



December 03, 2021

Fact Sheet and Timeline
Summary of Key Provisions of the Home and Community-Based
Services (HCBS) Final Rule – For Social Adult Day Care (SADC)

The HCBS Final Rule, a federal regulation effective March 17, 2014, set requirements for the qualities of settings to be eligible for federal financial reimbursement for Medicaid home and community-based services (HCBS). These HCBS are provided in New York under Sections 1915(c), 1915(k) Community First Choice Option (CFCO), and the 1115 demonstration, or Mainstream Medicaid Managed Care and Managed Long Term Care.

In this Final Rule, the Centers for Medicare and Medicaid Services (CMS) moved away from defining home and community-based settings by “what they are not,” and toward defining them by the nature and quality of individuals’ experiences. The home and community-based setting provisions in this Final Rule establish a more outcome-oriented definition of HCBS settings, rather than one based primarily on a setting’s location, geography, or physical characteristics. The intent of the Final Rule is to maximize the opportunities for participants in HCBS programs to have access to the benefits of community living and to receive services in the most community integrated settings.

Overview of the HCBS Rule Standards for Social Adult Day Care

The Final Rule requires that all home and community-based settings meet certain qualifications. For Social Adult Day Care, these requirements include that the settings:

- are integrated in and support full access to the greater community;
- are selected from among options by the individual;
- ensure rights of privacy, dignity, respect, and freedom from coercion and restraint;
- optimize an individual’s autonomy and independence in making life choices;
- facilitate an individual’s informed choice about their services and who provides them;
- are physically accessible to the individuals supported;
- provide freedom and support for individuals to control their own schedules and activities**; and
- provide individuals access to food (meals and/or snacks) and visitors at any time**.

**The last two standards are the only standards that may be modified, under certain conditions.

Any modification to these additional requirements for provider-owned home and community-based settings must be supported by a specific assessed need and justified in an individual’s person-centered service plan.

Modification example: Jane D. requires assistance with managing food/snacks due to her tendency to overeat, which raises her blood sugar levels. Staff tried counseling her but were not successful. With her (or her representative’s) informed consent, staff will support her with accessing the snack cabinet for at least six months, documenting this in her plan.



In addition to the settings standards above, the federal HCBS rule also requires a person-centered planning process. This process must include people chosen by the individual, and:

- provide necessary information and support to the individual to ensure that they can direct their planning process as much as possible;
- be timely and occur at least yearly at times and locations of the individual's convenience;
- assist the person in achieving outcomes they define for themselves, and in the most integrated community setting(s) they desire;
- ensure delivery of services in a manner that reflects personal preferences and choices;
- help promote the health and welfare of those receiving services;
- take into consideration the culture of the person served, also using plain language;
- include strategies for solving disagreement(s);
- offer choices regarding the services and supports the person receives, and from whom;
- provide a method for the individual to request updates to their plan;
- indicate what entity or person will monitor the primary or main person-centered plan;
- identify strengths, preferences, needs (both clinical and support), and desired outcomes.

Eligible HCBS Settings

Based on CMS-established standards, New York State assumes that an individual's private home, or the home of a family member, friend, neighbor, or roommate is in compliance with the Rule as long as the individual receiving services is not living with a paid caregiver who receives HCBS payments, as such a setting requires assessment. When an individual, such as a person receiving Social Adult Day Care, lives in a private home that is assumed to comply, that person must still have a person-centered plan in place that meets the planning requirements above and a process that supports them to have access to the full benefits of community living and informed choice over their services and who provides them.

The Final Rule excludes certain settings as allowable settings for the provision of Medicaid home and community-based services, including nursing facilities, institutions for mental disease, intermediate care facilities for individuals with intellectual disabilities, and hospitals. The Rule also presumes certain settings to be institutional and requires states to demonstrate their eligibility for continued HCBS funding, which is further discussed below under "**Heightened Scrutiny.**"

Determining the Eligibility of HCBS Settings

The Final Rule includes a transitional process for states to ensure that their HCBS waivers and impacted state plan services (i.e., CFCO in New York) meet the HCBS Final Rule requirements by March 17, 2023; a date extended three years from the original transition deadline. New HCBS waivers or funding authorities impacted by the Rule, (created after March 17, 2014), must meet the Rule's requirements from day one to be approved by CMS.

