/or included on member notices: DHPCO will contact the plan directly with any complainant allegations of non-compliance that are received by the Bureau of Consumer Services. Complaints can be sent to BCS via phone or email sent to the bureau's 800 number or email address.

- **MMC Plan Care Manager:** Notify their MMC plan Care Manager who is responsible for their PSCP.
- **MMC Plan:** Notify their MMC plan directly via members' services contact.
- **DOH:** MMC plan members or their designee can contact the DOH MMC Bureau of Consumer Services (BCS) at [managedcarecomplaint@health.ny.gov](mailto:managedcarecomplaint@health.ny.gov) or 1-800-206-8125 with concerns or complaints.
- **ICAN:** Independent Consumer Advocacy Network (ICAN) is the ombudsman program for MMC plan members. Go to [www.icannys.org](http://www.icannys.org), or call 1-844-614-8800 for free independent advice about coverage, complaints, and appeals options.
- **MMC website:** <https://nyhealthworks.com/blog/medicaid-managed-care-complaint-hotline/>

# **NEW YORK STATE DEPARTMENT OF HEALTH (DOH) OFFICE OF AGING AND LONG TERM CARE (OALTC) NURSING HOME TRANSITION AND DIVERSION (NHTD) & TRAUMATIC BRAIN INJURY (TBI) 1915(c) WAIVERS HCBS SETTINGS TRANSITION**

## **I. INTRODUCTION**

The Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) are 1915(c) Home and Community-Based Services (HCBS) Medicaid waiver programs, administered by the New York State Department of Health (DOH) NHTD and TBI Waiver Unit through contractual agreements with nine (9) Regional Resource Development Centers (RRDC) throughout the state.

The NHTD and TBI waivers provide services to assist individuals with traumatic brain injuries, disabilities, and seniors, toward successful inclusion in the community. Waiver participants may come from a nursing facility or other institution (transition) or choose to participate in the waiver to prevent institutionalization (diversion). Waiver services are provided when informal supports, local, state, and other federally funded services are not sufficient to assure the health and welfare of the individual in the community. There are many services and supports available in the NHTD and TBI waiver programs including: Assistive Technology, Community Integration Counseling, Environmental Modifications (E-Mods), Home and Community Support Services (HCSS), Independent Living Skills and Training Services (ILST), Respite Services, and Service Coordination; just to name a few.

The development of the NHTD and TBI Medicaid waivers was based on the philosophy that individuals with traumatic brain injuries, disabilities and/or seniors have the same rights as others. This includes the right to be in control of their lives, encounter and manage risks, and learn from their experiences. This is balanced with the waiver program's responsibility to assure the waiver participants' health and welfare.

The provision of waiver services is based on the participant's unique strengths, needs, choices, and goals. The individual is the primary decision-maker and works in cooperation with caregivers, informal supports and providers to develop a service plan. This process leads to personal empowerment, increased independence, greater community inclusion, self-reliance, and meaningful productive activities. Waiver participant satisfaction is a significant measure of success of waiver services. The NHTD and TBI waiver programs engage with the provider community, participant and community stakeholders, the Traumatic Brain Injury Services Coordinating Council regularly on a formal and informal basis. These stakeholder communications provide valuable information used by NHTD and TBI Waiver Unit to inform the transition plan activities described here.

## **II. SYSTEMIC COMPLIANCE**

In order to come into systemic compliance with the HCBS Final Rule the following tasks were completed:

- The notice found at the link below was distributed to providers advising of the HCBS Final Rule requirements for Structured Day Programs (SDP) and Provider Owned Residential Settings. This notice was circulated about a year ago and all standards were included, and modifications were used as applicable. [Clicking on this sentence brings you to the 2021 NHTD TBI HCBS guidance on the DOH webpage](#)
- This link contains the original HCBS Final Rule guidance notice disseminated to providers: [Clicking on this sentence brings you to the NHTD TBI guidance document on the DOH webpage.](#)
- The link below is provided as a reference for the 2018 systemic compliance assessment process that was conducted for NHTD and TBI waivers. Please note, the Care at Home (CAH) I/II waiver referenced on this notice has been consolidated into the Children's Waiver (CW), which is further described in the Children's Waiver section of this Statewide Transition Plan (STP): [Clicking on this sentence brings you to the 2018 Systemic Compliance Chart on the DOH webpage.](#)
- Additionally, the waiver unit anticipated publishing a revised NHTD manual by March of the following year, unfortunately, this was delayed and the revised NHTD manual was published last year. [Clicking on this sentence brings you to the 2021 Program Manual on the DOH webpage.](#)

### III. SITE VALIDATION

Settings that required site validation within the NHTD and TBI waivers were non-residential Structured Day Programs (SDP) and Provider Owned Residential Settings (i.e., there is no program name, simply providers that own an apartment or complex). A NHTD and TBI Waiver Unit site assessment and remediation tool, developed based on CMS guidance "Exploratory Questions to Assist States Assessment of Residential [and Non-Residential] HCBS Settings," was used in order to assess and validate sites. There was a total of two (2) Provider Owned Residential Settings and 54 Structured Day Program Sites to be assessed. The provider serves as a landlord but may also provide waiver services to those individuals residing in the home and others.

The onsite assessments at each setting and remediation tools were completed by the Regional Resource Development Center (RRDC) staff overseeing the region in which the sites were located. RRDCs are grant-funded contractors of DOH that manage the application, participation, and renewal processes of the NHTD and TBI programs. Any interested provider must contact the appropriate RRDC region(s) to start the application process for the NHTD and/or the TBI Waiver. The RRDC will complete a Waiver Service Provider Interview and the program application packet and then submit to DOH's NHTD and TBI Waiver Unit for review and approval. RRDCs are funded through a grant for a 5-year period and are the local representatives of DOH for the purposes of the NHTD and TBI waivers. Professionals/organizations interested in becoming an NHTD or TBI Waiver Service Provider must submit documentation to the RRDC for review and approval in order to complete the application process: RRDC staff are authorized to act on behalf of the state and the NHTD and TBI Waiver Unit has a process to validate their activities, which is described further below.

As a result of the site validation process, Provider Owned Residential Settings were determined to have all of the characteristics of private homes located in the community. They required no remediation to meet the HCBS Final Rule beyond issuing guidance to align official policies and procedures with the federal requirements.

As a result of the site assessment and validation, it was determined that 54 SDP Sites could come into full compliance with remediation.

Through the site assessment and validation process, four (4) SDP were found to be presumptively institutional in nature and triggered Heightened Scrutiny. All non-residential and residential settings utilized by NHTD/TBI waiver participants are monitored by the NHTD and TBI Waiver Unit. In order to ensure completeness of site validations conducted by the RRDCs, NHTD and TBI waiver unit staff reviewed each Heightened Scrutiny evidence package.

## **IV. REMEDIATION**

As mentioned, the two (2) Provider Owned Residential Settings were found to be similar to privately owned homes. As such, remediation was not required.

The main issues requiring remediation in SDP sites were: The setting is free from locked gates, fences or other barriers that inhibit entry to or egress from the location; there are sufficient staffing and/or resources (e.g., volunteers and natural supports) to address each person's needs and individualized plan priorities for community inclusion and integration activities outside of the setting; and the setting staff will adapt activities to accommodate each individual's needs and preferences as requested by the individual.

Remediation tasks that are being undertaken include: educating individuals, families, and/or advocates on the rights of the individuals served, including how to make informed choices, any risks involved in making those choices, and safeguards that may be put in place to support individuals to make such choices, and implementing key code entry to be provided to participants seeking to exit safely.

The RRDCs, in coordination with NHTD and TBI Waiver Unit, is tracking progress with all remediation plans to ensure all SDP settings achieve compliance with all of the HCBS Final Rule standards, including the two non-negotiable criteria listed below, by the March 2023 deadline:

- Privacy, dignity, respect, and freedom from coercion and restraint; and
- Control of personal resources

NHTD and TBI Waiver Unit will continue to provide technical assistance to the RRDCs as necessary to ensure that all SDP settings become fully compliant.

## **V. HEIGHTENED SCRUTINY**

NHTD and TBI Waiver Unit and the RRDCS used the site validation process described above to identify the settings that triggered heightened scrutiny. DOH trained RRDCs to investigate the SDP possible collocation with institutional settings using Google Maps and institutional settings listings, as well as to review the site assessments for isolating characteristics. NHTD and TBI Waiver Unit validated the RRDC findings by reviewing the documentation and data regarding the sites that they collected. The following sites triggered Heightened Scrutiny. Heightened Scrutiny evidence packets have not been posted for public comment. NHTD and TBI Waiver Unit anticipates posting the packets for public comment in the final quarter of 2022.



## Prong 1 Setting:

- Fort Hudson Health System Structured Day Program

## Prong 2 Settings:

- Ability Beyond Disability Structured Day Program
- Helen Hayes Hospital Transitional Rehabilitation Center Structured Day Program
- Hudson Valley Cerebral Palsy Association Structured Day Program
- To ensure remediation steps are completed (or will be completed) for all settings which triggered Heightened Scrutiny, NHTD and TBI Waiver Unit and the RRDCs have provided training and technical assistance to providers on an ongoing basis to ensure remediation activities are completed.

The main issues requiring remediation in SDP sites identified for Heightened Scrutiny were: The setting is free from locked gates, fences or other barriers that inhibit entry to or egress from the location; there are sufficient staffing and/or resources (e.g., volunteers and natural supports) to address each person's needs and individualized plan priorities for community inclusion and integration activities outside of the setting; and the setting staff will adapt activities to accommodate each individual's needs and preferences as requested by the individual.

The RRDCs have and will continue to conduct regular follow-up activities with the providers. The RRDC will continue these activities with the sites until they are able to confirm that remediation has been completed. All providers are required to attend eight (8) training sessions presented by the RRDCs a year in order to maintain their status in good standing, and this information has been included in those curricula. [Clicking this sentence will bring you to examples of the curricula presented to waiver providers at these trainings on the NYSDOH site.](#)

Should NHTD and TBI Waiver Unit receive feedback from CMS regarding a particular setting or settings the other Heightened Scrutiny settings assessment results will be reviewed to make sure that this feedback did not also need to be applied to similarly situated settings. Should additional remediation be required as a result then this activity will be integrated into the remediation follow-up process to ensure full compliance for such settings is achieved.

## **VI. ONGOING MONITORING AND QUALITY ASSURANCE**

Ongoing monitoring and quality assurance of participant's (i.e., individuals who receive NHTD or TBI waiver services) residential settings, whether they be Provider Owned Residential Settings or private homes, will be completed on an annual basis through the service plan document, which includes a section regarding HCBS settings compliance of the participant's residence. The participant and their Service Coordinator are responsible for completing the service plan. The RRDC's review and approve all service plans, ensuring that residential settings continue to be compliant.

For SDP settings, ongoing compliance and quality assurance will be monitored by the RRDCs and systemic controls including, but not limited to: the established incident reporting and complaint process which is overseen by NHTD and TBI Waiver Unit, the provider agreement which contains controls within it, audits by the RRDC and audits by the OMIG. These activities are overseen by the NHTD and TBI Waiver Unit by a review of 100% of serious reportable incidents, regular review of quarterly reports submitted by the RRDC, quarterly review of

complaint reports submitted by the RRDC and regular communication with the RRDC on provider trends or specific concerns. The provider agreement requires providers upon application to attest that they will abide by all applicable federal and State laws, and regulations of DOH and the Department of Health and Human Services (HHS). As such, failure to meet required HCBS Final Rule requirements will result in corrective action. This process will be initiated by the RRDC in conjunction with NHTD and TBI Waiver Unit. NHTD and TBI Waiver Unit will provide technical assistance and oversight as needed to ensure compliance.

The nature of the NHTD and TBI waivers ensures that individuals are integrated into their communities. This is reinforced by the format of the person-centered service plan, the design of the services themselves, and the robust reporting systems available to participants.

The NHTD and TBI waiver programs use person-centered service planning philosophies in the development and monitoring of participant services. At a minimum, every participant's service plan is reviewed and updated on an annual basis. The RRDC is the approver of the service plan and is tasked with ensuring that every service recipient has led, to the extent possible, and participated in the process of service planning per the participant's choice. Should an RRDC find that a service plan was not developed in concert with person-centered methods, the RRDC would contact the participant and implement a plan of correction in conjunction with that participant and their Service Coordinator. The RRDC may choose not to approve the service plan if it does not meet person centered planning criteria and/or it is confirmed that the participant did not actively participate in the development of the plan. On a regular basis, NYSDOH distributes and encourages participation in person-centered planning, thinking and practice resources and training opportunities and maintains a [PCP Online Resource Library \(clicking this sentence brings you to the PCP Online Resource Library on the DOH webpage\)](#), which can be accessed by providers, participants and other stakeholders at any time.

Community Re-integration Achieved and Verified Post PHE

In order to ensure ongoing compliance and to assess community integration for Structured Day Program settings, the annual participant satisfaction survey will include questions regarding satisfaction with services, specifically related to the Structured Day Program setting, and its compliance with HCBS settings regulations. In addition, the program manual states that providers must keep the RRDC and NHTD/TBI Waiver Unit apprised of all service locations and any changes made to their service locations. Participant files and the SDPs sign-in/sign-out log must be available for inspection/audit upon request. Community reintegration for SDPs is verified on an ongoing basis by RRDCs.

As previously described, Provider Owned Residential Settings are home like and provide full access to the community as with private homes, therefore reintegration is not a relevant concern.

## VII. CURRENT STATUS OF WAIVERS

- The Nursing Home Transition and Diversion and Traumatic Brain Injury 1915c waivers are currently operational.
- The Care at Home I/II waiver was consolidated with other children's waivers and is now referenced as the DOH Children's Waiver effective April 1, 2019 and described further within the Children's Waiver (CW) section of this STP.

## **VIII. NON-DISABILITY SPECIFIC SETTINGS**

As described above, Provider Owned Residential Settings are home like and provide full access to the community as with private homes. SDP services are provided in a variety of settings and with very different goals based on the individual's needs. Per policies and procedures in place SDPs offer trips on a regular basis to various community activities which are within mainstream community life. These are fully integrated activities and are not disability specific. Many of the ideas for the activity are generated by the program participants. Participants are notified in advance of the activity date so they can decide if they choose to participate.

Waiver transportation (Social Transportation) is offered as a direct service to waiver participants to provide non-medical transportation and provides the participant access to community resources, such as: religious institutions, grocery stores, banks, and recreational activities. These resources are identified in the participant's service plan and are associated with goal(s) in the plan. This service is offered in addition to medical transportation required under 42 CFR §431.53 and transportation services under the Medicaid State Plan, defined in 42 CFR 440.170(a) (if applicable), and shall not replace them. All other options for transportation, such as informal supports and community services that provide this support without charge, are utilized prior to seeking this service.

## **IX. STRATEGY FOR ASSISTING PARTICIPANTS LIVING/RECEIVING SERVICES IN NON-COMPLIANT SETTINGS**

There are no providers which cannot/will not come into compliance by the transition period. Should in the future the NHTD and TBI Waiver Unit find that a provider is out of compliance with the HCBS Final Rule and is not able to come into compliance, the person-centered planning process, supported by the Service Coordinator, would be used to help participants in the setting find compliant, appropriate services to meet their goals while avoiding any lapse in services.

## **X. BENEFICIARY RECOURSE**

NHTD and TBI Waiver Unit maintains a main program number to receive complaints. The RRDCs each maintain a main number to receive complaints that has 24-hour availability. All interested parties file a complaint using these lines, including participants. Individuals can also submit complaints via email, physical mail, or in person at any RRDC location. Complaints can be made at any time. All complaints are investigated by the RRDC or NHTD and TBI Waiver Unit as appropriate. Waiver protocols require that staff responsible for the complaint follow-up will contact the complainant within two (2) business days to acknowledge receipt of the complaint and to advise that the matter is under review. Once a resolution is reached, the RRDC/ NHTD and TBI Waiver Unit will contact the complainant to discuss the outcome of the investigation consistent with HIPAA confidentiality regulations and will provide confirmation of the discussion.

Once the complaint investigation/review is completed, the complainant will be notified of the investigation findings as "substantiated," "unsubstantiated," or "inconclusive." This notification will also notify the complainant of any actions required to remedy the

problem. Due to confidentiality requirements, copies of investigations are not distributed, but the complainant may request a summary of the investigation process and findings.

The Service Coordinator must ensure, on an annual basis, that:

- the participant has a copy of the NHTD Participant Instructions for the Complaint Process (DOH-5729) in an easily accessible location; and
- the participant understands the complaint process well enough that they are able to make a complaint if necessary.

Further details of the complaint processes can be found here: [Clicking on this sentence brings you to an NHTD TBI application with complaint information on the DOH webpage](#) and here: [Clicking on this sentence brings you to a compliant process document on the DOH webpage](#)

Each waiver participant has a Service Coordinator. The participant selects their Service Coordination provider. All Service Coordinators are required to maintain monthly contact with each individual on their caseload. Any issues related to community integration and related activities, access to the community, participant rights and home living circumstances may be reviewed and discussed during that contact. All incidents and potential violations will be reported by the Service Coordinator and addressed.

# **NEW YORK STATE OFFICE OF ADDICTION SERVICES AND SUPPORTS (OASAS) HCBS SETTINGS TRANSITION**

## **I. INTRODUCTION**

The New York State Office of Addiction Services and Supports (OASAS) oversees one of the nation's largest addiction treatment systems, which provides a full array of services to approximately 245,000 unique individuals each year. Treatment services are provided in inpatient, outpatient, and residential settings. The service continuum also includes school and community-based prevention services, crisis programs, other treatment support services, peer services, recovery services and housing services.

In the context of reviewing all of the state's settings overseen by OASAS to ensure a plan for compliance with the Home and Community-Based Services (HCBS) Final Rule, OASAS has reviewed its treatment and other settings to determine how its system fits into the State's overall plan and has determined that its inpatient detoxification and inpatient rehabilitation programs are clearly institutional settings that are not home and community-based.

OASAS has recently received approval, pursuant to New York's 1115 demonstration waiver, to receive Medicaid reimbursement for rehabilitative residential addiction services. While these are residential settings, they are not eligible to receive HCBS because such setting is not an HCBS eligible setting.

Finally, OASAS operates 2,067 units of Permanent Supportive Housing (PSH) for single adults and families. OASAS believes all PSH providers are compliant with the HCBS Final Rule and required providers to review the HCBS standards, analyze their individual apartment units and attest to compliance for each unit. These units are either one- or two-family apartments. Individuals placed in these units have a lease or occupancy agreement. Individuals are given a rental subsidy which decreases over time until they are eventually able to assume the lease and pay the rent in full. Individuals do not have roommates or non-family apartment mates. Individuals do not have curfews or other restrictions on their ability to come and go from the unit. Individuals have keys and full access to their own kitchen and bathroom.

Some individuals identified as persons with "high need" behavioral health conditions (substance use disorders and/or mental health conditions) may be eligible for enrollment in a specialized product line within a Managed Care Plan known as a Health and Recovery Plan (HARP). HARP enrollees will be assessed for eligibility for additional benefits known as Behavioral Health Home and Community Based Services (BH HCBS), based on functional deficits identified by the assessment. All HARP members will be assigned a care manager, either through a Health Home or other state designated entity. These care managers will be an integral part of OASAS' plan to assure that individuals reside in compliant settings, do not receive HCBS when an individual is moved to a non-HCBS compliant setting, and assist with discharge planning when individuals move between settings.

