Home and Community-Based Services (HCBS) Final Rule Compliance Self-Assessment for SADCs

12/09/2021

Agenda

- HCBS Final Rule Overview

- Assessing for Compliance with the HCBS Final Rule

- Understanding Heightened Scrutiny

- Understanding HCBS Person-Centered Planning

- Next Steps for Achieving Compliance

- Self-Assessment Question Review

- Self-Assessment Completion and Review

- Additional Resources

- Questions and Answers

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HCBS FINAL RULE OVERVIEW

Background on the HCBS Final Rule

- The HCBS Final Rule, a federal regulation effective March 17, 2014, set new standards to promote community involvement and independence for people who receive Medicaid-funded home and community-based services (HCBS)

- These federal standards apply to all HCBS provided through New York's 1915(c) waivers, Community First Choice Option, and the 1115 waiver, which includes Managed Care and Managed Long Term Care

- The Rule also set new person-centered planning and conflict of interest requirements

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Home and Community-Based Services Defined

Per CFR 440.180(b) "Home and Community-Based Waiver Services" include:

1. Case management services
2. Homemaker services
3. Home health aid services
4. Personal care services
5. Adult day health services
6. Habilitation services
7. Respite care services
8. Day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services for individuals with chronic mental illness subject to conditions specified in CFR 440.180(b)(8)(d)
9. **Other services** – requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization

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HCBS Final Rule Settings Standards

- Below are the Final Rule's *standards for all settings* where HCBS are provided and where HCBS recipients live. The settings must:

    - be integrated in and support full access to the greater community

    - be selected from among options by the individual (and their representative if they have one)

    - ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint

    - optimize autonomy and independence in making life choices

    - facilitate choices and options for an individual's services and who provides them

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Provider-Owned and Controlled Standards

Per CMS, the additional standards for non-residential settings (SADCs), are:

- Freedom and support to control one's own schedule and activities
- Access to food and visitors at any time
- The setting is physically accessible to the individual (*not modifiable)

Modifications, aka "rights restrictions," cannot be made on an entire setting. They must be made on a time-limited, *case-by-case basis* after previous positive attempts have failed, and be:

- Supported by a specific assessed need
- Justified in the person-centered service plan

Key Dates

- The HCBS Final Rule took effect:

  o March 17, 2014 for 1915(c) waivers (TBI, NHTD, CAH, etc.)

  o July 6, 2012 for 1915(k) (CFCO) programs, and

  o December 4, 2014 for the 1115 Demonstration (Managed Care and Managed Long Term Care)

- The Transition Period to achieve full compliance with the HCBS Final Rule is March 17, 2023, applies to:

  o The settings standards for 1915 (c), 1915 (k), and 1115 Demonstration

  o Making any modifications to, or restrictions of, a person's rights given by the Rule's *additional standards*, on case-by-case basis within individual Person-Centered Plans

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ASSESSING FOR COMPLIANCE WITH THE HCBS FINAL RULE

New York's HCBS Site-Level Assessment

The eight State agencies, offices and units that oversee Medicaid HCBS in New York:

- Have their own existing surveillance and monitoring processes in place to assess for compliance with various State and Federal rules and policies
- Are building site-level assessment of HCBS compliance into their systems to achieve compliance by 2023 and monitor compliance going forward
- Are using a CMS approved process of assessing for compliance of the settings they oversee/license such as:
  - site visits to a statistically significant sample of settings
  - site visits to all their settings
  - provider self-surveys/attestations, with validation of a statistically significant sample of settings

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UNDERSTANDING HEIGHTENED SCRUTINY

What is Heightened Scrutiny Assessment?

HCBS settings with certain characteristics are presumed to be institutional by CMS, and therefore require a more intensive form of HCBS site assessment. The three categories these settings fall into, often referred to as the 'three prongs of Heightened Scrutiny,' are:

- Settings in a publicly or privately owned facility providing inpatient, institutional treatment

- Settings on the grounds of, or adjacent to, a public institution providing inpatient, institutional treatment

- Settings with the effect of isolating individuals from the broader community (i.e., individuals have limited-to-no opportunities to access the community while in program)

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What is Heightened Scrutiny Assessment?

