



Department of Health

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Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

July 14, 2023

DACF: DAL #23-21
Subject: Federally Compliant Person-Centered Planning

Dear Adult Care Facility Administrator:

In 2014, the Centers for Medicare and Medicaid Services (CMS) published the Home and Community-Based Services (HCBS) Final Rule, effective March 17, 2014. The HCBS Final Rule intends to ensure that publicly funded long term services and supports (LTSS) are directed by the individual to the greatest extent possible and in a manner consistent with the recipient's individualized preferences and goals. Among its provisions, the HCBS Final Rule established new standards for person-centered planning, settings in which recipients of LTSS live and/or receive services, and mitigating conflicts that may occur if providers assess, plan, and deliver these LTSS.

Because at any time, an adult care facility (ACF) resident may receive HCBS due to a condition that requires personal care, nursing, physical therapy, or other supports beyond that offered by the facility, both CMS and the New York State Department of Health ("Department") agree that the HCBS Final Rule applies to all ACFs, including baseline Adult Homes and Enriched Housing Programs, such facilities with Assisted Living Program (ALP) licensure, and Assisted Living Residences (ALRs) with or without Special Needs Assisted Living Residence (SNALR) and Enhanced Assisted Living Residence (EALR) certifications. Information regarding the HCBS Final Rule and the New York State HCBS Statewide Transition Plan is located online at: http://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm. This Dear Administrator Letter (DAL) provides further guidance to comply with the person-centered planning requirements identified via DAL #21-12.

In 2016, the Department conducted an educational webinar concerning the impact of the HCBS Rule on ALPs, and later that same year, licensed ALP providers completed a self-assessment to measure their existing compliance with the HCBS Final Rule. In 2018, the Department replicated those activities for Adult Homes, Enriched Housing Programs, and ALRs, and specifically those that house one or more residents in receipt of Medicaid-funded HCBS, to help such facilities assure compliance with the HCBS Final Rule. The Department developed preliminary guidance to assist such facilities in the development of HCBS compliant policies and practices. Based on Title 42 of the Code of Federal Regulations, section 441.540, the Department now provides the enclosed additional guidance to assist Adult Care Facilities in developing an HCBS compliant person-centered planning process to incorporate into the facility's case management structure for all residents receiving Medicaid-funded HCBS in these facilities or in the community.

Where an individual is receiving HCBS outside of the included services of the ACF, the enclosed Person-Centered Service Plan (PCSP) template is required to document compliance with settings standards and individualized modifications to additional provider-owned or

controlled standards. In many instances, the template will be filled out by the individual's Managed Care Plan ("plan") or the Local Department of Social Services ("district"). If the HCBS is personal care and the individual **is not enrolled in a plan**, then the district should coordinate with the ACF operator to ensure the PCSP is updated with information based on what is learned at the ACF where the person resides. If the resident is enrolled in a Medicaid Managed Care Plan or Managed Long Term Care Plan, the ACF should coordinate with the care manager at the plan to ensure the PCSP template is updated with details included after developing the resident-level PCS plan. Please be reminded that failure to meet the metrics required under the HCBS Final Rule may result in a disallowance of federal funding to New York State and/or citation against a non-compliant ACF, as appropriate, under applicable regulation.

All ACFs must:

- be integrated in and support an individual's (i.e., the resident's) full access to the greater community;
- be selected from among options by the individual;
- ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint (not only physical, chemical, etc. but avoidant of blanket-policies);
- optimize individual's autonomy and independence in making life choices; and
- facilitate individual's choice about services and who provides them.

The additional standards for provider-owned or controlled residential settings apply to ACFs and require individuals receiving Medicaid-funded HCBS in these facilities to have:

- Freedom and support to control their own schedule and activities;
- Access to food and visitors at any time;
- A setting that is physically accessible to the individual (*not modifiable);
- Legally enforceable agreements giving residents the same protections and responsibilities as any tenant living in that jurisdiction;
- Privacy in sleeping or living unit;
- Units with lockable entrance doors;
- Residents and only appropriate staff have keys/codes to sleeping/living unit doors.
- A choice of roommates in shared units; and
- Freedom to furnish and decorate sleeping or living units.

Modifications

Modifications to any of the modifiable standards immediately above cannot be made to an entire setting. They must be made on a *case-by-case basis*, and be:

- Agreed upon by the individual (and/or their representative);
- Time-limited, with progress documented;
- Supported by a specific assessed **need** (a diagnosis is not sufficient to demonstrate need);
- Used only after prior positive interventions were tried and failed; and
- Justified in the person-centered service plan.

Modification example #1: Jane requires assistance with managing her access to food/snacks due to her overeating, which raises Jane's blood sugar levels. Staff tried counseling Jane but were not successful. With Jane's (and/or Jane's representative's) informed consent,

staff will support Jane with accessing the snack cabinet for the next six months, documenting this in Jane's plan.

Modification example #2: Mortimer was having substantial, long-standing problems with his roommate and therefore requested a private room but did not have the financial resources available for a private room. Therefore, staff discussed the choice of roommates to see if they could make accommodations to move Mortimer or his roommate given that another room with a likely more compatible roommate was about to become available. Mortimer moved which worked better for both Mortimer and his new roommate, who both got along well, and which helped prevent staff from dealing with ongoing conflict between Mortimer and his former roommate.

Process

The federal HCBS rule also requires a person-centered planning process. This process must:

- provide necessary information and support to the individual to ensure that they can direct their planning process as much as possible, including providing a copy of the agreed upon plan;
- include people chosen by the individual;
- be timely and occur at least annually 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;
- use 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; and
- identify individual's strengths, preferences, needs (both clinical and support), and their own desired outcomes.

Because a person's desired outcomes tend to focus on relationships and preferred activities, the ACF must obtain the resident's social history to ensure the resident's desired goals are established as part of their resident level person-centered care plan in addition to health and safety components.

Person-Centered Service Plan Template

The enclosed Person-Centered Service Plan template may be completed as an addendum to support the Individualized Service Plan (resident-level person centered service plan) developed pursuant to Title 10 NYCRR § 1001.7(k) for Assisted Living Residences and any service plans developed in accordance with Title 18 NYCRR Parts 487, 488, and 490, and must be maintained within the resident's case management file and readily accessible by the Department or its agents upon request. The ACF case management team should coordinate with the plan or district (whoever authorized the HCBS provided) to ensure the master template

is also updated and reflects site-based changes such as making modifications to the additional provider-owned or controlled standards.

To help ACF case managers understand the expectations of HCBS-compliant person-centered planning standards, the Department encourages participation in the available statewide trainings listed at [Person-Centered Planning Training Initiative information and registration page](#). Further, a webinar on person-centered practice for ACFs will be provided live by the Department on **August 17, 2023 at 2:00pm**. To pre-register, please visit <https://meetny.webex.com/weblink/register/ra018d14a4cd0f86dae32f1071f7f8da7>.

If you have any questions, please write to acfhcbs@health.ny.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kelly Ann Anderson". The signature is written in dark ink and is positioned above the printed name.

KellyAnn Anderson, Director
Division of Adult Care Facility
and Assisted Living Surveillance

Enclosure