## **II. SYSTEMIC COMPLIANCE**

In order to come into compliance systemically, all applicable standards and guidance regarding HCBS Final Rule compliance has been put into our Permanent Supportive Housing Program

Guidelines, which was last updated in 2020. As part of that process, updated language regarding person centered planning processes was included.

- [Clicking this sentence brings you to the PSH OASAS webpage.](#)
- [Clicking this sentence brings you to the PSH guidance manual on the PSH OASAS webpage.](#)
- As part of OASAS' process to come into compliance systemically an assessment of our rules, policies and procedures related to HCBS was conducted in 2018. The results of that assessment can be found in this Systemic Compliance Chart: [Clicking this sentence brings you to the 2018 Systemic Compliance Chart on the OASAS webpage.](#)

### III. SITE VALIDATION

As mentioned, all PSH sites have been validated and found to be independent apartments. OASAS used an online provider self-survey using questions provided by CMS guidance “Exploratory Questions to Assist States Assessment of Residential Settings.” Surveys were completed January 2017. There was a 100% completion rate for the self-survey. Additionally, staff from the OASAS Counsel’s Office visited two sites in person. State staff from the OASAS Housing Bureau have inspected all residential units, except for the units that are part of the Continuum, of Care Program which are overseen and inspected by the Department of Housing and Urban Development. One site was found to be presumptively institutional in nature and is discussed in more detail in the Heightened Scrutiny section below. OASAS conducted an assessment of units available through each of its PSH brands. Assessments were conducted using the process noted above (self-survey with onsite inspections by staff), as well as surveys of tenants to determine client satisfaction and HCBS Final Rule compliance using questions from CMS guidance, as well as interviews with tenants in private. This process was completed by June 2021. The number of units, broken out by PSH brand, is included below:

- NY/NY III Singles – 375 units
- NY/NY III Families – 285 units
- Re-Entry – 12 units
- Upstate PSH – 124 units
- MRT – 260 units
- Empire State Supportive Housing Initiative - 253
- Transitional Safety Units - 28
- Continuum of Care - 730

Setting Type	Total Number of Settings	Fully compliant with the federal HCBS requirements	Could come into full compliance with modifications	Cannot comply with the federal HCBS requirements	Are presumptively institutional in nature
Provider owned/controlled Apartments	2067	2061			6

## IV. REMEDIATION

No site level remediation was found to be necessary for our PSH sites. All sites comply with the requirements of the HCBS Final Rule, including the eight non-negotiable criteria described in CMS 2022 guidance:

- Privacy, dignity, respect, and freedom from coercion and restraint; and
- Control of personal resources.
- A lease or other legally enforceable agreement providing similar protections;
- Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit;
- Access to food at any time;
- Access to visitors at any time;
- Physical accessibility; and
- Person-centered service plan documentation of modifications to relevant regulatory criteria (*i.e.*, the additional standards are afforded to PSH recipients at all times and may not be modified)

## V. METHODS TO ADDRESS PROVIDER SELF-ASSESSMENT DISCREPANCIES

OASAS used provider self-assessment and found no discrepancies when inspected and validated in-person, using the robust process described above in the Site Validation section.

## VI. HEIGHTENED SCRUTINY

Heightened Scrutiny evidence packages will be developed for comment because OASAS believes these settings are compliant private homes, although a small number share a physical location with an inpatient institutional setting. While current residents of these settings do not participate in Medicaid funded HCBS, OASAS does not wish to forestall the possibility that someone may live in these settings in the future for whom HCBS may be both appropriate and desired. OASAS will create Heightened Scrutiny packets and put them out for public comment following the required process for such settings established in New York.

Of the 2,067 PSH units, six units share a physical location with an inpatient service provider. They are Continuum of Care housing units OASAS provides case management services, but no rental subsidies for these types of units. These six units were assessed and found to have all the characteristics of private homes. To make this determination, OASAS staff inspected the site and confirmed that the PSH units are physically and administratively separate from the institutional setting with which they share space.

The PSH units and inpatient services provider share a single building. The building itself is nondescript and not institutional in appearance. The PSH units are not accessible from the inpatient provider and have a separate entrance to the building. All of the residents have the same rights as other residential tenants living in the same jurisdiction. OASAS staff interviewed PSH tenants and confirmed that all of the rights were in fact available to the same extent as other tenants in the jurisdiction.

## **VII. Ongoing Monitoring and Quality Assurance**

OASAS conducts annual monitoring reviews of its PSH brands to evaluate program compliance with the HCBS Final Rule and other State and federal requirements. OASAS conducts interviews with staff and tenants, as well as a review of tenant files, to ensure effective management of the program. Monitoring focuses on overall program management, admission procedures, service plans, documentation of service and housing quality standards. In addition, housing providers are required to submit a monthly report to OASAS, regarding current census, admissions, discharges, and educational/vocational information. Moving forward, this annual review will also be utilized to ensure that all of our PSH units maintain compliance with the HCBS Final Rule. Guidance for providers regarding HCBS requirements was incorporated into the Permanent Supportive Housing Program Guidelines in 2019. This document serves as the basis for inspections.

All units are inspected regularly by OASAS Housing Bureau staff. In a normal year, 60% of all units are inspected. However, between late 2019 and the onset of the pandemic in early 2020, approximately 85% of units were inspected. When onsite inspections are allowed again, staff will be able to inspect the remaining units in 4-6 months. Staff will inspect each unit in-person. When warranted, emergency inspections are conducted in-person as well. In between inspections, staff monitors monthly reports submitted by providers. Staff also performs periodic check-ins with providers either through telephone or email.

## **VIII. CURRENT STATUS OF WAIVERS**

OASAS does not oversee any services for which a waiver has been issued.

## **IX. NON-DISABILITY SPECIFIC SETTINGS**

As described further above, OASAS operates approximately 1,337 units of PSH for single adults and families which are not disability-specific settings, but rather fully integrated settings within the community mixed among other private homes not related to OASAS.

## **X. STRATEGY FOR ASSISTING PARTICIPANTS LIVING/RECEIVING SERVICES IN NON-COMPLIANT SETTINGS**

All participants live in compliant settings.

## **XI. STP UPDATES**

OASAS' 2018 HCBS Rule STP section was updated for inclusion in the current 2022 STP as follows:

- Confirmed that OASAS background information was current.



- Confirmed that all settings have been assessed.
- Confirmed that all units are compliant.
- Explained the annual monitoring process.
- Described the status of guidance to providers.

## **XII. BENEFICIARY RECOURSE**

Beneficiaries have multiple means of reporting non-compliance to OASAS. OASAS has posted contact our Patient Advocacy Unit on our agency website. This information also is provided to tenants when they move into an OASAS PSH unit. Complaints are timely sorted and addressed by phone calls to providers, as well as by referral to the Housing Bureau for further investigation or inspection is necessary. Patient Advocacy also conducts follow up review, by contacting tenants to ensure that their complaints were resolved.

Additionally, all OASAS PSH tenants also can report provider non-compliance to their case managers, who will follow up appropriately with OASAS and the provider. Tenants who reside in OASAS PSH units which are provided in collaboration with local government programs, also can file complaints with their local government programs.

Finally, during inspections, OASAS staff meet with tenants individually, without provider staff being present, to discuss issues and concerns about non-compliance.

# NEW YORK STATE OFFICE OF MENTAL HEALTH (OMH) HCBS SETTINGS TRANSITION

## I. INTRODUCTION

New York State has a large, multi-faceted mental health system that serves more than 832,000 individuals each year. The Office of Mental Health (OMH) operates psychiatric centers across the State, and also regulates, certifies and oversees more than 4,500 programs, which are operated by local governments and provider agencies. These programs include various inpatient and outpatient programs, emergency, community support, residential and family care programs. These community-based resources have created a safety net which has helped the mental health system to evolve from a primarily hospital focused system to one of community support. The emergence of the peer recovery and empowerment movement in the 1990s has stimulated the shift in focus from support to recovery.

The legal system's expansion of civil rights to include people with mental illness, as part of Olmstead Legislation and Americans with Disabilities Act, has begun to move policy from the concept of least restrictive setting to full community inclusion. However, New York currently exceeds both the national average inpatient utilization rate at state-operated Psychiatric Centers (PCs), and per capita inpatient census levels at state-operated PCs in other urban states and all Mid-Atlantic States.

OMH is in the process of creating the mental health system that New York needs in the 21st Century—a system focused on prevention, early identification and intervention, and evidence-based clinical services and recovery supports. OMH is rebalancing the agency's institutional resources to further develop and enhance community-based mental health services, which are also consistent with the Americans with Disabilities Act (ADA). The US Supreme Court's 1999 Olmstead decision held that the ADA mandates that the state's services, programs, and activities for people with disabilities must be administered in the most integrated setting appropriate to a person's needs.

OMH has prepared an annual report to provide timely information on the progress of OMH's investments in community mental health services. This report describes the progress and effectiveness of investments in community mental health services in reducing the need for inpatient services and hospital lengths of stay, and the improvement of service effectiveness for children, adolescents and adults. The results so far from these community investments have continued to have significant positive impacts. The average daily inpatient census has declined by 5.7% during calendar year 2015 in OMH civil adult and children's Psychiatric Centers. Meanwhile, the OMH community service expansion has increased the number of people served in State-operated community settings in 2015 by 18% compared to the same period four years ago (prior to the OMH Transformation Plan and State-operated outpatient reforms). Most importantly, hundreds of children and adults are now receiving quality and effective care in the community, and no longer have to be separated from families and friends in a Psychiatric Center to help recover from mental illness. [The OMH Transformation Plan website can be accessed by clicking this sentence: OMH Transformation Plan.](#)

Part of OMH's systems transformation is the development of Health and Recovery Plans (HARPs) which are intended to promote significant improvements in the Behavioral Health System as we move into a recovery-based Managed Care delivery model. A recovery model of

care emphasizes and supports a person's potential for recovery by optimizing quality of life and reducing symptoms of mental illness and substance use disorders through empowerment, choice, treatment, educational, employment, housing, and health and well-being goals. Recovery is generally seen in this approach as a personal journey rather than a set outcome, and one that may involve developing hope, a secure base and sense of self, supportive relationships, self-direction, social inclusion, and coping skills.

The Behavioral Health Home and Community Based Services (BH HCBS) provide opportunities for adult Medicaid beneficiaries with mental illness and/or substance use disorders to receive services in their own home or community. Implementation of BH HCBS helps to create an environment where Managed Care Organizations (MCOs), service providers, plan members, families, and government partners help members prevent and manage chronic health conditions and recover from serious mental illness and substance use disorders. From the implementation of Adult BH HCBS, the State has provided detailed training and technical assistance for all stakeholders authorizing, providing and receiving Adult BH HCBS. Training and technical assistance resources can be found on the [OMH website: \(clicking on this sentence brings you to the OMH website\)](#) and on the [Managed Care Technical Assistance Center \(MCTAC\) website: \(clicking on this sentence brings you to the MCTAC website\)](#). The partnership is based on these core principles:

- Person-Centered Care
- Recovery-Oriented
- Integrated
- Data-Driven
- Evidence-Based
- Trauma-Informed
- Peer-Supported
- Culturally Competent
- Flexible and Mobile
- Inclusive of Social Network
- Coordination and Collaboration

The following information provides more detail on the scope of OMH's service system and demonstrates the challenges in achieving system transformation and full compliance with the HCBS Final Rule by March 17, 2023.

## **RESIDENTIAL: OMH HOUSING / ADULT PROGRAMS**

OMH provides development, capital and operating funding to not-for-profit sponsors in order to create opportunities for adults with serious mental illness, and children with serious emotional disturbances, to access a range of affordable housing and related services. OMH also develops its own State-operated housing, both on State psychiatric center grounds and in the community.

The types of housing programs that OMH funds are as follows:

### Treatment Programs

OMH's residential treatment programs are the successors to the community residence programs that were introduced in 1978, primarily as a means of enabling residents of State-operated Psychiatric Centers to transition to community living. These programs are licensed by OMH under Part 595 of the New York Codes, Rules and Regulations, and focus on services to address specific functional and behavioral deficits that prevent residents from functioning

independently in the community. Services are goal oriented and designed to be of limited duration. The types of housing that OMH provides funding to operate include the following:

- **Congregate Treatment:** These programs are operated by either not-for-profit organizations or New York and are often referred to as “group homes.” These are congregate living arrangements, for either adults or children, where staff are on-site 24 hours per day. Programs range in size from 4 to 48 units. Programs of up to 16 units are eligible for Medicaid reimbursement under the Federal Rehabilitation Option. **OMH currently has 314 Congregate Treatment sites that serve 5,666 individuals. These settings are not intended to be compliant with the HCBS Final Rule as they provide restrictive services to individuals with need for a higher level of care/support.**
- **Apartment Treatment:** These programs are for adults and are apartment-based. Resident/staff contacts occur on a flexible schedule, as appropriate to the needs of the resident. **OMH currently has 3,071 Apartment Treatment sites that serve 4,650 individuals.**
- **Community Residence/Single Room Occupancy (CR/SRO):** This program model was introduced in 1990 under the first “New York/New York Agreement.” The CR/SRO living units are usually designed as studio apartment, or as suites with single bedrooms around shared living spaces. **OMH currently has 66 CR/SRO sites that serve 3,432 individuals.**

#### Supportive Housing

Supportive Housing is unlicensed housing in which residents receive assistance with rent and housing-related support services, and in accessing the mental health treatment supports necessary to live successfully in the community. Services are provided on a flexible, as-needed basis. Such housing is usually located in mainstream “generic” apartments in the community but may be in single-site buildings where program design or the cost of single apartments in the area renders such arrangements appropriate. This housing modality was introduced in 1989. Supported Housing programs are governed by OMH’s Supported Housing Implementation Guidelines. These settings are considered private homes and presumed compliant with the HCBS Final Rule. Typically, residents are not in receipt of HCBS. If a resident is referred for HCBS the setting’s compliance will be validated through the assessment and case management process. There are two types of Supported Housing programs:

- **Scattered Site Supportive Housing:** is usually provided in apartments “scattered” over a given area, although there are some single-site apartment programs particularly in urban areas where it is fiscally advantageous to operate such housing. **OMH currently provides funding for 21,008 individuals.**
- **Congregate Supportive /Supported/Single Room Occupancy (SP/SRO):** SP/SRO programs are Supported Housing programs that receive an enhanced level of funding to operate large efficiency apartment programs where staff is on-site 24 hours per day for front desk security. **OMH currently has 256 SP/SRO sites that serve 10,142 individuals.**

#### Family Care

- Family Care homes provide 24- hour residential services in family settings that carefully match resident needs and provider skills in order to offer individually tailored supervision. OMH issues an operating certificate to qualified individuals in the community who agree to offer specified residential services in their own homes to an average of three persons diagnosed with mental illness. **OMH currently has 315 Family Care sites that**

**serv1,206 individuals. These settings are not intended to be compliant with the HCBS Final Rule as they provide restrictive services to individuals with need for a higher level of care/support.**

#### Non-Residential

This section pertains to non-housing/non-residential services known as Adult Behavioral Health Home and Community Based Services, which are authorized under the 1115 Demonstration Waiver.

#### ADULT BEHAVIORAL HEALTH HOME AND COMMUNITY BASED SERVICES (BH HCBS)

These services came into effect on January 1, 2016, after the March 17, 2014 promulgation of the HCBS Final Rule, meaning they were in full compliance from day one in order to provide services and are therefore not included in the site assessment aspect of this transition plan section.

**OMH and OASAS have 124 designated providers of Adult BH HCBS.** These services are largely provided individuals' homes and in community locations, as chosen by the individual receiving services. BH HCBS includes mobile, flexible services that focus on goal-oriented skill development. The menu of services includes habilitation, supported education, and a set of supported employment services. The duration of a given session is typically 1-2 hours and cannot exceed four hours in a single day.

Each designated provider is responsible for reporting any agency sites where BH HCBS are provided and/or where staff are based. As of October 2022, designated providers have identified 336 provider-owned or controlled sites where services may be delivered in office-based settings, when chosen by the individual. Typically, these sites serve as a home base for direct service staff and supervisors, who then go out and provide services in the places where people live, work, learn, and socialize.

## II. SYSTEMIC COMPLIANCE

In order to come into compliance with the HCBS Final Rule systemically, the following tasks were completed:

- Systemic assessment of the rules and regulations governing OMH residential sites was conducted in 2018. [The 2018 Systemic Compliance Chart developed as part of that review can be found on the OMH webpage by clicking this sentence.](#) Note: OMH's SED waiver, found on pages 1-3 of the Systemic Compliance Chart, was moved into the Children's Waiver in April of 2019, and is now overseen by New York State Department of Health (DOH) and described in full in the Children's Waiver section of this Statewide Transition Plan (STP).
- OMH issued updated Supportive Housing Guidelines to unlicensed residential providers on September 30, 2022. The Supportive Housing Guidelines govern all supportive housing providers funded by OMH. [The Supportive Housing guidelines can be found on the OMH webpage by clicking this sentence.](#)
- OMH issued sub-regulatory guidance to licensed residential providers on October 7, 2022. This sub-regulatory guidance pertains to OMH 14 NYCRR Part 595, and the operation of all licensed Apartment Treatment programs and all Community Residence Single Room Occupancy (CR-SRO) programs. [This sub-regulatory guidance includes all](#)

[aspects of the HCBS Final Rule and can be found on OMH's webpage by clicking this sentence.](#)

- BH HCBS Provider Manual was reissued on 09/26/22 to include CMS language related to HCBS Final Rule standards. This Provider Manual is specific to non-residential services and therefore did not include standards that are required for provider owned and controlled residential settings. For example, given the short duration of the services, community-based settings they are delivered, and the focus on skill development and supporting work or school goals in relevant settings, BH HCBS providers are not required to provide access to food or visitors during service delivery, however would not restrict either. [The BH HCBS Provider Manual can be found on OMH's webpage by clicking this sentence.](#)
- OMH further undertook a review of regulations and policies governing adult residential settings to ensure systemic HCBS Final Rule compliance.

### III. SITE VALIDATION

#### SITE REVIEW OF OMH NON RESIDENTIAL SETTINGS

OMH has implemented steps to comply with the Center for Medicaid and Medicare Services (CMS) HCBS Final Rule. (42 CFR 441.301, et. seq). Under the rule, States were required to develop a transition plan for existing HCBS demonstrating how they will ensure that HCBS existing at the time of the promulgation of the regulation would be brought into compliance with the new requirements. Because the implementation of HARP and the inclusion of HCBS in its benefit plan for adults were subsequent to the date of the issuance of the rule, compliance with the new requirements was mandatory from the date of the inception of the program. It is further noted that BH HCBS came into existence after March 1, 2014 and have been compliant with the HCBS Final Rule since implementation. There is no site level assessment, validation, or remediation needed for these sites and services.

#### SITE REVIEW OF OMH RESIDENTIAL SETTINGS

Accordingly, OMH undertook an assessment of the various adult residential programs and options available to individuals with serious mental illness who would otherwise be eligible for HCBS in order to determine which settings were already compliant, and whether and how settings that were non-compliant could be brought into compliance, in order to enable residents of such settings to participate in HCBS.