Each Heightened Scrutiny site assessment, **a standard site assessment including the same HCBS standards on slides 6 and 7,** submitted to CMS is required to have:

- onsite validation of the assessment results (on-site assessment)
- a 30-day public comment period on the assessment results
- the State's determination that the setting has or will overcome the institutional presumption by March 17, 2023

The State must submit evidence and the results of the public comment to CMS for those settings it wants to receive Federal Financial Participation (FFP) for past the March 2023 deadline.

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UNDERSTANDING HCBS PERSON-CENTERED PLANNING

HCBS Rule Person-Centered Plan Requirements

The HCBS Final Rule established many new standards regarding Person-Centered Planning (PCP), such as requiring a person-centered service plan for every person who receives Medicaid-funded HCBS – *42 CFR 441.301(c)(1)*

The Person-Centered Plan requirements are included in Section 2402(a) of the Affordable Care Act

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Person-Centered Plan Requirements

Person-Centered Plans must identify individuals':

- Strengths

- Preferences

- Needs (clinical and support)

- Desired outcomes

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Person-Centered Plan Requirements

Person-Centered Plans must also:

- Assist the person in achieving outcomes they define for themselves in the most integrated community settings they desire

- Be developed through a process where individuals get the right information and support so that they can direct the process as much as possible

- Document the individual's choice of services and supports they receive and from whom

- Document settings options provided to individuals that are not specifically designed for people with disabilities

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Person-Centered Plan Requirements

Person-Centered Plans must also:

- Include people in the planning meeting that are chosen by the person served
- Be updated at least once a year at times and locations convenient to the individual
- Take into consideration the person's culture and background
- Use non-technical or plain language, adjusting language as needed
- Include strategies for solving disagreement(s) and managing risk factors
- Provide a method for the individual to request updates

Next Steps for Achieving Compliance

Some changes that SADC providers *can* and *are* making, are:

- Increasing flexibility and options for individualized activities and outings, rather than only offering on-site activities or group outings

- Adding snack cabinets/cubbies, making snacks of individuals' preference available at any time

- Making visiting hours unrestricted, adding a visitor's room with a phone

- Giving individuals who are competent access to come and go freely with key codes/cards/etc.

  - *Remediation tools will provide additional options*

Next Steps for Achieving Compliance

- Enhancing person-centered planning and plan implementation:

  o Eliminate blanket program rules/restrictions and use required process to make modifications to HCBS standards on a case-by-case basis

  o Use plain language in all documents

  o Include goals important to the person (meaningful activities, relationships, etc.), balancing them with to important for them (health, safety, etc.)

- Initiate annual person-centered plan Member Experience Assessment (sample template forthcoming)

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SADC HCBS COMPLIANCE SELF-ASSESSMENT QUESTION REVIEW

SADC Self-Assessment Tool

MLTC Managed Care staff (p. 1) and SADC provider (p. 4) General Information Sections: Complete contact and demographics following instructions in form

Heightened Scrutiny Prong: MLTC Managed Care staff (p. 2) and SADC provider (p. 5) each fill in which of the three "prongs" are indicated for the SADC setting assessed, or "none of the above" if none are applicable. For Managed Care staff this is done *after* the completed self-assessment is

- reviewed for isolating characteristics – i.e., services and activities take place on site and there are limited-to-no opportunities for individuals to access activities in the community as described in the person-centered plans (see additional instructions in forthcoming Guiding Questions for Site Assessors)

- the location of the site has been verified by Managed Care staff using Google Maps or a similar platform to confirm whether it's inside of, on the grounds of, or adjacent to an institution providing inpatient, institutional treatment

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Questions # 1 - #5 for MLTC Managed Care Plan:

1. At some point were participants, or their representative, given options of HCBS service settings they could choose from, including the SADC?

