

Amended HCBS Statewide Transition Plan

OVERVIEW

On July 19th, New York State published an amended 211-page version of its Home and Community-Based Services (HCBS) Statewide Transition Plan (available [here](#)) for public comment. This document details how New York will ensure compliance with a 2014 rule published by the Centers for Medicare & Medicaid Services (CMS) that, among other items: requires all HCBS settings to meet criteria for community integration, individual choice, privacy, and other consumer protections; updates requirements for compliance assessments; and identifies certain settings as presumptively not qualified for Medicaid HCBS. Plans may transition services into compliance over a period of up to five years.

This amended version of the plan seeks to address CMS's concerns with the initial, more rudimentary 22-page version of the plan that the State submitted in early 2015. Although the final rule applies directly only to 1915(c), 1915(i), and 1915(k) waiver services, CMS requested that the State also address HCBS services provided through its 1115 Partnership Plan waiver, which includes the Managed Long-Term Care (MLTC) program.

Comments may be submitted to HCBSrule@health.ny.gov. The deadline for comments has been extended to September 9th. The State will hold a webinar to discuss this document on August 18th at 9:30am. Registration information is forthcoming.

STATE AGENCY PLANS

This document includes a separate transition plan from each agency that regulates HCBS services:

- The Department of Health (DOH), including the AIDS Institute (AI);
- The Office of Mental Health (OMH);
- The Office of Alcoholism and Substance Abuse Services (OASAS);
- The Office for People with Developmental Disabilities (OPWDD); and
- The Office of Children and Family Services (OCFS).

These agency plans generally include a description of:

- The array of HCBS services that it oversees;
- How it will design and conduct compliance assessments;
- How it will implement remediation and quality improvement for non-compliant providers; and
- A timeline of activities required to enact the plan.

Each agency that currently operates HCBS Medicaid-funded services has also submitted a Systemic Compliance Chart (SCC), which lists requirements for and the current status of compliance.

In general, the State agencies have requested transition periods of five years (or requested exceptions to take even longer periods), with enforcement of new requirements to begin in 2018 or 2019, after extensive development periods that will include significant opportunities for stakeholder consultation.

In some cases, waiver amendments may be necessary for programs to come into compliance with this rule. On August 1st, OPWDD posted for public comment a proposed waiver amendment (available [here](#)) which includes provisions to address requirements of this HCBS Transition Plan, including the establishment of a Conflict Free Case Management (CFCM) program.

AFFECTED WAIVERS AND SERVICES

Agency	Waivers and Services
DOH	<ul style="list-style-type: none"> • 1915(c) waivers: <ul style="list-style-type: none"> ○ Long Term Home Health Care Program (LTHHCP), now merged with MLTC ○ Nursing Home Transition and Diversion (NHTD) ○ Traumatic Brain Injury (TBI) ○ Care at Home (CAH) I-IV and VI • Long-term care services: <ul style="list-style-type: none"> ○ Social Adult Day Care ○ Adult Day Health Care (ADHC) ○ Assisted Living Programs (ALPs) • AIDS Institute: <ul style="list-style-type: none"> ○ AIDS ADHC ○ AIDS-Institute supportive housing • Certain services in the mainstream Medicaid managed care (MMC) benefit, including: <ul style="list-style-type: none"> ○ Private duty nursing ○ Home health services ○ Personal care services ○ Consumer Directed Personal Assistance Program (CDPAP) <p>DOH expects that certain settings will be presumed institutional, such as ADHC and Special Needs ALPs. These settings will be subject to heightened scrutiny.</p> <p>Although the Community First Choice Option (CFCO) is regulated, New York’s current State Plan Amendment limits CFCO eligibility to individuals in presumptively-eligible settings (e.g., in their own home). New York may seek to amend this in the future.</p>
OPWDD	OPWDD Comprehensive HCBS Medicaid Waiver (both residential and day services)
OMH	<ul style="list-style-type: none"> • Residential Treatment Programs <ul style="list-style-type: none"> ○ Congregate Treatment (group homes) ○ Apartment Treatment ○ Community Residence/Single Room Occupancy (CR/SRO) • Supportive Housing <ul style="list-style-type: none"> ○ Scattered Site ○ Congregate Single Room Occupancy (SP/SRO) • Family Care <p>Certain settings are considered automatically non-compliant (Congregate Treatment, Family Care, and sites co-located with or adjacent to psychiatric institutions); other settings listed above will have to fill out an assessment to determine eligibility for HCBS provision.</p>
OASAS	<ul style="list-style-type: none"> • Permanent Supportive Housing
OCFS	<ul style="list-style-type: none"> • Bridges to Health (B2H) Waivers