To accomplish this, OMH began by having adult residential providers complete a HCBS Settings Residential Program Assessment, a provider self-assessment developed based on CMS guidance “Exploratory Questions to Assist States Assessment of Residential Settings.” This assessment allowed OMH to compile baseline data that was used to assist OMH in determining which sites were compliant, and which sites required remediation to achieve full compliance. The provider self-assessment assisted OMH to:

- Inventory OMH’s current residential settings
  - Identify specific sites for heightened scrutiny (now non eligible settings)
  - Develop and implement compliance plans for non-compliant sites
  - Collect and verify evidence of settings compliance
- The final submission from Apartment Treatment, CR-SROs, and SP-SROs programs to OMH included:
- HCBS Residential Settings provider self-assessment for each site
  - Attestation signed by the provider’s Executive Director

- Additional supporting evidence such as maps, pictures of setting and/or other information
- List of non-compliant sites owned/operated by the provider
- An OMH Corrective Action Work Plan, if required, via the electronic assessment or OMH

When completing the assessment:

- Providers established a team of appropriate staff to complete the assessment.
- Providers had their Executive Director sign and submit the attestation form with their site specific assessment to OMH.
- Providers included additional supporting evidence where needed such as maps, pictures of the setting and/or other information that provides strong evidence the setting is a community-based setting.

OMH pre-determined the following as settings automatically non-compliant with the HCBS Final Rule. These sites were NOT required to complete an assessment and were therefore not submitted for heightened scrutiny:

- OMH Licensed Congregate Treatment Sites (Community Residences)
- Family Care Programs
- Owned and/or operated sites located on the grounds of or adjacent to a psychiatric institution

Based upon the standards set forth by the federal regulation, OMH determined that the following OMH funded settings were in need of further review for compliance and must complete a HCBS Settings Residential Program Assessment for each housing site:

- Apartment Treatment Programs
- Community Residence Single Room Occupancy Programs (CR-SRO)
- Supportive Single Residence Occupancy Programs (SP-SRO)
- Supportive Scattered-Site Housing

Please note: Supportive Scattered-Site Housing programs were initially required to complete an assessment for each program. However, upon further review it was determined that these sites should not be included in the review of OMH's residential system. Supportive Scattered-Site Housing programs provide a rental stipend for individuals to rent market-rate apartments, with limited services to help maintain housing stability. Individuals in these programs hold a lease or sub-lease and receive the protections of landlord tenant laws. These sites are have all the characteristics of private homes and will be reviewed as such if an individual is referred for HCBS.

In order to validate the provider self-assessments OMH staff conducted onsite validation visits. OMH determined 324 site visits would represent a statistically significant sample of the 2,076 sites to be assessed (see assessment results in Remediation section below for more info). To account for any margin of error, we conducted visits to 408 sites, completed in October 2022. Staff used a validation tool developed based on CMS guidance "Exploratory Questions to Assist States Assessment of Residential Settings," as with the provider-self assessment. All sites visited were found to be in compliance.

## **TRAININGS & OMH STATE OFFICE CONTACT INFORMATION**

A series of trainings were available through the [Managed Care Technical Assistance Center: \(clicking this sentence brings you to the MCTAC website\)](#) and the [OMH Website: \(clicking this sentence brings you to the OMH website\)](#) regarding the HCBS Final Rule to assist providers in completing the assessment. Trainings targeting agency executives and residential program directors were provided in 2016 and are archived and made readily available to applicable providers. In addition, OMH has set up an email mailbox which is specifically designated to questions and concerns regarding HCBS Final Rule compliance and integration. The email address is [hcbs-residential@omh.ny.gov](mailto:hcbs-residential@omh.ny.gov).

In 2021 and 2022, OMH offered technical assistance to providers via phone, email, and video conference to help them develop and implement remediation plans to come into compliance with the HCBS Final Rule.

The following table indicates all setting types and their level of compliance with the HCBS Final Rule.



**Table 1: HCBS Settings**

Setting Type	Total Number of Settings	Fully compliant with the federal HCBS requirements	Could come into full compliance with modifications	Cannot comply with the federal HCBS requirements	Are presumptively institutional in nature
<p>1) Name of Setting(s):  Apartment Treatment Sites. Location: Market-rate apartments fully integrated in community.</p> <p>2) HCBS: While most of these settings have no recipients of HCBS living in them it is possible that Adult Behavioral Health (BH) HCBS, or any other NY HCBS could be provided incidentally, as needed.</p>	3071	1583	1,484	0	4 <sup>1</sup>
<p>1) Setting:  Community Residence/ Single Room Occupancy (CR-SRO), Location: Congregate sites integrated in the community, most are individual studio or efficiency apartments with common spaces shared with other residents. Most programs exclusively house those with</p>	66	11	48	0	7 <sup>2</sup>

1 The four individuals at non-compliant sites are receiving rehabilitative supports and services (non-HCBS) that meet their needs and thus do not require additional HCBS services. If they require HCBS in the future, they will be transitioned to compliant settings in advance.

2 The seven individuals at non-compliant sites are receiving rehabilitative supports and services (non-HCBS) that meet their needs and thus do not require additional HCBS services. If they require HCBS in the future, they will be transitioned to compliant settings in advance.

<p>Serious Mental Illness but some are mixed use.</p> <p>2) HCBS: While most of these settings have no recipients of HCBS living in them, Adult Behavioral Health (BH) HCBS, or any other NY HCBS could be provided incidentally, as needed.</p>					
<p>1) Name of Setting</p> <p>OMH and OASAS Providers of Adult Behavioral Health HCBS</p> <p>HCBS: Habilitation, Supported Education and Supported Employment Services (1-2 hours per session, cannot exceed 4 hrs per day)</p>	124	124	0	0	0
<p>1) Setting:</p> <p>Congregate Support/ Supported/ Single Room Occupancy (SP/SRO)</p> <p>Location: Congregate mixed-use buildings where individuals have their own lease and own apartment. Units for individuals with disabilities are fully integrated in the building among apartments for individuals without disabilities. There are a handful of NYC</p>	256	179	77	0	0

programs that are exclusively for those with disabilities, but the building itself is fully integrated in the community.

2) HCBS: While most of these settings have no recipients of HCBS living in them it is possible that Adult Behavioral Health (BH) HCBS, or any other NY HCBS could be provided incidentally, as needed.

## IV. REMEDIATION

Residential settings that did not meet HCBS settings standards at the time of the provider self-assessment were required to develop a Corrective Action Work Plan outlining how the setting would achieve HCBS Final Rule compliance. Once submitting the initial assessment, providers were automatically given a list of flagged areas of non-compliance via the electronic review tool. Using this list, providers composed a Corrective Action Work Plan to demonstrate steps to resolve all flagged issues. The plan was initially submitted to OMH with the final submission of the provider self-assessment.

In February through October of 2022, OMH met with every program that was initially determined to be non-compliant as a result of the provider self-assessment. OMH reviewed Corrective Action Work Plans to ensure they were successful in achieving compliance. The biggest area that required remediation was access to visitors of their choosing at any time. The other areas that generated flags on the assessment tool largely required clarification, not remediation. For example, we asked about residents having a checking/savings account or other means to control their own funds. Many sites responded in the negative because residents did not have bank accounts, but further clarification that funds were controlled by the client and not the program irrespective of a bank account allowed us to confirm compliance. We also asked about sites being accessible to the residents, which generated negative responses because it was interpreted to mean every site needed to meet Accessibility requirements. When we clarified that the program must ensure sites met the accessibility needs of the specific individuals residing in them, we were able to resolve those flags without remediation.

OMH provided technical assistance to programs that had not yet developed appropriate plans for issues that required remediation. Finally, via review of residency agreements, policies and procedures, and any other relevant documentation, OMH ensured remediation had occurred via the effective implementation of Corrective Action Work Plans. Both OMH Central Office and designated field offices will have copies of the site's completed assessment and Corrective Action Work Plan for monitoring purposes and to make certain goals identified in the plan continue to be met.

### ASSESSMENT RESULTS

As of February 2022, the following number of sites that had completed self-assessments remained operational, and thus the self-assessments were validated:

- Apartment Treatment: 1,888 sites
- CR-SROs: 56 sites
- SP-SROs: 132 sites

As noted above, OMH met with all of the programs that contained sites that were not immediately compliant based on the self-assessment, to ensure the development of an appropriate Corrective Action Work Plan. OMH then reviewed implementation of the Corrective Action Work Plan to ensure providers came into compliance with the rule. Once review of Corrective Action Work Plans was complete, OMH conducted site visits to a statistically significant sample of sites to verify compliance (see next section for more information).

Based on the review of the provider self-assessments and implemented Corrective Action Work Plans, and sites that came online after the implementation of the HCBS Final Rule for which transition was not an option, OMH determined that 3,506 of the 3,517 sites are in compliance with the HCBS Final Rule at this time. It was determined that seven sites (7 CR-SROs and 4 Apartment Treatment sites) could not come into compliance. These eleven sites are all located on the grounds of a psychiatric institution and as such, OMH determined that individuals receiving HCBS may not reside in these settings. These individuals receive non-HCBS services that meet their needs..

Review of the provider self-assessments and implementation of Corrective Action Work Plans was completed in August 2022.

Additional Settings Came Online after HCBS Final Rule was in effect. As such, the following sites, as of October 2022, are also operating:

Apartment treatment settings: 1183  
CR-SRO: 66  
SP-SRO: 124  
Adult BH HCBS: 124

OMH field offices will incorporate HCBS standards into annual program and site performance reviews, further details of which can be found in the Ongoing Monitoring section below.

## **V. METHODS TO ADDRESS PROVIDER SELF-ASSESSMENT DISCREPANCIES**

To confirm compliance with the settings standards and identify and address any discrepancies with provider self-assessments, OMH conducted onsite visits to a statistically significant sample of sites. This sample included both sites that submitted Corrective Action Work Plans and sites that were found to be compliant at the time of the provider self-assessment. The visits were conducted in all geographic regions of the State and are roughly proportional to the site types that completed self-assessments.

## **VI. HEIGHTENED SCRUTINY**

OMH pre-determined some settings to be non-compliant, meaning ineligible for HCBS, due to the regulations governing these programs and program rules that are in direct conflict with some of the HCBS Final Rule. These programs include Community Residences, Family Care Programs, and programs adjacent to or on the grounds of a psychiatric institution. OMH is confirming that Community Residence, Family Care programs, and programs adjacent to or on the grounds of a psychiatric institution are not now and will not be settings included in the HCBS delivery system. OMH does not intend to remediate these settings pursuant to HCBS Final Rule compliance.

Through review of provider self-assessments, review of remediation plans, and onsite validation visits, OMH determined that all other sites are compliant with the HCBS Final Rule and there were no prong three settings, or settings that serve to isolate. No sites are being submitted by OMH for Heightened Scrutiny.

## **VII. ONGOING MONITORING AND QUALITY ASSURANCE**

### **OMH HOUSING & RESIDENTIAL**

OMH has a robust monitoring and quality assurance process conducted by our field offices located across the state. OMH has five field offices in the following regions: Long Island, New York City, Hudson River, Central New York, and Western New York. Licensed programs (Apartment Treatment and CR-SROs) receive a site visit at least once every three years, and unlicensed residential programs (SP-SROs) receive a site visit at least once every five years. In between site visits, ongoing monitoring and technical assistance occurs.

OMH field offices will be provided with the HCBS review tool, developed based on CMS guidance “Exploratory Questions to Assist States in Their Assessment of Residential Settings” and will be incorporating it into monitoring visits effective January 1, 2023. Any areas that OMH staff find to be non-compliant will require a Corrective Action Work Plan and follow a remediation process that is similar to what was described above.

Please see below for information on how private homes and person-centered plans of care are monitored.

### **NON-RESIDENTIAL: ADULT BH HCBS**

BH HCBS designated providers are designated by both OMH and Office of Addiction Services and Supports (OASAS); once designated, providers are assigned a State Host Agency which is responsible for ongoing monitoring and quality assurance. OMH and OASAS use the BH HCBS Service Standards, conducting reviews at least every 36 months for all providers. This process involves an administrative review, chart reviews, and staff and client interviews to ensure compliance with state and federal standards. At OMH, this process is conducted by the Field Office Managed Care staff; at OASAS, this process is conducted by Central Office in coordination with their regional offices. BH HCBS Service Standards were reissued on October 18, 2022. This tool is used in the routine oversight and monitoring of BH HCBS providers and has been updated to explicitly include HCBS standards (see Service Standard 5.1).

The chart review and interviews place specific emphasis on reviewing person-centered planning by the BH HCBS provider in the development of their Individual Service Plan (ISP).

As part of the person-centered planning process, the Health Home Care Manager is responsible for ensuring that the individual has chosen to live in their current residence (as documented on the Plan of Care, elsewhere referred to as the Person-Centered Service Plan (PCSP)). If an individual has not chosen their residential setting, the Care Manager must support the individual with identifying a plan to move to the setting of their choice.

It is noted that the Department of Health (DOH) designates Health Homes; ongoing monitoring for the BH HCBS Plan of Care and person-centered planning falls under their oversight process.

### **HEALTH HOME CARE MANAGEMENT AND ADULT BH HCBS**

Within the BH HCBS the Health Home is the care management service model whereby all of an individual's caregivers communicate with one another so that all of an individual's needs are addressed in a comprehensive manner. This is done primarily through a Care Manager who oversees and provides access to all of the services an individual needs. Health records are shared among providers so that services are not duplicated or neglected. Health Home services are provided through a network of organizations – providers, health plans and community-based

organizations. When all the services are considered collectively they become a virtual "Health Home."

The "Health Home Standards and Requirements for Health Homes, Care Management Providers and Managed Care Organizations" requires Health Homes to prepare Plans of Care for members receiving BH HCBS that meet the requirements in this checklist, offer choice of providers, and document choice in the Plan of Care. See D. 6 and also B.13 at: [clicking this sentence brings you to the Health Home Standards and Requirements for Health Homes, Care Management Providers and Managed Care Organizations on the OMH webpage.](#)

Health Home care managers are responsible for creating the person-centered Plans of Care for BH HCBS. MCOs are responsible for the review and approval of the Plans of Care, including ensuring that Plans of Care contain the elements in the checklist and meet all of requirements per the "Health Home Standards and Requirements..." document.

In addition, the Medicaid Managed Care Model Contract revisions for the behavioral health transition to managed care, currently under CMS review, contain provisions requiring the MCO to ensure that a person-centered Plan of Care is developed. The Plan of Care must be consistent with the requirements set forth in the "Health Home Standards and Requirements..." document and must reflect the individuals' preferences for services and providers. Contract language must also reflect MCO policies and procedures to monitor the implementation of the Plan of Care.

To ensure HARP members and HARP-Eligible HIV SNP members who are not currently enrolled in a Health Home are given the opportunity to access Adult BH HCBS, the State has established Recovery Coordination Agencies (RCAs), who are Health Home affiliated and charged with complying with the same federal rules as the individuals who are health home enrolled: [\(clicking this sentence brings you to the RCA guidance document on the OMH webpage\)](#). All individuals enrolled in Adult BH HCBS have either a care manager or recovery coordinator. These entities are responsible for maintaining the person-centered Plan of Care and monitoring of private homes.

## **VIII. CURRENT STATUS OF WAIVERS**

- Serious Emotional Disturbances (SED) Waiver moved to Children's Waiver in April 2019 and is now overseen by DOH
- No other changes to waivers occurred since last STP was submitted

## **IX. NON-DISABILITY SPECIFIC SETTINGS**

### **OMH RESIDENTIAL/ HOUSING**

OMH residential programs, by design are community integrated. Individuals are able to access the community to the same level as individuals in private homes. Staff in these programs assist in linking individuals with fully integrated community resources and service providers. The majority of residential sites licensed or funded by OMH are in non-disability specific settings. OMH ensures expansion of housing occurs in non-disability specific settings, and also continuously explores opportunities to redesign existing disability-specific residential settings to more integrated settings.

## **NON-RESIDENTIAL/ BH HCBS**

BH HCBS are focused on community integration and inclusion. As such, these services are provided in locations chosen by the individual, in the places where they live, work, learn, and socialize. Direct service staff may meet with individuals in their homes, at local parks or libraries, or at their schools and workplaces, consistent with the individual's goals. Services may also be provided via telehealth, as appropriate and based on individual choice.

## **X. STRATEGY FOR ASSISTING PARTICIPANTS LIVING IN NON-COMPLIANT SETTINGS**

All of the programs that were determined non-compliant (see above) are licensed settings. OMH's licensed programs are, by nature, designed as transitional residential programs where individuals will learn the skills to live more independently. Therefore, there is always the expectation that residents will transition from these more structured settings to more independent settings. Residents requiring the level of care provided in a Community Residence must meet medical necessity standards and be authorized by a physician to receive the services provided by the Community Residence.

Individuals in these non-compliant settings are not receiving HCBS services. They are receiving other rehabilitative services designed to assist residents in achieving life goals and transitioning into the least restrictive setting appropriate to their needs and wants. All of this is done using a person-centered planning process.

## **XI. STP UPDATES**

The updates that were made to the prior version of OMH's transition plan document were as follows:

- Introduction and overview of OMH's Service System was updated
- The document format and headers were aligned with the NY HCBS STP 2022 Update Outline
- Validation of provider self-assessment surveys across all setting types: completed August 2022
- Issuance of updated Supportive Housing Guidelines containing all components of the settings rule: September 30, 2022
- Issuance of updated sub-regulatory guidance containing all components of the settings rule: October 7, 2022
- Completion of statistically significant sample of onsite visits for validation of provider self-assessment surveys: October 28, 2022
- Implementation of ongoing monitoring and quality assurance practices: November 1, 2022

## **XII. BENEFICIARY RECOURSE**

OMH residential providers across all setting types are required to have a grievance process. They are required to notify all residents of their rights and the program's grievance process



upon admission and at least once annually. OMH ensures these practices are in place and that grievances have been resolved appropriately during ongoing monitoring.

OMH also operates a customer relations line to receive and address complaints. OMH requires that providers must inform residents of the opportunity to contact OMH with complaints or concerns. Contact information for the OMH field offices and the customer relations line can be found at: [Clicking on this sentence brings you the complaints information page on the OMH webpage, Contact OMH \(ny.gov\)](#).

# OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES (OPWDD) HCBS SETTINGS TRANSITION PLAN

## I. INTRODUCTION

The Office for People with Developmental Disabilities (OPWDD) submits this amended transition plan section, as required by the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) Final Rule, updated as of October 2022.

OPWDD has developed a large, complex, and statewide network of community living and day services, including community residences, individually controlled residential supports, provider managed day services, and self-directed options. The initiation of OPWDD's Comprehensive HCBS Waiver in 1991 was the foundation that propelled tremendous growth in community-based service options and enabled the system to develop capacity to serve people in their own homes in the community. OPWDD's history demonstrates the agency's commitment to the delivery of HCBS and achieving the vision of the Americans with Disabilities Act (ADA), the Olmstead decision and, more recently, the HCBS Final Rule requirements.

The purpose here is to describe how OPWDD is bringing its Medicaid HCBS and supports into compliance with the 2014 CMS-issued Department of Health & Human Services requirements for home and community-based settings. OPWDD began the assessment process of OPWDD settings in 2014 as OPWDD recognized that all OPWDD settings would require some form of remediation. Results of our initial systemic assessments are included below under Site Validation.

### Stakeholder Engagement

Upon the promulgation of the HCBS Final Rule in 2014, OPWDD immediately began a structured process to capture the perspectives and insights of multiple knowledgeable and active stakeholders who have spent much of their lives building or being served by the current system of community services and supports that enrich the lives of individuals with intellectual and developmental disabilities in New York. While they offer many varied perspectives, they are united in their purpose: to protect the system of community-based services and supports and the individuals who are served.

OPWDD has a long history of engaging stakeholders in multiple ways. Stakeholder engagement is a foundational methodological step in developing and implementing effective compliance strategies. This structured process informed the design of OPWDD's initial review of its policies and practices; how person-centeredness in residential settings is assessed; clarified regulatory and financing issues, identified vulnerabilities, and forged a path for implementing OPWDD's transition plan.