2. Are individuals provided a choice regarding the site where they receive services when they sign their plan of care?

3. Does the site allow individuals, who are known to be safe and competent, the freedom to move about the setting, including the freedom to go outside as they choose?

Note (#3): The MLTC plan will be doing the UAS-NY assessment and would be the entity determining if the consumer is "safe and competent," sharing results with the SADC provider. Individuals who require support to be able to go outside or move about the building should have support to do so, indicated in their care plan.

Questions #1 - #5 for Managed Care Plan:

4. 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?

5. Does the site support individuals to receive services or to engage in activities outside of the setting?

Questions for Social Adult Day Care Provider #1 - #3:

1. Setting is integrated and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work/volunteer in competitive integrated settings?

2. Does the site provide opportunities for regular meaningful activities in community settings with people who do not receive services, for the amount of time desired by participants?

3. Do the individuals served at this site regularly interact with members of the community (not staff or volunteers) while participating in program?

Note (#3): This question is not only referring to time spent at the daycare site, other examples would be interacting with others at community events and outings, health care provider offices, stores, etc.

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Questions for Social Adult Day Care Provider #4 - #5

4. Does the site afford opportunities for individualized activities that focus on the needs and desires of the individuals served and an opportunity for individual growth?

5. Does the site allow individuals, who are known to be safe and competent (per plan assessment), the freedom to move about the setting, including the freedom to go outside as they choose?

Note (#5): The plan will be doing the UASNY assessment and would be the entity determining if the consumer is "safe and competent," sharing results with the SDC provider. Individuals who require support to be able to go outside or move about the building should have support to do so, as indicated in their care plan.

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Questions for Social Adult Day Care Provider #6 - #9

6. Is public transportation available to/from the site?

Note: In a rural setting this may include STAR bus, taxi, Lyft/Uber, etc. Answering "no" does not necessarily indicate non-compliance as long as the program provides adequate transportation for individuals to access the community.

7. Is information regarding transportation available to individuals in a convenient manner such as participant handbooks, handouts, or public postings?

8. Are resources other than public transportation, including financial and staff resources, available for individuals during the time at the SDC to access the site and/or individualized activities that participants may wish to attend in the community?

9. Does the site restrict individuals from receiving services or engaging in activities outside of the setting?

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Questions for Social Adult Day Care Provider #10 - #14

10. Does the site ensure individual information (medical, diet information, etc.) is kept private/confidential?

11. Are individuals given flexibility in when they take breaks/lunch times?

12. Are activities adapted to individuals' needs and preferences?

13. Are health and personal care activities, including discussions of health or personal matters, conducted in private?

14. Does the staff interact and communicate with people respectfully and in a manner in which the person would like to be addressed at all times?

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Questions for Social Adult Day Care Provider #15 - #17

15. Does site provide the opportunity and space for all individuals to do activities such as speaking on the telephone and visiting with others in private?

Note (for questions #15 and #16): Describe the current conditions, if they are impacted by COVID, and how policies and procedures ensure this standard is met under current and/or normal circumstances.

16. Are participants given freedom and support to control their own schedule and activities and have access to food and visitors at any time, with any modifications or restrictions made based on a participant's specific assessed need, and done on a time-limited basis after other positive interventions have failed, which is documented in the participant's plan of care?

17. Does the setting ensure that one or more person's behavior supports do not impede on the rights of other individuals?

Questions for Social Adult Day Care Provider #18 - #20

18. Does the site provide individuals with flexibility in their daily schedule and activities?

19. Does the site have any of the following barriers used to prevent individuals' movement?
- Gates, locked doors, fences
- Other (please specify in the "Comments" column)

20. Does the site offer any options for the participants to meet physical environment goals and needs?
- Indoor gathering space, outdoor gathering space, large group activity space
- Small group activity space, private space, area for calming activities, area for stimulating activities

Note (#20): Describe the current conditions, if they are impacted by COVID, and how policies and procedures ensure this standard is met under current and/or normal circumstances.