Per CMS, New York, its contractors, or Managed Care Plans, must assess all Social Adult Day Care sites that receive funding through our 1915 (c), 1915 (k) or 1115 authorities approved prior to March 17, 2014 to verify the settings are in compliance with the Rule. Most Social Adult Day Care sites will require assessment. As with any such HCBS setting, if there are Social Adult Day



Care sites that do not fully meet the Final Rule's requirements, a remediation plan to bring the program into compliance must be developed and put into action.

Heightened Scrutiny

The Final Rule identifies other settings that are presumed to have institutional qualities including:

- those in a publicly or privately-owned facility that provides inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or
- that have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS.

For any setting that falls under the categories just mentioned that New York determines to include in Medicaid HCBS programs, a decision must be made based on information collected and then presented by the State to CMS to demonstrate that the setting is in fact home and community-based and does not have the qualities of an institution. This process, called "heightened scrutiny," includes input and information from the public.

Social Adult Day-Care Person-Centered Planning

To achieve the Rule's person-centered planning standards, which make up the foundation of HCBS rule implementation, the plan and/or the social adult day care entity must obtain a social history of Social Adult Day Care participants. Having a person-centered plan that includes the desired outcomes of participants, a key standard within the Rule, means that person-centered plans will often include a focus on personal relationships and preferred activities, in addition to health and safety related outcomes. The social history is also known as the Individual Experience Assessment (IEA) and is conducted at the initial and at the annual Person-Centered Services Plan timeframe, unless changes to member's conditions warrant earlier.

Social Day Care providers who receive Medicaid funding will be required to make any necessary changes and remediations by March 17, 2023.

Remediation Activities:

Social Adult Daycare (SADC) provider Sites will be required to perform remediation activities for standards that are found non-compliant and MLTC plans are required to validate the remediation activities. The following are guidelines in developing remediation plans and activities for reaching compliance.

- Train staff at all levels in person-centered planning, thinking, and practice, including how to incorporate these practices in the writing and coordination of service plans (registrant care plans/individual service plans/etc.). Training should include techniques used to facilitate and support individuals' participation in unscheduled/scheduled community activities in the same manner as people not receiving HCBS (e.g. shop, attend religious services, appointments, lunch/activities with family and friends, etc.) in the community as they choose. Also, address how to ensure individuals have freedom around meal planning, preparation, and access to food as addressed in service planning and daily activities.
- Educate 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.



- Ensure person-centered planning occurs at least annually for individuals served to assess their strengths, interests, preferences, and goals, making sure their activities and services reflect this process, which is driven by the individual whenever possible.
- Reorganize and/or retool staffing resources and/or staffing patterns to support individual choices.
- Train staff, individuals, families, and/or advocates on creating an environment where individuals have a right to come and go at any time. This includes appropriate rights modifications and implementation.
- Increase access to activities and options that are of interest to, or the preference of, the individual by directly soliciting their feedback during the person centered planning process.
- Develop and implement experiential learning strategies with individuals supported (i.e. working on money skills by heading into a local store and making a purchase, working on cooking/baking skills starting with finding a recipe on-line, going to the store to buy the ingredients, then coming home to do actual cooking/baking).
- Reallocate/revise/increase transportation resources to ensure individual's transportation needs are met to ensure individual's access to the community at times and dates of their choosing.
- Develop and implement strategies to help foster natural and volunteer supports for individuals to access meaningful community activities that promote community inclusion and independence.
- Modify physical environment if needed to include locking mechanism to setting and personal space, and/or removal of locks, barriers, or obstructions that restrict movement within the setting.
- Increase access to/options for assistive technology (i.e., purchase of a computer/cell phone, access to the internet; use of cell phone applications to support independence; key pad entry systems; medication dispensers; etc.).
- Update/revise policies and procedures applicable to the setting, such as removal of 'blanket restrictions' applying to all individuals served in the setting, relying instead on an individualized person-centered planning process for any needed restrictions
- Allocate additional program space in order to promote freedom of movement within the setting, privacy, comfort, and individualized activity opportunities.
- If the setting is located inside of, or adjacent to, an institution, establish separate fiscal and administrative operations, HCBS-specific training opportunities, policies, and procedures, promoting that HCBS settings standards are present in the program/setting, as opposed to institutional policies/procedures.