This stakeholder engagement also provided an opportunity to educate valued and diverse constituents and train different organizations, staff, and advocates about the elements within, and value of, achieving an approved Plan for the OPWDD's HCBS settings and services. OPWDD formed an advisory group to guide OPWDD's transition as well as the Heightened Scrutiny Stakeholder Subgroup and the Day Settings Subgroup. Each workgroup was comprised of individuals who receive services, parents and other advocates, providers, and representatives from other groups such as the Self Advocacy Association of New York State (SANYS) and Parent to Parent.

OPWDD has continued HCBS Final Rule transition efforts through the current Public Health Emergency (PHE), which as of this date is still in effect. The impact of the PHE and COVID-19 can be felt throughout the OPWDD service system, on the communities in which people receiving HCBS and their families live and work, on the approximately 500 not-for-profit HCBS service providers and on our state-operated service system. Later in this plan, OPWDD outlines HCBS Final Rule standards that have been impacted by the PHE and COVID-19 and our plans to support our service system to move to full compliance after the end of the PHE.

Through the development of the OPWDD Statewide Comprehensive 2023-2027 Strategic Plan, OPWDD is continuing its stakeholder engagement through a variety of activities. Stakeholders offered verbal and written comments on a variety of topics, including housing options for individuals, and supporting person-centered choices. During five regional public forums, held in May and June of 2021, OPWDD heard from over 100 participants. Common themes expressed included the need for more staff and increased wages for direct support professionals (DSPs); more flexibility in the provision of services; expanded housing options; use of data to inform decision-making; improved supports for those with the most complex needs; and improved crisis services. In addition to the public forums, OPWDD also held meetings with representatives of 26 stakeholder groups including self-advocacy groups, family organizations, provider organizations,

Developmental Disability Councils, with particular attention to expanding engagement with under-represented groups. The themes that characterized these discussions were consistent with those identified during the public forums, but also included the need for improved access to services for under-represented groups, including language access and culturally responsive services and the need for improved collaboration across state agencies, expanded innovations in technology and meaningful stakeholder participation in decision-making. People with disabilities from culturally and linguistically diverse families and communities commonly face additional barriers to accessing supports and services, resulting in increased health disparities. OPWDD recognizes this and is committed to prioritizing equitable access to services and supports for all New Yorkers with developmental disabilities.

As a result of regional public forums in May and June of 2021, written testimony was provided by more than 218 stakeholders, 163 of whom did not participate in any of the public forums or submit comments as part of a formal stakeholder group. The top priorities of these stakeholders included addressing the workforce crisis and improving housing supports, self-direction and care management. Common themes among self-advocates included the desire to be listened to and respected, calls for investments in technology and accessible housing, and the continuation of virtual programming. Family members had many of the same concerns in addition to the need to improve self-direction and provide supports for people with complex needs. Primary concerns for providers were related to workforce, flexibility in service delivery and regulatory relief. [The OPWDD Statewide Comprehensive 2023-2027 Strategic Plan, also known as the 507 Plan, can be viewed on the OPWDD webpage by clicking here.](#)

To provide context, the following 17 services are offered to participants through OPWDD HCBS Waiver services as reflected in the most recent OPWDD HCBS Waiver. [The most recent OPWDD Home and Community Based Services Waiver can be viewed on the OPWDD webpage by clicking here.](#)

- Residential Habilitation
- Day Habilitation
- Community Habilitation
- Supported Employment
- Pathway to Employment

- Prevocational Services
- Intensive Behavioral Services
- Respite
- Assistive Technology
- Environmental Modifications
- Vehicle Modifications
- Live-in-Caregiver
- Community Transition Services
- Individual Directed Goods and Services
- Family Education and Training
- Fiscal Intermediary Services
- Support Brokerage

The settings in which HCBS Waiver services can be offered, depending upon the specifications for each Waiver service, include:

- Integrated community settings
- Peoples' own home and apartments or the home of a relative or friend
- In certified group homes, including Individualized Residential Alternatives (IRAs) and Community Residences (CRs)
- Certified Family Care Homes (FCH)
- Certified day habilitation and prevocational settings

## II. SYSTEMIC COMPLIANCE

### Regulatory Compliance

The Division of Policy and Program Development (DPPD), in conjunction with OPWDD's Counsel's Office, engaged in a comprehensive assessment of OPWDD regulatory compliance with HCBS Final Rule. As a result, OPWDD promulgated or amended regulations, found in Title 14 of the New York Codes, Rules and Regulations (NYCRR) as summarized below. All regulations or amendments are currently in effect and are applicable to all OPWDD HCBS waiver services and applicable as required to Care Management services provided through Care Coordination Organizations (CCOs). Links to all OPWDD regulatory changes or updates can be viewed in greater detail on the OPWDD Systemic Compliance Chart. [The complete OPWDD Systemic Compliance Chart, which represents our 2018 systemic assessment results, can be viewed on the OPWDD webpage.](#) A summary of the regulations are as follows:

- OPWDD promulgated 14 NYCRR- 636-1, Person-Centered Planning. These regulations govern person-centered planning requirements and were effective as of November 1, 2015. The [14 NYCRR- 636-1, Person-Centered Planning regulations can be viewed on the OPWDD webpage.](#)
- OPWDD promulgated 14 NYCRR 636-2, Home and Community Based Services and Settings requirements. These regulations govern HCBS general requirements for all settings providing HCBS and were effective as of October 1, 2021. [The 14 NYCRR 636-2, Home and Community Based Services and Settings requirements can be viewed on the OPWDD webpage.](#)
- OPWDD made two changes to 14 NYCRR 633, to include language on documentation of rights modifications and all are in effect as of October 1, 2021. These regulations govern protections for people receiving services. [The changes to 14 NYCRR 633](#)

[regulations on Protection of Individuals Receiving Services in facilities and Services Operated and/or Certified by OPWDD can be viewed on the OPWDD webpage.](#)

- OPWDD made changes effective November 1, 2015, to 14 NYCRR 635, to include HCBS Final Rule rights and language governing the individualized service environment defining the Individualized Service Plan. [The changes to 14 NYCRR 635 can be viewed on the OPWDD webpage.](#)
- OPWDD made changes to 14 NYCRR 686, to include HCBS Final Rule rights and language governing the individualized service environment defining the Individualized Service Plan and were in effect as of November 1, 2015. These regulations govern the operations of community residences, such as IRAs. [The 14 NYCRR 686 regulations on the Operation of Community Residences can be viewed on the OPWDD webpage.](#)

### III. SITE VALIDATION

#### Initial Assessment of Settings

Starting in 2014, OPWDD began a multi-year initial assessment process of certified settings to determine site level compliance and the need for remediation that included technical assistance and training to providers of HCBS. Based on this assessment, OPWDD found that all certified residential service categories, IRAs, and Family Care Homes, required remediation of some form due to the nature of new requirements. OPWDD found that while certified day services, Day Habilitation, Site Based Prevocational Services were at a high level of compliance they would benefit from HCBS training and remediation activities similar to other settings.

As noted by CMS, private homes are presumed compliant but are included in on-going monitoring activities by OPWDD Division of Quality Improvement (DQI). In addition, all OPWDD employment services are community-based, integrated, individualized, and presumed compliant but are also included in on-going monitoring activities by OPWDD DQI.

Initial Assessment Data is summarized below on Table 1, OPWDD Initial Site Level assessment Data. It must be noted that at the time of the completion of initial assessments for IRAs and Day Habilitation settings, OPWDD was using criteria based on our initial interpretation of HCBS standards that all settings adjacent to former public institutions and all settings that converted from an Intermediate Care Facility (ICF) to an IRA after March 2014, were to be subject to Heightened Scrutiny. OPWDD no longer uses this second criterion to determine Heightened Scrutiny status, therefore the projections noted below in this initial assessment data are overestimated. Despite these factors, OPWDD used the site assessment data to develop robust remediation activities.

**Table 1: OPWDD Initial Site Assessment Data**

<b>Setting Type</b>	<b>Type of Assessment and Validation Method</b>	<b>Total Number of Settings Assessed</b>	<b>Number of Settings that Were Compliant</b>	<b>Number of Settings that are Not Compliant but will be by March 17, 2023</b>	<b>Number of Settings that Cannot Comply</b>	<b>Number of Settings that may be Subject to Heightened Scrutiny that Have or Will Comply by March 17, 2023</b>
IRAs	2017 (update of 2014-2016 data)- OPWDD DQI conducted random site-based reviews and utilized assessment tools based on CMS Exploratory Questions, in 2014-2016, 2017 OPWDD DQI updated data and utilized the Site Review Protocol, Validated by DQI Survey staff	6,166	5,672	251  (Does not include Heightened Scrutiny projection)	0	243  (Included former ICFs and settings adjacent to former public institutions)

Day Habilitation	2016-17- OPWDD DQI utilized the Site Review Protocol, Validated by DQI Survey staff	727	712	15	0	0 (Note that future site assessment determined some settings subject to Heightened Scrutiny)
Site-Based Prevocational Settings	2018 through 2022- DQI utilized the Site Review Protocol, Validated by DQI Survey staff	21	21	0	0	0
Family Care	2018- OPWDD assessed Family Care Homes utilizing a survey based on the CMS Exploratory Questions that were validated completed by Family Care Staff.	1001	1001	0	0	0

All OPWDD settings have had an assessment of all HCBS setting criteria/requirements using OPWDD protocols. OPWDD continues the HCBS compliance assurances begun in 2016, through the DQI survey validation process. Site validation data is summarized below on Table 2, Site-Based Assessment Data, and reflects OPWDD site review data and validation for required settings. The review of all HCBS settings criteria remains an annual part of the comprehensive OPWDD DQI survey process using DQI review protocols that include all HCBS settings standards. Of note, DQI is conducting interviews with individuals receiving services, as well as their family members/advocates as part of OPWDD's site validation activities and ongoing monitoring for HCBS Final Rule compliance. Interviews with individuals are conducted as part of OPWDD's Site Review Protocol and Person-Centered Review Protocols. All interviews conducted with individuals routinely focus on satisfaction, rights, choices, preferences, autonomy, and outcomes in a person-centered way.

For certified IRAs, Day Habilitation settings, and Site-Based Prevocational services, the data in the table below (site specific assessment results) is based on the results of the most recent full site survey using the DQI Site Protocol. Assessments of all settings have been completed. For Settings where an HCBS requirement was assessed to be deficient, an acceptable plan of correction action was required to be submitted to OPWDD. All settings subject to this requirement have submitted an acceptable plan of corrective action to OPWDD, and OPWDD is in the process of validating, or confirming the implementation of those plans, on a schedule to be completed by March 17, 2023. OPWDD feels confident based on validation findings thus far that these actions, and the engagement with agencies to ensure implementation of corrections, will result in all settings' compliance with all HCBS setting criteria (with exclusion of the CAPs items) by March 17, 2023. Site assessments and validation of Family Care Homes is complete and was conducted by OPWDD Developmental Disabilities State Operations Offices staff.

OPWDD's request for Corrective Action Plans (CAP) due to the impact of the PHE and in accordance with guidance from CMS, is noted later in this Transition Plan. All OPWDD HCBS settings will be fully compliant with the following standards by March 17, 2023:

- Privacy, dignity, respect, and freedom from coercion and restraint; and
- Control of personal resources.

In addition, all OPWDD HCBS provider-owned and controlled residential settings, such as IRAs, will be fully compliant with the following standards by March 17, 2023:

- A lease or other legally enforceable agreement providing similar protections;
- Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit;
- Access to food at any time;
- Access to visitors at any time;
- Physical accessibility; and
- Person-centered service plan documentation of modifications to relevant regulatory criteria.

The above activities are completed to ensure compliance of OPWDD settings by March 17, 2023. However, this is not a singular activity. Through annual implementation of the OPWDD protocols, OPWDD will perpetuate evaluation of compliance with all HCBS settings criteria to facilitate and ensure that settings remain in compliance.



**Table 2: Site Based Assessment Data -Validation Step**

<b>Setting Type</b>	<b>Type of Assessment and Validation Method</b>	<b>Total Number of Settings Assessed</b>	<b>Number of Settings that Were Compliant</b>	<b>Number of Non-Isolating Settings that are Not Compliant but will be by March 17, 2023</b>	<b>Number of Settings that Cannot Comply</b>	<b>Number of Settings that are Subject to Heightened Scrutiny that Have or Will Comply by March 17, 2023</b>
<b>IRAs</b>	DQI Site Review Protocol Validated by DQI Survey staff 10/1/2018-9/22/22 DQI survey data	6,307	5,631	612	0	64
<b>Day Habilitation</b>	DQI Site Review Protocol Validated by DQI Survey Staff 10/1/2018-9/22/22 DQI survey data	794	734	47	0	13
<b>Site-Based Pre-vocational Services</b>	DQI Site Review Protocol Validated by DQI Survey Staff 10/1/2018-9/22/22 DQI survey data	19	19	0	0	0
<b>Family Care Homes</b>	Assessment based on DQI Site Review Protocol Validated by DDSCO Staff	1001	1001	0	0	0

The below table indicates all setting types and their level of compliance with the HCBS Final Rule.

<b>Table 3: HCBS Settings</b>					
<b>Setting Type</b>	<b>Total Number of Settings<sup>1</sup></b>	<b>Fully Compliant with the Federal HCBS Requirements<sup>2</sup></b>	<b>Could Come Into Full Compliance with Modifications<sup>3</sup></b>	<b>Cannot Comply with the Federal HCBS Requirements</b>	<b>Are Presumptively Institutional in Nature</b>
Individualized Residential Alternatives (IRAs)	6,307	6,236	7	0	64
Supervised IRAs 1- 8 beds	4,219	4,178	2	0	39
Supervised IRAs- 9- 14 beds	832	802	5	0	25
Supportive IRAs	1,256	1,256	0	0	0
Day Habilitation	793	779	2	0	12
Site- based Pre-Vocational Services	18	18	0	0	0
Family Care Homes	1,001	1,001	0	0	0
Individual Private Homes	N/A <sup>4</sup>	0	0	0	0

<sup>1</sup> 6,307 in this column includes the next two columns combined and is based upon surveys completed in advance of the July 2021 CMS expectation that States determine the settings that may isolate individuals from the broader community and to establish those sites subject to a heightened scrutiny review.

<sup>2</sup> Settings where an HCBS requirement was assessed to be deficient, were required to submit an acceptable plan of corrective action. OPWDD has validated that every setting required to submit a plan of corrective action, has provided an acceptable plan to OPWDD. OPWDD staff confirmed the implementation/validation of those plans, including site visits, documentation review, and interviews, by March 17, 2023

<sup>3</sup> OPWDD estimates that 56% of certified Residential and Day service providers may not be meeting post-COVID expectations for community integration as the PHE significantly affected all aspects of community inclusion including, but not limited to, transportation, staffing, and reopening (without restrictions) of community businesses and events.

<sup>4</sup> OPWDD presumes that private homes, that are not provider owned or controlled, are the least restrictive setting available and are also presumed to be chosen by the person receiving Home and Community Based Services (HCBS). OPWDD's quality oversight process begins with the person-centered planning process coordinated by the Care Manager and continues with on-going monitoring using tools that include HCBS Settings requirements, care plans that include specific focus on the person's home and the collection of CMS's Health Related Social Needs (HRSN) Screening Tool data that is shared with the State via an on-going data exchange. The goal of ongoing monitoring is to ensure that people who receive HCBS are part of their community and making the same life choices as those not receiving HCBS. On-going monitoring and the OPWDD incident management function may identify issues that will be addressed through established investigative teams such as Adult Protective Services, Provider Certification and Compliance, or Quality Improvement.

## IV. REMEDIATION

Using the results of the systemic assessment process, OPWDD embarked on a comprehensive program of remediation. Because OPWDD began training providers in 2014 OPWDD HCBS Settings developed a high level of HCBS Final Rule compliance early in the transition to full compliance. The remediation efforts are summarized below but here are a few of the initiatives:

- OPWDD partnered with The Council on Quality and Leadership (CQL) to offer Personal Outcome Measure (POMs) Work Shops to OPWDD state operations staff, OPWDD DQI surveyors, and to staff with OPWDD voluntary providers. As of October 2017, 726 OPWDD staff from all areas of the state, engaging in all aspects of service provision and/or administration, were trained in CQL POMs. In addition, over 2600 staff from voluntary providers also benefited from this training.
- OPWDD developed, in conjunction with a stakeholder work group that included people receiving services, a Rights Card to make people receiving services, their families, and providers, aware of rights and to assist with starting conversations and person-centered planning. [The Rights Card can be viewed on the OPWDD webpage.](#)
- OPWDD's DQI Survey Protocols were re-designed to include all HCBS Settings standards, with the first updated protocol implemented in 2016. OPWDD providers received training on these Protocols as well as on HCBS Settings compliance during regularly scheduled Bi-Annual DQI provider training.
- OPWDD developed a video series titled "Transitions" depicting stories of community transition and the profound positive changes that community living makes in the lives of people with developmental disabilities and the lives of the people around them. The video segments portray, through personal stories, the successful transition of individuals receiving OPWDD services from segregated, institutional settings to integrated, community-based opportunities. The stories focus on their living situations, workplace, daily activities, relationships, and how OPWDD supports, and services are assisting them with their move to the community. [The Transitions Video Series can be viewed on the OPWDD webpage.](#)
- OPWDD providers and all HCBS providers in New York state continue to benefit from the DOH Person-Centered Planning On-Line Resource Library which provides a diverse and user-friendly collection of person-centered planning resources and tools. [The PCP Online Resource Library can be viewed on the DOH webpage.](#)

### Site Specific Remediation Process

Remediation is an integral component of OPWDD's systemic and comprehensive survey process. The survey process includes the remediation of any standards found not met during site surveys and during the completion of the Person-Centered and Agency Review Protocols.

The data for IRAs, Day Habilitation and Site-Based Prevocational services is based on the results of the most recent full site surveys completed by DQI utilizing the Site Review Protocol from 10/2018 to the 9/2022.

Beginning in 2016, OPWDD has conducted on-site reviews using protocols that include HCBS Final Rule standards. OPWDD survey activities were suspended in 3/2020 during the PHE and routine survey activities resumed in 4/2021.

The identification of site level compliance is achieved through evaluation of the DQI protocol data collected each survey year. The focus of the analysis of survey data is to identify any patterns or trends found non-compliant in the core areas included in HCBS standards.

The most prevalent concern for remediation identified in the analysis of both the IRA and Day Habilitation Site Protocol data is in the requirement to provide sufficient staffing to support the individual's participation in individualized and personally meaningful community activities. The overall concern in not having sufficient staffing is a contributing factor in secondary areas identified as prevalent in the standards below.

In both the IRAs and Day Habilitation sites, another prevalent issue of non-compliance requiring further remediation was in having a mechanism to access individual's satisfaction with their service environment.

The next standards most prevalent and identified in the review of IRA and Day Habilitation data varied by setting. In the IRAs, the standard for having a mechanism to assess living arrangement choice was identified as area for further remediation. In the Day Habilitation settings, individual's being encouraged and supported to have access to the broader community was identified and is a concern directly related to not having adequate staffing to support participation in individualized and meaningful community activities.

The data for the Prevocational service sites was also reviewed and there are no trends or patterns of non-compliance identified.

Systems implemented by OPWDD to track the progress and completion of remedial actions to achieve compliance is described in the following processes:

During the completion of Site surveys and Person-centered and agency reviews, a written summary of unmet standard findings is provided to the agency providing HCBS. Any areas of non-compliance identified during the review is documented on the finding reports that are given to the agency. The agency must correct any areas of non-compliance identified on the reports, within the established timeframes required and identified by OPWDD.

When warranted, Statements of Deficiencies (SODs) are issued to the agency. Agencies must submit a written Plan of Corrective Action (POCA) that is acceptable to OPWDD. For a POCA to be found acceptable to OPWDD, it must include how the agency will correct the specific concern identified and include the agency's systemic actions to correct the deficiency across the programs to prevent recurrence of the deficiency in the future. The POCA must also include the actions the agency has implemented to verify that corrective actions were implemented and how the agency will monitor and maintain compliance.

The implementation and effectiveness of plans of corrective actions are reviewed by OPWDD during the subsequent protocol reviews and surveys conducted annually. OPWDD also completes additional validation and monitoring visits when warranted to ensure that corrective actions have been implemented. OPWDD has policies and procedures to deal with egregious situations or situations that raise the risk of imminent harm requiring more immediate or ongoing visits to the setting.

Protocol documentation and data is reviewed, assessed, and monitored by OPWDD. On-going data analysis is completed to ensure remediation occurred at a specific site/program. Systemic reports

are pulled from this data and is utilized to re-evaluate OPWDD's site level compliance in its programs.

OPWDD conducts statewide provider training to update the provider community on changes in policy, clarify expectations, and to provide technical assistance and resources in remediation strategies and share best practices.

**Site specific remediation activities included the following:**

**IRAs**

- OPWDD Person-Centered Regulations Issued
- OPWDD Survey Protocols updated to include HCBS Settings standards
- Provider Training
- Train state and voluntary staff on person-centered practices
- Develop Occupancy Agreement Template
- Incorporate HCBS Final Rule in OPWDD DSP Training
- Rights "Card" developed for individuals receiving services

**Day Habilitation**

- OPWDD Person-Centered Regulations Issued
- OPWDD Survey Protocols updated to include HCBS Settings standards
- Interim Guidance Document developed for Day Habilitation Providers
- Train state and voluntary staff on person-centered practices
- Incorporate HCBS Final Rule in OPWDD DSP Training
- Rights "Card" developed for individuals receiving services

**Site-Based Prevocational Settings**

- OPWDD Person-Centered Regulations Issued
- OPWDD Survey Protocols updated to include HCBS Settings standards
- Train state and voluntary staff on person-centered practices
- Incorporate HCBS Final Rule in OPWDD DSP Training
- Rights "Card" developed for individuals receiving services

**Family Care**

- OPWDD Person-Centered Regulations Issued
- Family Care On-Going monitoring was updated
- Rights "Card" developed for individuals receiving services
- Train providers on rights including access to keys to front and bedroom doors
- Develop Occupancy Agreement Template

## **V. CORRECTIVE ACTION PLAN**

OPWDD, its staff, and the provider network have worked tirelessly throughout the national PHE in order to support individuals and their families to stay as healthy and safe as possible and to live their lives with purpose. OPWDD employed many methods to ensure that individuals and their families have been able to maintain as many supports and services of their choice as possible, in spite of the gravity of health risks associated with COVID-19 and the resulting impact on HCBS services and staffing. OPWDD worked closely with providers and stakeholders to support individuals and their families in maintaining community-based supports and services by authorizing the provision of Day,

Community Habilitation, Site-Based Prevocational, and Respite services using telehealth, streamlining the approval process for service requests during COVID, and allowing service provision in a wider array of settings, for example.

Despite the progress toward full compliance with the HCBS Final Rule, as outlined here, the OPWDD HCBS system is under increasing strain. Longstanding workforce shortages have been exacerbated by the COVID-19 pandemic, making it increasingly difficult for people to access the services and supports they need. People are seeking choice and control, but often find that workforce shortages impact their choices. COVID-19 has exacerbated this already challenging trend, with service providers reporting a chronic inability to recruit and retain direct support staff and significant staff vacancy rates requiring them to close programs or reduce operations due to staffing shortages. In addition, and prior to COVID-19, data indicated a substantially lower rate of employment for people with disabilities (34.4% for those ages 18-64) than for those without disabilities in NYS (76.4%). The COVID-19 pandemic further affected employment rates and delivery of employment supports and other day program services.

As a result, OPWDD, in conjunction with the New York State Department of Health (DOH), is requesting to be a part of NY's Corrective Action Plan (CAP) in order to have sufficient time to remediate standards that are out of compliance and have been impacted by the PHE. These standards are access to the broader community and opportunities for employment.

OPWDD will employ a number of initiatives to remediate and monitor these standards that have been impacted by the PHE, which are described below.

- **Access to the broader community** – OPWDD will implement short-term and long-term strategies to invest in the direct support workforce and initiate broad system-outreach to improve access to the community following the COVID PHE. In the short-term, OPWDD will make significant new investments in the direct support workforce. New federal funding through the American Rescue Plan Act (ARPA) is enabling OPWDD to make immediate and significant new investments in the direct care workforce. This funding includes a supplemental, one-time payment to support current DSPs and family care providers who worked during the pandemic and remain employed in the OPWDD service system with an additional bonus if the worker is fully vaccinated against COVID-19. Furthermore, the ARPA spending plan also includes Workforce Longevity and Retention Bonuses. OPWDD submitted to CMS an Appendix K application, requesting the authority to make temporary changes to its HCBS waiver to accommodate these plans. CMS approved the Appendix K in November 2021, and OPWDD then began working to implement the financial incentives to provide critical economic support to the direct support workforce.

Over the long-term, OPWDD will seek to strengthen the recruitment and retention of DSPs to build and sustain a robust and diverse workforce. OPWDD intends for these investments in the direct support workforce to increase retention of DSPs, decrease the vacancy rate and reduce the turnover rate. OPWDD will monitor and report this outcome data through the NCI Staff Stability Survey, administered annually to OPWDD providers and will report this data through its public website.

Ongoing Workforce Development Strategies and the ARPA workforce recruitment and retention investments will complement ongoing and planned OPWDD activities to strengthen the direct support workforce and expand workforce development partnerships that increase the talent pipeline.

- **Opportunities for employment** – New York State will make investments of \$27.76 million over four years to increase individuals with disabilities participation in the workforce. This significant investment is funded through State general fund investments and will augment Medicaid funding for employment supports. These efforts will improve provider quality and capacity, which is a fundamental step toward OPWDD enhancing vocational, educational,

employment and training programs, as outlined in Governor Hochul's 2022 State of the State address.

OPWDD is also examining the potential to incorporate outcomes-based payment models into its employment services and to incentivize day program providers to deliver a continuum of day service options including prevocational and career planning services. OPWDD will continue to train care managers about employment and vocational services so that they can consider employment services and employment as the first option for services for people who wish to work.

## **VI. HEIGHTENED SCRUTINY**

OPWDD has identified a total of 77 settings that are subject to Heightened Scrutiny, which were identified using the process described in the Site Validation section above. OPWDD conducted the required 30-day public comment period for settings subject to Heightened Scrutiny from April 27, 2022, through May 27, 2022. Prior to the start of the public comment period OPWDD engaged in many activities to communicate with stakeholders and providers. OPWDD conducted a 60-day Tribal Notification period in advance of the start of the public comment period in addition to notice in the New York State register and communication through the OPWDD stakeholder distribution list. Also, in advance of the public comment period, each provider with a setting subject to Heightened Scrutiny received an information packet that included template letters to be distributed to individuals and families receiving services at the site. The template letter described the Heightened Scrutiny process and how individuals and their families could participate in the public comment process. OPWDD worked with the providers of settings requiring a Heightened Scrutiny review to achieve HCBS compliance or to develop a plan to achieve HCBS compliance. Using the OPWDD protocols and review tools, OPWDD was able to verify compliance with HCBS standards or verify remediation that was required in order to meet compliance. OPWDD provided training and guidance to providers on all aspects of HCBS standards including person-centered supports and community integration. In addition, OPWDD collaborated with DOH, supporting the development and promotion of extensive training on person-centered thinking, planning and practice for all HCBS providers in New York State. Through the ongoing monitoring process using OPWDD protocols and review tools, OPWDD will ensure all settings that receive a Heightened Scrutiny review will remediate and comply with federal regulations by March 17, 2023. The ongoing monitoring process will also ensure continued compliance for settings already in compliance.

### **Process for Applying CMS Feedback on Specific Settings**

Heightened Scrutiny summaries, including public comment and supporting evidence, may later be selected for review by CMS as a part of a random sample. OPWDD will use any feedback from the CMS random sample review to inform whether it is applicable to similar settings not included in the CMS review. If feedback from the CMS random sample review applies to settings not included in the CMS sample, OPWDD will review these settings and require additional remediation if necessary.

### **Heightened Scrutiny Categories and Summary**

CMS has identified three categories of settings that are presumed to have qualities of an institution. The categories are described below as well as the number of settings in each category that have been identified by OPWDD as requiring a Heightened Scrutiny review.

<b>Heightened Scrutiny Category</b>	<b>Number of OPWDD Sites in Category</b>
<b>Category 1</b> - Settings in this category are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment. For settings in this category, a link was included to a summary for each setting that describes compliance, or any steps needed to achieve HCBS compliance by March 17, 2023.	2
<b>Category 2</b> - Settings in this category are located in a building located on the grounds of, or immediately adjacent to, a public institution.	0
<b>Category 3</b> - Settings in this category have the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS. Category 3 has two lists—3A and 3B depending on compliance status:	
<b>Category 3A</b> - For settings in this category, a link was included to a summary for each setting that describes compliance, or any steps needed to achieve HCBS compliance by March 17, 2023.	5
<b>Category 3B</b> - Settings in this category achieved HCBS compliance on or before July 1, 2021, and do not require a summary. Information supporting remediation for settings in this category is available upon request.	70
<b>Settings that will be unable to achieve HCBS compliance by March 17, 2023.</b>	0
<b>Total Number of Settings Requiring Heightened Scrutiny in All Categories.</b>	77

### Numbered List of Settings

Settings OPWDD has identified as requiring a Heightened Scrutiny review that are in HCBS compliance, or will come into HCBS compliance by March 17, 2023, are listed below by category.

Category 1 - Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment. For settings in this category, there is a link below to a summary for each setting that describes compliance, or any steps needed to achieve HCBS compliance by March 17, 2023.

<b>Category 1 - Site Label</b>	
1.	Finger Lakes DDSOO, Phelps, Site 1
2.	Suffolk County NYSARC Inc., Shoreham, Site 1



Category 2 - Settings that are in a building on the grounds of, or immediately adjacent to, a public institution.

There are no OPWDD settings in this category.

Category 3 – Presumptively Institutional Settings Due to Isolation- Settings that have the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving HCBS.

Category 3A – For settings in this category, there is a link below to a summary for each setting that describes compliance, or any steps needed to achieve HCBS compliance by March 17, 2023.

<b>Category 3A - Site Label</b>	
3.	ADAPT COMMUNITY NETWORK (DBA), Bronx, Site 1
4.	ADAPT COMMUNITY NETWORK (DBA), Bronx, Site 2
5.	HILLSIDE CHILDREN'S CENTER, Rochester, Site 1
6.	ONTARIO COUNTY NYSARC, INC., Canandaigua, Site 1
7.	OSWEGO INDUSTRIES, Fulton, Site 1

Category 3B – Settings in this category achieved HCBS compliance by July 1, 2021, and do not require a summary. Information supporting remediation for settings in this category is available upon request at [HCBSSettings@opwdd.ny.gov](mailto:HCBSSettings@opwdd.ny.gov).

<b>Category 3B - Site Label</b>	
8.	ASPIRE OF WESTERN NEW YORK, Buffalo, Site 1
9.	BROOME DDSOO, Oneonta, Site 1
10.	BROOME DDSOO, Endwell, Site 2
11.	BROOME DDSOO, Ithaca, Site 3
12.	BROOME DDSOO, Freeville, Site 4
13.	BROOME DDSOO, Waverly, Site 5
14.	CENTRAL NEW YORK DDSOO, E. Syracuse, Site 1
15.	CENTRAL NEW YORK DDSOO, Rome, Site 2
16.	CENTRAL NEW YORK DDSOO, Rome, Site 3
17.	CENTRAL NEW YORK DDSOO, Rome, Site 4
18.	CENTRAL NEW YORK DDSOO, Rome, Site 5
19.	CENTRAL NEW YORK DDSOO, Rome, Site 6
20.	CENTRAL NEW YORK DDSOO, Rome, Site 7

21.	CENTRAL NEW YORK DDSOO, Rome, Site 8
22.	CENTRAL NEW YORK DDSOO, Auburn, Site 9
23.	FINGER LAKES DDSOO, Newark, Site 2
24.	FINGER LAKES DDSOO, Newark, Site 3
25.	FINGER LAKES DDSOO, Newark, Site 4
26.	FINGER LAKES DDSOO, Newark, Site 5
27.	FINGER LAKES DDSOO, Newark, Site 6
28.	FINGER LAKES DDSOO, Newark, Site 7
29.	FINGER LAKES DDSOO, Newark, Site 8
30.	FINGER LAKES DDSOO, Newark, Site 9
31.	FINGER LAKES DDSOO, Newark, Site 10
32.	FINGER LAKES DDSOO, Newark, Site 11
33.	FINGER LAKES DDSOO, Newark, Site 12
34.	FINGER LAKES DDSOO, Newark, Site 13
35.	FINGER LAKES DDSOO, Newark, Site 14
36.	FINGER LAKES DDSOO, Newark, Site 15
37.	FINGER LAKES DDSOO, Newark, Site 16
38.	FINGER LAKES DDSOO, Perry, Site 17
39.	HUDSON VALLEY DDSOO, White Plains, Site 1
40.	HUDSON VALLEY DDSOO, White Plains, Site 2
41.	HUDSON VALLEY DDSOO, White Plains, Site 3
42.	LOCHLAND SCHOOL, INC., Geneva, Site 1
43.	PATHFINDER VILLAGE, INC., Edmeston, Site 1
44.	PATHFINDER VILLAGE, INC., Edmeston, Site 2
45.	PATHFINDER VILLAGE, INC., Edmeston, Site 3
46.	PATHFINDER VILLAGE, INC., Edmeston, Site 4
47.	PATHFINDER VILLAGE, INC., Edmeston, Site 5
48.	PEOPLE, INC., Buffalo, Site 1
49.	PEOPLE, INC., West Seneca, Site 2
50.	PEOPLE, INC., Orchard Park, Site 3
51.	PEOPLE, INC., Tonawanda, Site 4
52.	PEOPLE, INC., Williamsville, Site 5
53.	SASI, Derby, Site 1
54.	SPRINGBROOK NY, INC., Oneonta, Site 1
55.	SPRINGBROOK NY, INC., Sidney, Site 2
56.	SPRINGBROOK NY, INC., Sidney, Site 3
57.	STATEN ISLAND DDSOO, Staten Island, Site 1
58.	STATEN ISLAND DDSOO, Staten Island, Site 2

59.	STATEN ISLAND DDSOO, Staten Island, Site 3
60.	STATEN ISLAND DDSOO, Staten Island, Site 4
61.	STATEN ISLAND DDSOO, Staten Island, Site 5
62.	STATEN ISLAND DDSOO, Staten Island, Site 6
63.	STATEN ISLAND DDSOO, Staten Island, Site 7
64.	STATEN ISLAND DDSOO, Staten Island, Site 8
65.	STATEN ISLAND DDSOO, Staten Island, Site 9
66.	STATEN ISLAND DDSOO, Staten Island, Site 10
67.	STATEN ISLAND DDSOO, Staten Island, Site 11
68.	STATEN ISLAND DDSOO, Staten Island, Site 12
69.	STATEN ISLAND DDSOO, Staten Island, Site 13
70.	STATEN ISLAND DDSOO, Staten Island, Site 14
71.	STATEN ISLAND DDSOO, Staten Island, Site 15
72.	UCPA OF NASSAU COUNTY., INC., Roosevelt, Site 1
73.	WESTERN NY DDSOO, West Seneca, Site 1
74.	WESTERN NY DDSOO, West Seneca, Site 2
75.	WESTERN NY DDSOO, West Seneca, Site 3
76.	WESTERN NY DDSOO, West Seneca, Site 4
77.	WESTERN NY DDSOO, West Seneca, Site 5

**Settings that Cannot Overcome the Institutional Presumption**

There are no OPWDD settings in this category.

**Results of Public Comment Period**

OPWDD received one public comment for site number 48, People Inc. Site number 1. The public comment questioned and disagreed with OPWDD regulations requiring a rights modification process be followed before installing cameras in resident bedrooms. OPWDD is in communication with the individual providing the comment. There are no concerns with compliance determinations as a result of public comment.

**VII. ONGOING MONITORING**

Site Reviews are conducted at individuals certified residential and day settings that are certified for operation by OPWDD. Reviews are typically unannounced. Site reviews occur using a risk-based strategy based on a variety of factors, including the compliance history of the site. All HCBS settings receive on site visits during their certification period. These site-based reviews are part of a suite of review tools including Person Centered reviews and Agency reviews. Thus, DQI’s reviews approach services from several perspectives to better understand the service environment.

Through the OPWDD on-going monitoring process, individual settings that did not achieve 100% compliance received Exit Conference documentation and technical assistance from the DQI in order to achieve 100% compliance.

Person-Centered Reviews (PCR) is a comprehensive assessment of all services an individual receives including HCBS. The review encompasses services that are site-based, community-based and Care Management services. The review evaluates that person-centered planning processes were implemented and resulted in an array of services that address the person's desired and needed outcomes. The randomly selected annual PCR sample includes individuals who live in private homes and Family Care Homes. The sampling process ensures that all service providers, OPWDD-sponsored services, and service setting types are evaluated. The Person-Centered Review tool is intended to assess compliance with federal PCP requirements as well as HCBS standards, such as choice of living arrangement including non-disability specific settings.

Agency Reviews assess the provider's organizational mechanisms to ensure the delivery of quality services in compliance with quality practices and state and federal regulatory requirements. Through survey/review activity using information from all survey protocols, a determination is made whether each HCBS standard is met or not met. Standards not met are discussed with the agency at the end of the survey. Findings are entered into a protocol database and a summary document of findings is provided to the agencies. Agencies are required to address/correct any findings detailed in the report. Findings and data are reviewed and monitored as part of OPWDD's oversight. Analysis of this data is used to determine site level corrections as needed.

OPWDD's HCBS Setting Regulations were promulgated effective October 1, 2021, requiring agencies to comply with these regulatory requirements. Using established standardized practices, findings are provided to the agency and corrective actions are required within specified timelines. Additional monitoring/remedial action may be implemented by OPWDD as deemed necessary.

Failure of an agency to achieve compliance within timeframes determined by OPWDD, and consistent with CMS guidance, may result in the suspension of waiver funding. Other remedial actions may include fines, change of auspice of the facility/program to a provider in good standing, and/or closure of the facility/program by way of revocation of operating certificates.