Timeline for MLTC Social Adult Day Care HCBS Compliance

Timeline & Key Dates (Phase 1)		
Milestone	Description	Target Dates
All Plan Meeting announcement	DOH overview of SADC self-assessment timeline, process and expectations.	November 2021
LISTSERV Notification	DOH distributes SADC Site Self-Assessment Tool to MLTC plans with applicable guidance and policy resources	December 2021
Training Webinar	DOH will host an educational training webinar with MLTC plans and SADC providers to review how the self-assessment should be conducted.	December 2021
Plans Conduct and Return SADC Self-Assessments	Plans will work with their SADC sites to complete self-assessments, analyze results, document remediation plans, and return results to DOH.	Late December 2021
DOH Analysis of SADC Self-Assessment Results	DOH will analyze self-assessment results and work with plans to validate remediation plans and determine what sites will come into compliance by March 2023.	January 2022 – February 2022
Plan Remediation Begins	Plans begin remediation activities and reviews with SADC sites to bring into compliance.	January 2022 – February 2022

Timeline & Key Dates (Phase 2)		
Milestone	Description	Target Dates
Policies, Procedures and Heightened Scrutiny	DOH will work with plans to review and/or establish policies and procedures for monitoring SADC site remediation plans and transition activities. This will also include validation of the plans heightened scrutiny steps for their SADC networks.	January 2022 – February 2022
Site-Level Assessments	DOH will work with plans to conduct SADC site-level reviews for specific SADC sites. Reviews will validate the plans monitoring and remediation activities for the specific SADC sites, as well as the overall compliance of each SADC site with the HCBS Final Rule and Person-Centered Planning requirements.	Starting in early 2022



Timeline & Key Dates (Phase 2)		
Milestone	Description	Target Dates
Member Experience Assessments	HCBS member experience assessments begin and conducted in alignment to member’s Person-Centered Planning Services.	Spring 2022
Public Comment and Heightened Scrutiny Sites	DOH will host public comment activities and identification of Heightened Scrutiny SADC sites.	Late Spring 2022
Ongoing Reporting	Plans will report status of ongoing SADC site compliance and remediation activities to DOH. MLTC plan and SADC site compliance will be incorporated into reporting to CMS within the NYS HCBS Transition plan timeframes.	Ongoing through October 2022
100% compliance	NYS compliance to HCBS Settings Final Rule	March 2023

Timeline & Key Dates (Phase 3)		
Milestone	Description	Target Dates
Ongoing Monitoring and Compliance	<p>Annual HCBS compliance reviews of SADC sites will continue to be conducted by DOH. All HCBS providers must comply with the HCBS Settings Final Rule to remain eligible to contract with MLTC plans, and MLTC plans are required to monitor continued ongoing compliance with the HCBS Settings Final Rule and all State and Federal regulations on at least an annual basis.</p> <p>All SADC sites must achieve and attest to compliance with 9NYCRR 6650.20 requirements via annual certification through the Office of the Medicaid Inspector General (OMIG) and SADC sites in New York City must register with NYC Aging per Local Law 9 of 2015.</p>	Annual and Ongoing



Resources and Training

New York State Department of Health (DOH) will offer a statewide webinar for Social Adult Day Care provider sites and the MLTC plans in early December 2021 to provide additional education for assessment and remediation.

In addition to the specific webinar for MLTC Social Adult Day Care provider sites, DOH is currently sponsoring the ***Person-Centered Planning Comprehensive System Transformation Statewide Training Initiative***. The trainings, learning opportunities, and upcoming person-centered planning online toolkit are offered at no cost. Participation can demonstrate efforts towards compliance. For information and to register, go to: nydohpcptraining.com/events.

Additional information regarding New York’s HCBS Rule Statewide Transition Plan can be found at:

- **CMS HCBS Final Rule:**
 - https://www.health.ny.gov/health_care/medicaid/redesign/docs/hcbs_final_rule.pdf
- **NYSDOH HCBS Final Rule Website:**
 - https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm
- **NYSDOH HCBS Transition Plan:**
 - https://www.health.ny.gov/health_care/medicaid/redesign/hcbs/docs/2018-11-07_hcbs_final_rule.pdf
- **NYSDOH Person-Centered Planning Library:**
 - https://www.health.ny.gov/health_care/medicaid/redesign/person-centered_planning/index.htm

Any questions should be directed to: HCBSSADCSiteAssessments@health.ny.gov.