Ongoing monitoring activities for Family Care Homes follows a different process and is the responsibility of the OPWDD State Operations Regional Offices. OPWDD State Operations Regional Offices monitor Family Care Homes. All Family Care Homes undergo an annual review using the *Form 238 Family Care Home Evaluation and Survey* review tool. [The Family Care Form 238 on the OPWDD webpage can be viewed by clicking here.](#) This review tool includes a section specific to the OPWDD Home and Community Based (HCBS) Waiver Settings regulations. At least annually, each Family Care Home operated by a Sponsoring Agency will also be reviewed by the associated Sponsoring Agency against the established standards to confirm compliance with all HCBS regulations. Each Sponsoring Agency is responsible to assign a staff member familiar with the Family Care program to complete this task. Prior to recertifying Family Care Homes, OPWDD's Developmental Disabilities State Operations Offices' (DDSOO) designated Quality Assurance staff review each *Form 238 Family Care Home Evaluation and Survey* and other recertification records, to verify that the certification standards have been met. A *Family Care Home Evaluation and Survey Deficiency Report and Verification of Correction Form* is completed if a standard is not met, which must include a plan of corrective action (POCA). The POCA must identify responsible parties from the State Operated or Sponsoring Agency and timelines for correcting the deficient practice or the home may not be recertified. Upon verification that the certification standards have been met or an acceptable POCA has been established, the DDSOO Director signs and submits a "*DDSOO Family Care Attestation: Readiness for Recertification Attestation*" to OPWDD's Division of Quality Improvement for the issuance of an operating certificate."

## **Community Integration Verification Post Public Health Emergency**

As of this date the PHE is still in effect. OPWDD will continue to support individuals receiving HCBS through our vast system of supports, to participate in community-based activities of their choice as noted in their person-centered plans. The OPWDD 2023-2027 Strategic Plan addresses community integration and participation within each of its three strategic goals. For example, Goal 2, Objective 2.1, focuses on the development of more integrated day services, expanding access to assistive technology, and environmental modifications, and promoting the use of Supported Decision Making.

Likewise, OPWDD's strategic plan outlines efforts to increase access to the community by prioritizing and strengthening the Direct Care workforce (Goal 1, Objective 1.1). Direct Care Professionals are essential to achieving the goal of community integration. Therefore, OPWDD has made significant investments in the workforce using ARPA resources (described in Section V of this document). [The 2023-2027 OPWDD Strategic Plan, also known as the 5.07 Plan pursuant to section 5.07 of state mental hygiene law, can be viewed on the OPWDD webpage by clicking this sentence.](#)

To assess the impact of these efforts and ensure activities are yielding results, OPWDD's DQI will engage in ongoing- survey and monitoring processes. Additionally, OPWDD routinely offers technical assistance and guidance to service providers on a site-specific basis. The OPWDD DQI Person-Centered Review addresses this topic. This data will be used to assist OPWDD with oversight of a CAP, should New York have its request for a CAP approved.

## **VII. ACCESS TO NON-DISABILITY SPECIFIC SETTINGS**

Through the person-centered planning process individuals have an opportunity to choose from a variety of settings for services and supports, including non-disability specific community-based resources that everyone has access to, as noted in OPWDD regulations at 14 NYCRR 636-1, Person-Centered Planning (effective November 1, 2015).

OPWDD plans to build capacity using ARPA funds to strengthen access to and the availability of supportive housing models and to increase housing subsidies for individuals who choose integrated, and community based, non-disability specific housing. Recently OPWDD updated the OPWDD Housing Subsidy program. The OPWDD Housing Subsidy program is intended to support eligible individuals who choose to live independently in the community in non-disability specific settings, and who are or will be financially and legally responsible for their housing unit (i.e., residence). Through the OPWDD Housing Subsidy program, individuals control their own housing and related decisions, such as who they will live with. Individuals can choose to live alone, live with others and/or with a live-in-caregiver. OPWDD's Housing subsidy is available to eligible individuals, as described herein, subject to availability.

## **VII. STRATEGY FOR ASSISTING PARTICIPANTS LIVING/RECEIVING SERVICES IN NON-COMPLIANT SETTINGS**

OPWDD does not anticipate that any setting will fail to achieve HCBS Final Rule compliance by March 17, 2023 (CAP request pending). However, if OPWDD determines that a setting will fail to achieve compliance by this date, then people receiving services at the setting who choose to continue services through the HCBS Waiver must transition to a setting that meets compliance. Transitions would occur through the following process:

- In accordance with federal and state laws, OPWDD will provide affected individuals with as much advance written notice as possible that outlines the reason for the transition and the due process procedure. OPWDD will ensure that sufficient time is provided to safely complete any needed transitions and to assure continuity of services and supports.

Individuals receiving services certified or operated by OPWDD, including individuals residing in certified residential facilities, must be afforded the due process required by OPWDD regulations at 14 NYCRR 633.12: Objection to Services Process, as well as OPWDD's Community Placement Procedures. These rights apply whenever a provider proposes to modify the provision of services, to discharge an individual from their residential or nonresidential facility, program, or service, to reduce, suspend or terminate an HCBS waiver service, and/or to initiate changes to an individualized service plan including Life Plans. The change in the person's services can only occur with advance notice of at least 30 days, with additional time provided for due process should the person make such a request.

- The person and his/her program planning team will be provided with information on the variety of settings that are available and compliant with the HCBS Final Rule in which to make an informed choice of another setting.
- The person will receive any needed support and assistance in making transition choices.
- Once the person has chosen a new setting, a person-centered planning meeting will take place to outline a transition plan to include specific transition timelines as well as supports needs to ensure the transition and the person's health, safety, and welfare.
- Supports and services will be required to be in place with the new provider agency prior to the transition.
- OPWDD has been working with providers since 2015 and assessing HCBS settings through routine oversight protocols (described above) since 2016 and has concluded that there will not be any individuals with services disrupted or interrupted. If, at any time in the future, any individual is impacted by a non-compliant setting, the timeframes associated with the OPWDD processes described above will apply. Excluding cases of immediate jeopardy where actions may need to be taken on the date of discovery, the typical process would take up to 6 months depending on individual decisions to appeal and alternative placement options to a qualifying setting. The process to decertify a site is initiated by DQI with the issuance of a Statement of Deficiency. The provider then has 20 days to submit a Plan of Corrective Action to address any systemic, pervasive, or egregious deficiencies that result in the site not meeting the expectations of the HCBS Final Rule. An agency has 20 days to submit a Plan of Corrective Action once the Statement of Deficiency has been received. If the inability of the provider to meet the HCBS Final Rule standards results from more egregious issues, DQI will issue a 45-day letter, and the agency has 10 days to complete the Plan of Corrective Action after the receipt of the 45-day letter. If the Plan of Corrective Action is unacceptable and it is determined that the site cannot remediate, OPWDD would initiate a revocation of the operating certificate. On a non-emergent basis, the revocation of an operating certificate would only take effect once the people served at the site have completed the person-centered process described above and can relocate to a new, selected location.

## **VIII. STATEWIDE TRANSITION PLAN (STP) UPDATES**

OPWDD, in conjunction with DOH, has streamlined its STP section to respond to CMS' May 16 Letter to State Medicaid Director regarding next steps to achieve final approval of NY's STP, highlighting the major transition activities that OPWDD has employed since the promulgation of the HCBS Final Rule in 2014. By removing more ancillary information we also feel confident we have

responded to CMS' request for our STP to be well organized and readable by the public. [The HCBS Final Rule Statewide Transition Plan that received initial approval from CMS in November 2018 can be viewed on the DOH webpage by clicking this sentence.](#) Transition Plan Updates of note include:

- Consolidated summary of OPWDD stakeholder involvement as well as updated information on current stakeholder involvement
- Streamlined summary of Initial Systemic Assessment Activities and Results
- Addition of updated On-going Monitoring processes
- Inclusion of Site-Based assessment data and remediation
- Inclusion of Heightened Scrutiny lists and results of the public comment period
- Request for a Corrective Action Plan

## **IX. BENEFICIARY RECOURSE**

In the event that an individual or their representative believe that an OPWDD HCBS setting and/or service is not compliant with HCBS Final Rule Standards, the individual may follow the Objection to Services Process as described in 14 NYCRR 633.12. [The Objection to Services Process can be viewed on the Westlaw webpage.](#) The Objection to Services Process include a provision for an informal and formal resolution for concerns related to any person-centered plan or services or proposed changes to the services. If, through informal mechanisms, a resolution cannot be reached, individuals or their representatives may submit a formal written objection to the DDRO at which point a hearing will be scheduled. If the individual or their representative is not satisfied with the result of the hearing, an appeal may be submitted to the Commissioner of OPWDD.

## **X. OPWDD RESPONSE TO FEDERAL FEEDBACK**

The following is our response to federal feedback based on New York's 2019 Statewide Transition Plan submission regarding Group Supported Employment and assessment of employment settings, where the STP references the "New York State Plan to Increase Competitive Employment Opportunities for People with Developmental Disabilities (Final Plan Approved May 1, 2014) (p. 118). All OPWDD sponsored sheltered workshops were closed as of April 2020. In addition, OPWDD has provided assessment data in this updated transition plan section for Site-Based Pre-Vocational settings. All other employment services are community based, integrated, individualized and, according to CMS, are presumed compliant with HCBS Final Rule standards. Please refer to the ongoing monitoring section for how the person-centered plans for individuals receiving these services are monitored for compliance.

The following is our response to a federal question regarding why OPWDD believes all 363 of the ICFs converting to HCBS settings will fall under Heightened Scrutiny and under which category of Heightened Scrutiny these settings belong. While the "HCBS Settings Rule" has not changed, CMS has clarified guidance, particularly as it applies to categories of Heightened Scrutiny, as noted in the CMS March 22, 2019, FAQs. Due to the size and complexity of the OPWDD system of HCBS, OPWDD's assessment process began in 2015, long before the publication of much of the CMS interpretive guidance. At that time OPWDD was projecting that former ICFs that converted to IRAs after March 2014 would automatically be subject to Heightened Scrutiny. It is now clear that CMS guidance does not require former institutional settings to be automatically subject to Heightened Scrutiny review and that all settings providing HCBS are to be reviewed based on CMS Heightened Scrutiny criteria, including settings that may or may not have been previously designated as

institutional. OPWDD has followed this guidance when determining the Heightened Scrutiny status of settings as noted in this current Transition Plan and settings that converted to IRAs from ICFs are no longer automatically subject to Heightened Scrutiny, therefore we saw a great reduction in the number of OPWDD settings in this category.



# **NYS DEPARTMENT OF HEALTH (DOH) OFFICE OF HEALTH INSURANCE PROGRAMS (OHIP) SOCIAL ADULT DAY CARE (SADC)- HCBS SETTINGS TRANSITION**

## **I. INTRODUCTION**

The New York State (NYS) Department of Health (DOH) Social Adult Day Care (SADC) sites are contracted with the Managed Long Term Care (MLTC) Plans to provide social adult day care services, which are **non-residential programs**. SADCs are located in a wide variety of settings, all of which are integrated into the community. SADCs are in urban, rural, and suburban areas. SADCs are in standalone buildings and multi-use buildings, both of which may be run by non-profits, for-profit entities, state, or county run. Multi-use buildings vary greatly in what other entities utilize the other space and include both residential and commercial entities. The spaces for the SADCs are both rented and owned by the SADC or the parent entity. Some SADCs are easily accessible by public transportation and others require transportation with a vehicle. Some members may receive services in their residence from a SADC.

Members arrive at the SADC sites, on days of their choosing, and stay through-out the day, not overnight. The MLTC Plans are responsible for providing oversight and monitoring of all SADC sites they contract with for compliance with the Home and Community-Based Services (HCBS) Final Rule, along with all other state and federal requirements. In turn, the SADC Team, which is under the DOH MLTC Surveillance Unit, is responsible for monitoring the MLTC Plans and ensuring their oversight of the SADC sites is sufficient to ensure high-quality services are received and all state and federal regulations, including the HCBS Final Rule, are met. Details on DOH's oversight of the MLTC Plans can be found in the separate MLTC section of this NYS Statewide Transition Plan (STP).

DOH regularly engages and seeks feedback from the MLTC Plans and external stakeholder groups, maintaining open, bi-directional lines of communications. Separate monthly meetings are held with both groups to provide updates, discuss items of concern, and seek feedback to help inform its plans, processes, and tools to implement the federal rule. Webinars have also been held with plans and SADC sites, policies and resources have been posted on the DOH website, and SADC HCBS Final Rule compliance specific and MLTC Plan information email boxes are active to receive and resolve inquiries. MLTC Plans also work directly with a DOH Plan Manager, who they may contact as needed.

The information below details efforts undertaken and planned to ensure the SADC sites are compliant with the HCBS Final Rule.

## **II. SYSTEMIC COMPLIANCE**

To come into compliance systemically with the federal requirements the following actions were taken:

A systemic assessment was conducted in 2018 for SADC, the results of which are included in this chart on pages 10-12: [Clicking this sentence brings you to the SADC systemic compliance chart on the DOH webpage.](#)

Listed below is the guidance released to ensure SADC site compliance with the HCBS Final Rule:

- **MLTC Policy 21.05: Social Adult Day Care HCBS Final Rule Implementation**
  - [Clicking this sentence brings you to MLTC Policy 21.05 on the DOH webpage.](#)
  - Release Date: 12/3/2021
  - Description: This policy was issued to all MLTC Plans and details all applicable requirements and provides resources for ensuring SADC site compliance with the HCBS Final Rule standards.
  
- **Fact Sheet and Timeline for SADC HCBS Final Rule Compliance**
  - [Clicking this sentence brings you to the Fact Sheet and Timeline for SADC HCBS Settings Final Rule Compliance on the DOH webpage.](#)
  - Release Date: 12/3/2021
  - Description: This fact sheet and timeline were issued with MLTC Policy 21.05 which details the requirements, steps, and timeline for SADC site compliance with the HCBS Final Rule.
  
- **HCBS Rule Compliance Assessment SADC Guiding Questions for MLTC Plans**
  - [Clicking this sentence brings you to the HCBS Rule Compliance Assessment Guiding Questions.](#)
  - Release Date: 12/28/2021
  - Description: Detailed guidance for MLTC Plan on-site assessors to utilize in ensuring HCBS Final Rule compliance at SADC sites. Provides guidance and information on ensuring compliance with all HCBS Final Rule requirements.

### III. SITE VALIDATION

#### Efforts Undertaken to Validate HCBS Compliance

The SADC Team is currently undertaking efforts to validate SADC site compliance with the HCBS Final Rule. The SADC site network is continuously changing as MLTC Plans contract with new SADC sites or cancel contracts with existing SADC sites. However, at the time of this update, there are 393 SADC sites which are in the process of being validated for compliance. Therefore, validation of a statistically significant sample of SADC sites will be completed before March 17, 2023. Please see the Remediation section below, which provides details on the SADC validation efforts and the current findings of the 393 SADC sites being validated.

The SADC Team is utilizing the following assessments, tools, and methods to validate compliance:

- **Self-Assessment Survey:** This self-assessment survey tool was developed based on the Centers for Medicare and Medicaid's (CMS) "Exploratory Questions to Assist States in Assessment of Non-Residential HCBS Settings." It was completed and submitted to the SADC Team between January and July 2022 for each SADC site and MLTC Plan

contract. Since SADC sites can be contracted with more than one MLTC Plan and for more than one line of business, it was common to see a multitude of submissions for one SADC site.

- **Quality Assurance (QA) Validation Review:** Once the SADC self-assessment surveys were received by DOH, the SADC Team began review of the submissions. This began in May 2022 and validation of the self-assessment survey activities continue. Utilizing all self-assessments, supporting documentation submitted with the surveys, and a geographical address search, the SADC Team is reviewing the information to determine compliance. The geographical address search is used to determine if the SADC site is inside of, on the grounds of, or adjacent to an institutional setting. Utilizing all information, the SADC Team makes a preliminary determination on if the SADC site appears to be compliant or appears to need remediation to be in full compliance with the HCBS Final Rule. All SADC sites appearing to need remediation were then validated in the next step, the Virtual On-Site Review.
- **Virtual On-Site Review:** For all SADC sites where non-compliance was noted during the QA Validation Review process, the SADC Team is conducting a virtual on-site review to confirm compliance or to note issues that will need remediation. These virtual on site reviews began October 2022 and will continue. Additionally, if a SADC site appears to be inside of, on the grounds of or adjacent to an institutional setting, the SADC Team also conducts the virtual on-site review, to determine if the SADC site can demonstrate compliance.
- **Member Experience Survey:** Prior to each Virtual On-Site Review, the SADC Team is requiring a Member Experience Survey to be conducted with up to three of the MLTC Plan members that attend the SADC site being reviewed. This is utilized to verify the setting being community integrated and identify potential non-compliance issues and areas of focus for the Virtual On-Site Review.
- **SADC PCSP Review:** Prior to each Virtual On-Site Review, the SADC Team is obtaining copies of the most recent SADC person-centered service plan (PCSP) for up to three of the MLTC Plan members that attend the SADC site being reviewed. These are being scrutinized to identify any potential non-compliance issues and areas of focus for the Virtual On-Site Review and to ensure person-centered planning is compliant.

### Calendar of the SADC Team Site Validation Activities

The SADC Team made extensive headway towards validating all SADC site compliance to ensure compliance activities were underway before March 17, 2023, for the areas not impacted by the public health emergency. Full details of remediation are in the IV Remediation section below. The SADC Team is currently conducting compliance activities based on the following risk pools for the 393 SADC sites:

- **Risk Pool 1:** SADC site and/or MLTC Plan reported the SADC site is prong 1, 2, or 3.
  - Number of SADC Sites: 137
- **Risk Pool 2:** SADC site and/or MLTC Plan reported the SADC site is not fully compliant with all HCBS Final Rule standards.
  - Number of SADC Sites: 263

- Risk pool 2 is broken into two groups.
  - The first group (a) contains 47 SADC sites, which represents the remainder of sites needing to be reviewed to ensure a statistically significant sample.
  - The second group (b) will be the remainder of the SADC sites in the risk pool, currently 209 sites, and may fluctuate due to SADC sites closing or new SADC sites opening.

The below activities have been completed or are in-progress and are planned to be completed to ensure SADC sites meet compliance standards. The below efforts include reviews of a statistically significant sample of SADC sites.

- **December 2021 – Self-Assessment Survey Release:** Self-Assessment Survey released to MLTC Plans to complete for all contracted SADC sites.
- **January 2022 – December 2022 – Self-Assessment Intake Reviews:** Intake and verification of completeness of the Self-Assessment Surveys. Most acceptable surveys were fully received by July 2022, but the process remains ongoing for new SADC sites and new contracts between MLTC Plans and SADC sites (i.e., over 6,500 reviewed and repeated submissions to date).
- **May 2022 – November 2022 – QA Validation Reviews (Risk Pool 1):** QA Validation Reviews of self-assessment surveys and supporting documentation submitted for SADC sites.
- **October 2022 – December 2022 – Virtual On-Site Reviews (Risk Pool 1 – Possibly Non-Compliant):** If a SADC site is deemed still possibly non-compliant or prongs 1, 2, or 3 after the QA Validation Review, a Virtual On-Site Review, which includes review of members' SADC PSPs, is conducted to make a final determination on compliance.
- **December 2022 – February 2023 – QA Validation Reviews (Risk Pool 2a):** QA Validation Reviews were conducted for self-assessment surveys and supporting documentation submitted for SADC Sites in group (a) of risk pool 2a. This risk pool was the remaining SADC sites that needed to be reviewed to ensure a statistically significant sample of all sites have been verified.
- **January 2023 – February 2023 – Virtual On-Site Reviews (Risk Pool 2a – Possibly Non-Compliant):** If a SADC site was deemed still possibly non-compliant or prongs 1, 2, or 3 after the QA Validation Review, a Virtual On-Site Review, which included review of members' SADC PCSPs, was conducted to make a final determination on compliance.
- **March 2023 – September 2023 – Virtual On-Site Reviews (Remaining Risk Pool 1, Remaining Risk Pool 2a, and Risk Pool 2b):** Virtual On-Site Reviews for SADC sites in Risk Pools 1 and 2a, that were originally deemed compliant, based on the QA Validation Review and all of Risk Pool 2b will be conducted through September 2023. This includes review of members' SADC PCSPs conducted to make a final determination on compliance
- **August 2023 – September 2023 – Heightened Scrutiny List Public Comment Period:** Once the QA Virtual On-Site Reviews are completed for Risk Pool 1, the

complete list of SADC sites that require Heightened Scrutiny review, along with the evidence packages, will be posted for public comment.

<b>Setting Type</b>	<b>Number of Settings</b>	<b>Fully compliant with federal HCBS rule</b>	<b>Can come into compliance with federal HCBS rule with modifications</b>	<b>Cannot comply with federal HCBS rule</b>	<b>Presumed Institutional</b>
SADC in the community	393	4	336 <sup>1</sup>	1	52

## **IV. REMEDIATION**

The SADC Team is currently in the process of validating SADC site compliance with the HCBS Final Rule standards. Therefore, remediation efforts for any non-compliance found or noted, are still being performed and NYS understands that all SADC sites will require some form of remediation, at this time. The SADC Team required that all remediation efforts were completed prior to March 17, 2023, for SADC sites identified as heightened scrutiny, unless a CMS approved NYS Corrective Action Plan (CAP) allows flexibility for the deficiency in question. The SADC Team is requiring remediation for all other SADC sites that require validation within 30-days of the review being finalized and notification sent the MLTC plan of the SADC Team's findings. Please see the section on the SADC Team's portion of the NYS CAP request below for additional details. For SADC sites that are unable to meet compliance, please see the Strategy for Assisting Participants Receiving Services in Non-Compliant Settings section below.

There are two levels of SADC remediation efforts being undertaken, those by the SADC Team and those by the MLTC Plans.

### **Remediation Oversight of MLTC Plans**

MLTC Plans are required to ensure all contracted SADC sites are compliant with state and federal regulations, and the MLTC Surveillance Unit monitors the MLTC Plan oversight of the SADC sites. Details on oversight of the MLTC Plans can be found in that portion of this STP. The SADC Team is in the process of verifying SADC site compliance with the HCBS Final Rule. As the SADC Team implements efforts to ensure compliance, any SADC site found to not be fully compliant is reported to all MLTC Plans contracted with the site. Every MLTC Plan contracted with that SADC site is expected to complete a strategic remediation plan with the SADC site and return the plan to the SADC Team. Once received, the SADC Team review the remediation plans to ensure they will bring the SADC site into full compliance.

If a MLTC Plan is not cooperating and performing the required oversight of the SADC sites they are contracted with, the MLTC Surveillance Unit may issue a statement of deficiency to the

<sup>1</sup> 309 of these 336 sites are pending validation of the self-assessment surveys by DOH. These 309 sites are presumed non-compliant, are able to remediate, and can come into compliance with federal HCBS rule with modifications. 27 of the 336 sites were already validated and remediating.

MLTC Plan. SADC sites may report issues and grievances with a MLTC Plan to DOH directly at the DOH MLTC Technical Assistance Center (TAC). See the Beneficiary Recourse section below for additional details on reporting to the MLTC TAC.

### MLTC Plan Remediation Oversight of SADC Sites

As part of their contract with DOH, the MLTC Plans are responsible for ensuring all their contracted SADC sites are fully compliant. Additionally, any non-compliance findings must be remediated with MLTC Plans supporting the SADC sites with that process via technical assistance and guidance. The SADC Team and MLTC Surveillance Unit have provided continuous support, training webinars, and guidance to the MLTC Plans to ensure they have the tools (see Site Validation section for details), resources, timelines, and knowledge to ensure their SADC sites are complying. If a SADC site is not compliant, all MLTC Plans contracted with that site must ensure the SADC site is in compliance.

Additionally, in September 2022 the SADC Team issued reminders to all MLTC Plans of their responsibility to ensure compliance and provided detailed information for SADC sites that had self-reported as possibly being institutional or institutional-like in nature (prongs 1, 2, or 3), or not being fully compliant. The MLTC Plans worked with their contracted SADC sites to remediate non-compliance issues before March 17, 2023, unless a CAP is approved and allows flexibility for specific deficiencies (see the CAP section below for additional details). For SADC sites that were unable to meet compliance, the MLTC Plan terminated the contract(s) with the SADC site and if the SADC site would like to provide services in the future, they will need to provide evidence that they are fully compliant before contracting with an MLTC Plan.

### Identified Trends of Remediation Needed

The SADC Team is in the process of conducting compliance verification efforts. Additionally, the SADC Team has identified that approximately one-third of the originally contracted SADC sites were closed during the COVID-19 public health emergency (PHE). The SADC Team has given direction that upon reopening the SADC sites must be in full compliance with the HCBS Final Rule, and all state and federal standards before members may receive services. Some preliminary trends where remediation was needed are listed below, along with the remediation activities.

### Planned Remediation for Criteria Not Affected by the PHE

The SADC Team issued notice to the MLTC Plans in September 2022 that all SADC sites were to be compliant with the following three standards by March 17, 2023, or the MLTC Plan was required to terminate the contract with the SADC site for non-compliance.

- The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.
- The setting facilitates individual choice regarding services and supports, and who provides them.
- The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact.

When a SADC site is found to need remediation, the SADC Team sends all MLTC Plans contracted with the site a remediation plan which identifies all non-compliant areas found during the review. The remediation plan is completed by the MLTC Plans contracted with the site and

the MLTC Plans are responsible for ensuring their SADC completes all remediation efforts by the agreed upon date. In order to ensure the MLTC Plans are appropriately overseeing the SADC sites, the completed remediation plan is returned to the SADC Team who verify the agreed upon activities are sufficient to bring the SADC site into compliance. If a remediation plan is not sufficient to bring a SADC site into compliance, the SADC Team reaches out to the MLTC Plan, explains what is insufficient, and coordinates with the MLTC Plan to get an updated, sufficient remediation plan.

Additionally, the SADC Team provides systemic education and guidance for identified trends. This includes providing technical assistance, webinars, and providing trainings to MLTC Plans, to ensure their understanding of all requirements. Based on identified trends, DOH and the SADC Team released further guidance to the MLTC Plans on person-centered planning and community integration. The SADC Team and MLTC Surveillance Team also enhanced the suggested tool issued for MLTC Plans to annually monitor their contracted SADC sites with a section on reviewing a SADC PCSP Template, ensuring all required criteria are present. Further analysis of these areas will determine upcoming guidance from the SADC Team to the MLTC Plans and their SADC networks.

### Planned Remediation for Criteria Affected by the PHE

The SADC Team noted the most common preliminary trends where remediation is needed are in the following three areas. These potential areas of non-compliance align with the SADC Team's expectations of where deficiencies are occurring for many HCBS settings and exemplify the impact the COVID-19 PHE has had on the SADC sites.

- Does the site allow participants to have visitors of their choosing at any time?
- Does the site restrict individuals from receiving services or engaging in activities outside of the setting?
- Are resources other than public transportation, including financial and staff resources, available for individuals during the time at the SADC to access the site and/or individualized activities that participants may wish to attend in the community?

For SADC sites that do need to remediate any non-compliance for criteria affected by the PHE, the SADC Team is following the same steps above as for criteria not affected by the PHE. Please see the details below in the Corrective Action Plan section regarding NYS's request for a CAP and timeline flexibility being requested for the SADC program compliance with criteria affected by the PHE.

## **V. CORRECTIVE ACTION PLAN**

The SADC Team will ensure all SADC sites have been reviewed for full compliance with the non-negotiable criteria by September 30, 2023. As of March 17, 2023, there were 55 total sites reviewed and we are continuing to validate the remaining 334 sites. Of the 55 SADC sites, all non-negotiable criteria were met.

As part of the time-limited CAP NYS is requesting for remediation needs identified, the SADC program is requesting to include flexibility for the following standards remediation timeline:

- The setting is selected by the individual from among settings options.

- This is applicable to SADC sites due to the extensive amount of SADC sites that closed due to the PHE, approximately one-third. The SADC Team is coordinating with the MLTC Plans and SADC sites to encourage reopening and meeting network adequacy standards.
- The setting is integrated in and supports full access to the greater community.
  - Due to the PHE, most SADC sites had to severely limit access to the greater community to ensure the health and safety of their members. In addition, many community involvement opportunities and even transportation were limited due to the PHE. However, PHE restrictions have since been lifted and MLTC Plans have been instructed to follow local health department guidance. Assurances that will need to be assessed to verify that SADC members can access activities, where applicable, into the greater community have also begun.
- Choice of non-disability specific settings.
  - During the PHE, many non-disability specific settings were closed or shutdown. As the state has removed restrictions, the non-disability specific settings continue to reopen, allowing more opportunities and options for MLTC SADC enrollees.

While the SADC Team has allowed leniency for SADC sites in these specific areas or reporting, the SADC Team will require that MLTC plan and SADC sites attest that these areas are compliant by or before March 17, 2024, should New York's request for a federal CAP be accepted.

## **VI. METHODS TO ADDRESS PROVIDER SELF-ASSESSMENT DISCREPANCIES**

To confirm the validity of all SADC site self-assessment surveys submitted, the SADC Team is conducting a detailed review. The review process entails the following:

- Review of all self-assessment surveys received for a single SADC site for the purpose of corroborating supporting documentation and responses received from multiple MLTC Plans.
- The use of Member Experience Surveys for additional information and identification of possible non-compliance, which can be investigated further during or after the Virtual On-Site Review.
- Inspection of the SADC PCSPs to confirm person-centered planning compliance and identify any deficiencies to further investigate in the Virtual On-Site Review.
- A geographical verification of SADC site locations is compared to institutional settings lists to identify possible prongs 1 or 2 settings.
- Virtual On-Site Reviews are conducted to obtain detailed information and first-hand confirmation of compliance with all standards.

Throughout this process, all findings are reported to the MLTC Plans contracted with the SADC site and remediation activities described above are initiated for all noted deficiencies.

## **VII. HEIGHTENED SCRUTINY**



The SADC Team continues to validate SADC sites that are possibly institutional or institutional-like in nature. Therefore, the Heightened Scrutiny evidence packets have not yet been posted for public comment. The SADC Team finalized the list of SADC sites for Heightened Scrutiny review. There will be a public comment period for at least 30-days (a period of 60-days will be utilized if the SADC site is on tribal lands), and after the comment period, will submit the Heightened Scrutiny list of SADC sites to CMS. The remediation of such settings will follow the same process and timeline as described in the Remediation section above. Once public comment is conducted the SADC program will review comments received and follow up with any providers who receive comments that call its determinations of compliance into question, ensuring any needed remediation is conducted by MLTC Plans in this process.

As CMS conducts Heightened Scrutiny random sampling of evidence packets, if feedback is received on a particular SADC site, the SADC Team will review its assessment results and apply CMS' feedback to all SADC sites that are similarly situated. The SADC Team will continue to issue clarifying guidance to the MLTC Plans, along with sending notification of which contracted SADC sites were identified as being similarly situated. The SADC Team will then coordinate with the MLTC Plans to ensure their contracted SADC sites remediate any CMS identified non-compliance. Additionally, the SADC Team and/or MLTC Surveillance Unit will update any resources or guidance issued to all MLTC Plans to account for this feedback, ensuring this feedback is monitored and verified via the ongoing monitoring process.

## VIII. ONGOING MONITORING AND QUALITY ASSURANCE

Ongoing monitoring and quality assurance entails two levels of efforts being undertaken to ensure SADC site compliance with all state and federal regulations and the HCBS Final Rule standards. These entail efforts by the SADC Team and/or MLTC Surveillance Unit, and those by the MLTC Plans. The MLTC Plans are required by contract to monitor their contracted SADC sites and in turn, the SADC Team and MLTC Surveillance Unit monitor the MLTC Plans to ensure their oversight and compliance efforts of the SADC sites are sufficient and meaningful.

**Note:** Since the MLTC Plans are responsible for creating and maintaining the PCSPs for members, PCSP oversight activities can be found in the separate MLTC section of this STP.

The SADC Team has begun implementing the plan for ongoing processing and monitoring. At the start of this process, the SADC Team also has conducted or plans to conduct the following continued efforts, ensuring all SADC sites known to date have been reviewed, not just the required statistically significant sample.

- **March 2023 – May 2023 – QA Validation Reviews (Risk Pool 2b & 3):** Validation reviews of the remaining self-assessment surveys will be conducted and supporting documentation submitted for SADC Sites in group a of risk pool 2b.
- **June 2023 – September 2023 – Virtual On-Site Reviews (Risk Pool 2b & 3– Possibly Non-Compliant):** If a SADC site is deemed still possibly non-compliant or prongs 1, 2, or 3 after the QA Validation Review, a Virtual On-Site Review, which includes review of members' SADC PCSPs, will be conducted to make a final determination on compliance.

## Monitoring and Oversight of MLTC Plans

In order to monitor and oversee the MLTC Plans, the SADC Team and DOH MLTC Surveillance Unit has and will be conducting the below activities. Failure to comply with all requirements and standards of any survey will result in the issuance of statements of deficiency.

- **Support and Education:** Continuously provide tools, resources, guidance, and timelines to MLTC Plans and SADC sites.
- **Communication Channels:** The SADC Team will continue to have an open two-way communication channel with all MLTC Plans. The SADC Team has an active mailbox that MLTC Plans, and stakeholders, submit inquiries to: [hcbssadcsiteassessments@health.ny.gov](mailto:hcbssadcsiteassessments@health.ny.gov)
- **SADC Compliance Annual Survey:** The DOH MLTC Surveillance Unit will conduct a planned annual review of SADC sites' compliance, as reviewed by MLTC Plans, on a statistically valid sample of contracted SADC sites for all MLTC Plans. This review will include review of the MLTC Plan conducted SADC site annual site visits as well as MLTC Plan conducted Member Experience Surveys. This cycle has started as of October 2022 and will continue annually thereafter.
- **Operational Surveys:** The DOH MLTC Surveillance Unit already performs ongoing and monitoring operational surveys. However, the DOH MLTC Surveillance Unit is enhancing these surveys to include a more in-depth focused examination of SADC site compliance. See the MLTC Plan portion of this STP for additional details on this effort.

Efforts that have already begun or are planned to implement this process are as follows:

- **September 2022 – Suggested SADC Site Evaluation Tool:** In September 2022, the SADC Team released the Suggested SADC Site Evaluation Tool, along with the corresponding user guide, for all MLTC Plans to utilize during their annual SADC site reviews or when first contracting with a SADC site, to ensure compliance with the HCBS Final Rule and other state and federal standards. MLTC Plans are required to utilize the SADC Team's tool or confirm their tool covers at minimum all items in the SADC Team tool. This tool will ensure a comprehensive and consistent review is performed by all MLTC Plans across all contracted SADC sites.
- **September 2023 – Annual SADC Compliance Survey:** The MLTC Surveillance Unit's annual review of the SADC sites' compliance, as reviewed by MLTC Plans, will be conducted, and continue annually thereafter. See the MLTC Plan portion of New York's STP for additional details on this effort.

## MLTC Monitoring and Oversight of SADC Sites

By contract, all MLTC Plans are required to conduct an annual on-site evaluation of all contracted SADC sites. Additionally, an on-site evaluation must be conducted prior to contracting with a SADC site. MLTC Plans are also required to conduct annual Member Experience Surveys.

The SADC Team and MLTC Surveillance Unit have provided guidance on all standards that must be verified for compliance during these evaluations, which include HCBS Final Rule compliance and other state and federal requirements.

All deficiencies noted during the annual evaluations and Member Experience Surveys were addressed and must be remediated. If a SADC site is unable to remediate the deficiency, the MLTC Plan is required to terminate their contract with the SADC site, support any members in selecting and transitioning to a HCBS-compliant SADC site through their person-centered planning process and remove the non-compliant SADC site from their network.

The SADC Team and MLTC Surveillance Unit continuously provide support to the MLTC Plans to establish continuous quality improvement and confirm compliance with all state and federal standards.

#### Community Reintegration Post Public Health Emergency

The SADC Team is working with MLTC Plans, providing education, tools, and technical assistance to support them in encouraging the SADC sites to become fully community-facing and integrated programs that offer offsite activities and the ability to access the community on an individual and group basis. Receiving the CAP will help afford enough time to ensure that transportation, staffing, and other PHE impacted barriers to integration are removed. The above described SADC site ongoing monitoring and quality assurance process includes assessment of community integration and will be addressed going forward through that process as described above.

## **IX. NON-DISABILITY SPECIFIC SETTINGS**

SADC sites are not a disability specific setting. The members who attend have a variety of situations, disabilities and/or functional impairments, which may be temporary or not, that bring them to use this service. Some individuals attend SADC sites simply because they are aging, live alone and need additional opportunities to socialize and receive nutritious food. SADC sites are able to use the level of care determination to custom tailor programming to meet individual members' needs.

Additionally, the SADC Team, MLTC Surveillance Unit, and MLTC Plans are supporting and encouraging the previously COVID-19 PHE impacted and closed SADC sites, where applicable, to reopen with full compliance. This also helps meet network standards, expanding member options of where to receive SADC services.

#### Oversight of MLTC Plans

As detailed above, the MLTC Surveillance Unit conducts an annual focused survey of MLTC Plans. For additional details on MLTC Surveillance Unit oversight of the MLTC Plans, please see the MLTC transition plan section in this STP. In addition, during the current SADC site validation, to ensure SADC sites are offering and encouraging community activities, the SADC Team is reviewing SADC site activity calendars and options, ensuring support is given to attend offsite activities and verifying that SADC sites allow members to come and go. Any non-compliance is being addressed and remediated.

#### MLTC Plan Oversight of Contracted SADC Sites

In addition to the SADC Team's initial site validation, the MLTC Plans are required to monitor SADC site compliance by reviewing SADC site activity calendars and options, ensuring planning and support is given to attend offsite community-based activities and verifying that SADC sites allow members to come and go as they please, unless there is a time-limited, specific assessed

need documented in the SADC PCSP stating that someone needs support with their ability to egress freely. Any non-compliance is being addressed and remediated.

## **X. STRATEGY FOR ASSISTING PARTICIPANTS RECEIVING SERVICES IN NON-COMPLIANT SETTINGS**

If a SADC site is non-compliant and unable to remediate the non-compliance, the following strategy is implemented:

- The SADC Team notifies all MLTC Plans contracted with the SADC site regarding the non-compliance and that the SADC site is unable to remediate.
- The MLTC Plans are given 60-days, from the date of DOH's notification, to contact all members currently attending the SADC site, notify them of the SADC site's non-compliance, assist them in selecting a HCBS-compliant SADC site to receive services, and support the transfer of the member to the new SADC site of their choosing, through the person-centered planning process to ensure there is no lapse in services.
- The MLTC Plans terminate the contract with the HCBS non-compliant SADC site.
- The SADC Team verifies, via the next quarterly network report submitted, that all MLTC Plans contracted with the HCBS-non-compliant SADC site have removed those sites from their network.

As detailed above, DOH is currently in the process of finalizing reviews. Only one SADC site, which had a virtual on-site review conducted on November 22, 2022, has been found non-compliant and unable to remediate, and DOH does not anticipate any further SADC sites being non-compliant and unable to remediate. For the one SADC site found non-compliant and unable to remediate, there were four MLTC Plans contracted with the site. All four MLTC Plans were notified on December 8th 2022 of DOH's determination. Two of the MLTC Plans had no members that were currently attending at the time of the notification and a total of 21 members were attending from the other two MLTC Plans. Per the process above, all 21 members were offered alternative SADC site options by their MLTC Plans, via the person-centered planning process, and transfers to another SADC site or adjustments to their services being received made, as applicable and per the member's choice, within the 60-days of DOH's notification to the MLTC Plans. All MLTC Plans had terminated their contracts with the SADC site within the 60-days, as per the process, which was confirmed by DOH via the quarterly network report.

## **XI. BENEFICIARY RECOURSE**

If a member or their designee feels a MLTC SADC site is non-compliant or wishes to issue a grievance or voice a concern, they may do so via several ways. Additionally, SADC sites may report any issues or grievances regarding a MLTC Plan directly to DOH for investigation. The methods of reporting below are documented in the member handbook, which all members receive upon their enrollment in MLTC, available publicly on websites, and/or included on member notices, as applicable to the reporting method. Complaints are tracked and reported in the member's case file at the plan level, the technical assistance database for plan response and resolution and/or through an ombudsman process. All entities often work collaboratively to investigate and resolve the member's complaint, grievance, and/or appeal rights.

- **DOH:** MLTC Plan members or their designee can contact the DOH MLTC Technical Assistance Center (TAC) at [mltctac@health.ny.gov](mailto:mltctac@health.ny.gov) or 1-866-712-7197 with concerns or complaints. This contact is also utilized by SADC sites who wish to report an issue with a

MLTC Plan.

- **MLTC Plan PSCP Care Manager:** Members may notify their MLTC Plan Care Manager, who is responsible for their MLTC PSCP, of any concerns.
- **MLTC Plan:** Notify their MLTC Plan directly via members' services contact.
- **ICAN:** Independent Consumer Advocacy Network (ICAN) is the ombudsman program for MLTC plan members. Members may go to [www.icannys.org](http://www.icannys.org), or call 1-844-614-8800 for free independent advice about coverage, complaints, and appeals options.
- **Reporting Information – MLTC Website:** Members may also obtain information on reporting an issue on the MLTC website.
  - [Clicking this sentence will bring to you the MLTC complaint page on the DOH website.](#)

# New York State HCBS Programs and Services Index

## Department of Health (DOH) - Office of Aging and Long Term Care (OALTC)

### **A. NHTD & TBI 1915(c) Waiver Programs:**

- Nursing Home Transition and Diversion (NHTD) Waiver
- Traumatic Brain Injury Waiver (TBI) Waiver

### **Services Provided Under NHTD & TBI 1915(c) Waiver Programs:**

1. Assistive Technology (AT)
2. Community Integration Counseling (CIC)
3. Community Transitional Services (CTS)
4. Congregate and Home Delivered Meals (NHTD only)
5. Environmental Modifications (E-mods)
6. Home and Community Support Services (HCSS)
7. Home Visits by Medical Personnel (NHTD only)
8. Independent Living Skills and Training Services (ILST)
9. Moving Assistance (NHTD only)
10. Nutritional Counseling/Educational Services (NHTD only)
11. Peer Mentoring (NHTD only)
12. Positive Behavioral Interventions and Support Services (PBIS)
13. Respiratory Therapy (NHTD only)
14. Respite
15. Service Coordination (SC)
16. Structured Day Program Services (SDP)
17. Substance Abuse Program Services (TBI only)
18. Transportation Services
19. Wellness Counseling (NHTD only)

### **B. Adult Care Facilities (ACFs):**

- Assisted Living Programs (ALPs)
  - ALP residents may receive Behavioral Health Home and Community-Based Services (BH HCBS HARP) or HCBS through MMMC and MLTC, under - 1115 Demonstration Project (NY Medicaid Redesign Team)

**Services Provided Under ALPs:**

The following core services are provided under ALPs:

1. Personal Care
2. Home Health Aides
3. Personal Emergency Response Services
4. Nursing
5. Physical Therapy
6. Occupational Therapy
7. Speech Therapy
8. Medical Supplies and Equipment
9. Adult Day Health Care

In addition, regulations require the adult home or enriched housing program within which the ALP is located to provide:

1. Room
2. Board
3. Housekeeping
4. Supervision
5. Case Management

In addition to the menu of services above, an ALP resident who enrolls in a Mainstream Medicaid Managed Care or Managed Long Term Care plan may also receive the following services:

1. A Range of Home Health Services
2. Case Management Services of a Registered Professional Nurse

**C. Community First Choice Option (CFCO) (1915 (k)) (OALTC and Office of Health Insurance Programs (OHIP))**

**Services Provided Under CFCO:**

1. Assistive Technology\*
2. Skill Acquisition, Maintenance and Enhancement (SAME)\*
3. Community Transitional Services\*

4. Environmental Modification\*
5. Home Delivered Meals\*
6. Home Health Care (Aide)
7. Homemaker/Housekeeper
8. Moving Assistance\*
9. Personal Care/Consumer Directed Personal Assistance Program
10. Personal Emergency Response
11. Transportation - Non-Emergency, Medical\*
12. Transportation - Non-Emergency, Social\*
13. Vehicle Modification\*

\* These services are authorized in the State Plan but not yet implemented by the State.

## **Department of Health (DOH)-Office of Health Insurance Programs (OHIP)**

### **D. 1115 Demonstration Project (NY Medicaid Redesign Team) (OHIP):**

#### **D1. Managed Long Term Care (MLTC):**

- Medicaid Advantage Program (MAP)
- Partial Capitation (Partial Cap)

#### **Services Provided Under MLTC:**

1. Home Care (including home health aide, skilled nursing care, physical, speech and occupational therapy, and medical social services)
2. Personal Care Services (PCS)
3. Private Duty Nursing (PDN)
4. Consumer Directed Personal Assistant Services (CDPAS)
5. Adult Day Health Care (medical only, or medical and social together)
6. Social Adult Day Care (SADC)
7. Personal Emergency Response System (PERS)
8. Home-Delivered Meals and Congregate Meals
9. Medical Equipment, Durable Medical Equipment (DME), Eyeglasses, Hearing Aids, Home Modifications
10. Podiatry, Audiology, Dentistry, and Optometry



11. Non-Emergency Medical Transportation
12. Physical, Speech, and Occupational Therapy (outside the home - limited to 40 visits, which the plan may increase due to medical necessity)

**D2. Mainstream Medicaid Managed Care (MMMC):**

**HCBS Services Available to All Enrollees Under MMMC:**

1. Private Duty Nursing
2. Home Health Services
3. Personal Care Services
4. Personal Emergency Response System
5. Consumer Directed Personal Assistance Services
6. Adult Day Health Care
7. AIDS Adult Day Health Care

In addition to the HCB services listed above available to all enrollees, effective October 1, 2019, eligible MMC Plan members under age 21 receive access to these HCBS services from their MMC plan:

1. Community Habilitation
2. Day Habilitation
3. Caregiver/Family Support and Services
4. Community Self Advocacy Training and Support
5. Prevocational Services- *must be age 14 and older*
6. Supported Employment- *must be age 14 and older*
7. Respite Services (Planned Respite and Crisis Respite)
8. Palliative Care
9. Environmental Modifications
10. Vehicle Modifications
11. Adaptive and Assistive Equipment
12. Youth Peer Support Services and Training
13. Crisis Intervention

In addition to the services above, individuals with serious behavioral health issues who are enrolled in HARPs and HARP-eligible individuals enrolled in HIV SNPs who are identified as eligible by an assessment will have access to the following Behavioral Health HCBS:

1. Habilitation Support Services
2. Education Support Services
3. Pre-Vocational Services
4. Transitional Employment
5. Intensive Supported Employment
6. Ongoing Supported Employment

**E. 1915 (c) Children's Waiver Programs:**

Children's Home and Community-Based Services (HCBS) (#4125)

**Children's Waiver HCBS Services:**

1. Community Habilitation
2. Day Habilitation
3. Caregiver/Family Advocacy and Support Services
4. Respite
5. Prevocational Services
6. Supported Employment
7. Palliative Care – Expressive Therapy
8. Palliative Care – Massage Therapy
9. Palliative Care – Counseling and Support Services
10. Palliative Care – Pain and Symptom Management
11. Adaptive and Assistive Technology
12. Vehicle Modifications
13. Environmental Modifications
14. Non-Medical Transportation

DOH- Office of Public Health (OPH)-AIDS Institute

**F - G. 1115 Demonstration Project (NY Medicaid Redesign Team) (AIDS Institute)**

**F. AIDS Adult Day Health Care Program (AADHCP):**

**Services Provided in AADHCP:**

1. Treatment Adherence Support

2. Nursing Care
3. Rehabilitative Services
4. Nutritional Services
5. Case Management
6. HIV Risk Reduction
7. Substance Use Services
8. Mental Health Services

**G. HIV/AIDS Supportive Housing Program:**

**Services Provided in the HIV/AIDS Supportive Housing Program:**

9. Independent Living Skills Training
10. Individual and Group Health Education
11. Housing Placement
12. Lease Negotiation
13. Home Visits
14. Vocational Readiness Education
15. Peer Support
16. Care Coordination (including Case Conferencing involving other Community-Based Medical and Social Service Providers)
17. Financial Assistance

**Office for People with Developmental Disabilities (OPWDD)**

**Services under the New York State OPWDD Comprehensive HCBS Waiver:**

1. Residential Habilitation
2. Day Habilitation
3. Community Habilitation
4. Supported Employment
5. Pathway to Employment
6. Prevocational Services
7. Intensive Behavioral Services
8. Respite
9. Assistive Technology

10. Environmental Modifications
11. Vehicle Modifications
12. Live-in-Caregiver
13. Community Transition Services
14. Individual Directed Goods and Services
15. Family Education and Training
16. Fiscal Intermediary Services
17. Support Brokerage

### **Office of Mental Health (OMH)**

H – K. Recipients/residents in these programs/settings may receive Behavioral Health Home and Community-Based Services (BH HCBS) through HARP

H. **Apartment Treatment Programs:**

I. **Community Residence Single Room Occupancy Programs (CR-SRO):**

J. **Supportive Single Residence Occupancy Programs (SP-SRO):**

K. **Supportive Scattered-Site Housing, formerly known as Supported Housing:**

### **Behavioral Health Home and Community-Based Services (BH HCBS) Services provided under HARP - 1115 Demonstration Project (New York Medicaid Redesign Team) (OASAS/OMH/DOH):**

1. Habilitation
2. Education Support Services
3. Pre-vocational Services
4. Transitional Employment
5. Intensive Supported Employment (ISE)
6. Ongoing Supported Employment
7. Non-Medical Transportation

\* Community-based agencies apply for a designation in order to provide BH HCBS. The designation confirms that an agency has attested to provide BH HCBS within the agency's scope of practice and consistent with the criteria articulated in the BH HCBS manual.

## **Office of Alcoholism and Substance Abuse Services (OASAS)**

### **L. Permanent Supportive Housing (PSH):**

PSH residents may receive Behavioral Health Home and Community-Based Services (BH HCBS HARP) or HCBS through MMMC and MLTC, under - 1115 Demonstration Project (NY Medicaid Redesign Team)

### **Behavioral Health Home and Community-Based Services (BH HCBS) Services provided under HARP - 1115 Demonstration Project (NY Medicaid Redesign Team) (OASAS/OMH/DOH):**

1. Habilitation Services
2. Education Support Services
3. Pre-vocational Services
4. Transitional Employment
5. Intensive Supported Employment (ISE)
6. Ongoing Supported Employment

New York State Home and Community-Based Services Settings Statewide Transition Plan Addendum  
**HCBS Program Area: Adult Day Health Care Program (ADHC)**  
 Agency/Office in Oversight: Department of Health, Office of Aging and Long Term Care

1) Name of Setting(s) (i.e., locations where services occur)  And  2) Name of HCBS	Residential (R) Or Non-Residential (N)	Number of Settings Fully Compliant by March 17, 2023 with No Remediation Needed	Number that Came into Full Compliance by March 17, 2023 with Remediation Required	Number of Settings That Could Not Comply Fully by March 17, 2023	Number of Settings That Are Presumptively Institutional/ Heightened Scrutiny	Type of Validation Used	Top Three Remediation Issues (Results of the Validation for the HCB Service(s) in the Setting Type(s))
1) Name of Settings: Adult Day Health Care Programs, located in for-profit and not-for-profit nursing homes and in buildings on the campus of these nursing homes. May be standalone or in shared commercial space with medical or non-medical offices.  2) HCBS: Adult Day Health Care	N	0	10	39	35	Provider Self Assessment of all ADHC programs were completed State staff conducted virtual on-site reviews of all open ADHCs and validated all open ADHCs via staff and registrant interviews, PCSP reviews, record reviews, and policy and procedure reviews.	Community integration, more individualized activity offerings, updates to policies and procedures, and making modifications to PCSP documents and process.

New York State Home and Community-Based Services Settings Statewide Transition Plan Addendum  
**HCBS Program Area: AIDS Institute (AI) AIDS Adult Day Health Care (AADHC) and Supportive Housing (SH)**  
 Agency/Office in Oversight: Department of Health, AIDS Institute

1) Name of Setting(s) (i.e., locations where services occur.)  And  2) Name of HCBS	Residential (R) Or Non-Residential (N)	Number of Settings Fully Compliant by March 17, 2023 with No Remediation Needed	Number that Came into Full Compliance by March 17, 2023 with Remediation Required	Number of Settings That Could Not Comply Fully by March 17, 2023	Number of Settings That Are Presumptively Institutional/Heightened Scrutiny	Type of Validation Used	Top Three Remediation Issues (Results of the Validation for the HCB Service(s) in the Setting Type(s))
1) Setting Location: Standalone buildings run by non-profits that are community integrated, and multi-use state agency buildings located in the urban center that provide a variety of HCBS and non-HCBS services,  2) HCBS: AIDS Adult Day Health Care (AADHC)	N	0	7	0	2	All AADHCs completed and submitted self-assessments for review by the AI/Office of Medicaid Policy. AI team conducted virtual and onsite reviews of each facility which included policy and procedure review, medical record review and client and staff interviews.	Policy revision regarding access to visitors, explicit language regarding access to food and snacks, and remediating person-centered planning practices.
1) Setting Locations: Scattered Site Apartments, located in the community and have a mix of	R	1	11	0	0	AIDS Institute Supportive Housing program staff conducted virtual site validation discussions with	Top remediation needs were aligning programmatic policies and procedures with the HCBS Final Rule and training on HCBS Final Rule.

New York State Home and Community-Based Services Settings Statewide Transition Plan Addendum  
**HCBS Program Area: AIDS Institute (AI) AIDS Adult Day Health Care (AADHC) and Supportive Housing (SH)**  
 Agency/Office in Oversight: Department of Health, AIDS Institute

<p>people with and without HCBS living there, and Congregate Living Facilities, both congregate living facilities are solely for those living with HIV; one location contains studio or efficiency apartments with common spaces and one location contains two bedroom/two bath shared apartments with shared living space. No common areas in the building itself.</p> <p>2) HCBS: AIDS Supportive Housing</p>						<p>each provider to verify the accuracy of provider-self assessments, seek clarification when necessary, and give providers an opportunity to revise their original responses.</p>	
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New York State Home and Community-Based Services Statewide Transition Plan Addendum

**HCBS Program Area: Community First Choice Option (CFCO)**

Agency/Office in Oversight: Department of Health Office of Health Insurance Programs

<p>1) Name of Setting(s) (i.e., locations where services occur)</p> <p>And</p> <p>2) Name of HCBS</p>	<p>Residential (R) Or Non-Residential (N)</p>	<p>Number of Settings Fully Compliant by March 17, 2023 with No Remediation Needed</p>	<p>Number that Came into Full Compliance by March 17, 2023 with Remediation Required</p>	<p>Number of Settings That Could Not Comply Fully by March 17, 2023</p>	<p>Number of Settings That Are Presumptively Institutional/Heightened Scrutiny</p>	<p>Type of Validation Used</p>	<p>Top Three Remediation Issues (Results of the Validation for the HCB Service(s) in the Setting Type(s))</p>
<p>1) Settings: Individual private homes</p> <p>2) HCBS: Personal Care, Consumer Directed Personal Assistance Services (CDPAS), assistance with health related tasks; Personal Emergency Response Systems</p>	<p>R</p>	<p>New York presumed private homes to be compliant with the Rule.</p> <p>315,451 members received one or more services or supports in private homes and/or in the community between January and June, 2022</p>	<p>New York presumed private homes to be compliant with the Rule.</p>	<p>New York presumed private homes to be compliant with the Rule.</p>	<p>Not applicable</p>	<p>Not applicable.</p>	<p>Not applicable</p>

New York State Home and Community-Based Services Settings Statewide Transition Plan Addendum

**HCBS Program Area: Managed Long Term Care (MLTC)**

Agency/Office in Oversight: Department of Health, Office of Health Insurance Programs

<p>1) Name of Setting(s) (i.e., locations where services occur)</p> <p>And</p> <p>2) Name of HCBS</p>	<p>Residential (R) Or Non-Residential (N)</p>	<p>Number of Settings Fully Compliant by March 17, 2023, with No Remediation Needed</p>	<p>Number that Came into Full Compliance by March 17, 2023, with Remediation Required</p>	<p>Number of Settings That Could Not Comply Fully by March 17, 2023</p>	<p>Number of Settings That Are Presumptively Institutional/Heightened Scrutiny</p>	<p>Type of Validation Used</p>	<p>Top Three Remediation Issues (Results of the Validation for the HCB Service(s) in the Setting Type(s))</p>
<p>1) Settings: Individual private homes</p> <p>2) HCBS: Home Care, Personal Care, including Consumer Directed Personal Care, Adult Day Health Care (ADHC), Social Adult Day Care (SADC), Personal Emergency Response System (PERS), Home-Delivered/ Congregate Meals, Social and Environmental Supports, and Durable Medical Equipment.</p>	<p>R</p>	<p>New York presumed private homes to be compliant with the Rule. The MLTC Program had 271,853 members receive one or more services or supports provided in the home and/or community between January and June of 2022.</p>	<p>New York presumed private homes to be compliant with the Rule.</p>	<p>New York presumed private homes to be compliant with the Rule.</p>	<p>Not applicable.</p>	<p>Not applicable.</p>	<p>Not applicable.</p>

New York State Home and Community-Based Services Settings Statewide Transition Plan Addendum  
**HCBS Program Area: Mainstream Medicaid Managed Care (MMC)**  
 Agency/Office in Oversight: Department of Health Office of Health Insurance Programs

1) Name of Setting(s) (i.e., locations where services occur)  And  2) Name of HCBS	Residential (R) Or Non-Residential (N)	Number of Settings Fully Compliant by March 17, 2023, with No Remediation Needed	Number that Came into Full Compliance by March 17, 2023, with Remediation Required	Number of Settings That Could Not Comply Fully by March 17, 2023	Number of Settings That Are Presumptively Institutional/Heightened Scrutiny	Type of Validation Used	Top Three Remediation Issues (Results of the Validation for the HCB Service(s) in the Setting Type(s))
1) Settings: Individual private homes  2) HCBS: Personal Care, CDPAS, Home Health Care (nursing, physical, occupational and speech therapies), and ADHC	R	New York presumed private homes to be compliant with the Rule. 135,876 enrollees received one or more Long Term Care services and supports between January and June, 2022, through their Mainstream Managed Care Plan.	New York presumed private homes to be compliant with the Rule.	New York presumed private homes to be compliant with the Rule.	Not applicable.	Not applicable.	Not applicable.