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Questions for Social Adult Day Care Provider #21 - #25

21. Is the site physically accessible to the participants, including access to bathrooms and break rooms?

22. Does the site provide for more than one meal option and private dining space if requested by an individual?

23. Do the individuals have access to food at any time with snacks and water and/or beverage available during non-meal times?

24. Does the site allow participants to choose with whom they spend their time while at the setting?

25. Does the site allow participants to have visitors of their choosing at any time?

Questions for Social Adult Day Care Provider #26 - #29

26. Does the setting support individuals to do the following?
• Make their own decisions, associate with others, access their money

27. Does the site allow individuals to choose which of the site's employees provide their services? Example: An individual requests that all personal care services for her be conducted by female employees. Is that individual's request met?

28. Does the site afford individuals the opportunity to update or change their work/daily activities based on their preferences?

29. Does the site have person-centered policies to ensure participants are supported in developing specific plans to support their needs and preferences?

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Questions for Social Adult Day Care Provider #30 - #34

30. Does the setting ensure staff is knowledgeable about the capabilities, interests, preferences, and needs of people?

31. Does the site provide information to individuals about how to make a request for additional services or to make changes to their care plan?

32. Do all staff (paid and unpaid) receive new hire training related to company policies, including HCBS specific policies and person-centered planning, practice and thinking?

33. Are company policies regularly reassessed for compliance and effectiveness, and amended as necessary?

34. Does the site have documentation that shows staff's adherence to policies such as HCBS specific training documentation and sign-in sheets for relevant activities?

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SELF-ASSESSMENT COMPLETION AND SUBMISSION

SADC Self-Assessment Tool

To complete the first phase of the SADC HCBS Final Rule compliance project, respond to the questions with only a "Yes" or a "No" in that column.

MLTC Managed Care staff should complete the sections beginning on page one, with SADC providers completing questions starting on page four.

If you answer "No" to a question, thereby *potentially* demonstrating a lack of HCBS Rule compliance, please provide a brief explanation as to why in the far-right "Comments" column and any remediation efforts in progress.

If you answer "Yes" to a question, provide a brief explanation in Comments as to how you demonstrate compliance.

Due Date: Your response is <u>required</u> by December 30, 2021

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Submitting the SADC Self-Assessment Tool

Submitting: MLTC Managed Care Plans must **log into Health Commerce System (HCS)** and submit the completed Self-Assessment and all supporting documentation for EACH contracted daycare in ZIP FILES to the HCS secure mailbox (HCBS SADC Site Assessments) using Secure File Transfer 2.0. by cob **December 30, 2021.**

Ten items requiring supporting documentation if you answer "Yes" are noted with an indicator of "**Supporting Documentation Required.**"

In the field provided under the "Guidance and Supporting Documentation" column, please write the title of the document(s) and the specific page number(s) for where the relevant information can be found within the document so it may be easily found in the zip file. Not applicable for photographs.

For questions only on this self-assessment contact:
HCBSSADCSiteAssessments@health.ny.gov

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TIMELINE AND KEY DATES

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SADC Timeline & Key Dates

Timeline & Key Dates (Phase 1)		
Milestone	**Description**	**Target Dates**
All Plan Meeting announcement	DOH overview of SADC self-assessment timeline, process and expectations.	**November 17th, 2021**
LISTSERV Notification	DOH distributes SADC Site Self-Assessment Tool to MLTC plans with applicable guidance and policy resources	**December 3rd, 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 9th, 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.	**December 30th, 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**

SADC Timeline & Key Dates

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**
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**

ADDITIONAL RESOURCES

Additional Resources

- HCBS SADC MLTC Policy 21.05 Guidance – Disseminated on December 3rd, 2021

- HCBS SADC Fact Sheet with Timeline – Disseminated on December 3rd, 2021

- HCBS SADC Guiding Questions for Site Assessors – Disseminating to plans December 2021

- Additional information/resources will be provided to settings identified for Heightened Scrutiny assessment as needed early-to-mid 2022

- SADC Provider Remediation Tool – Disseminating to plans early 2022, dissemination timeline for providers will be communicated after that time

- Member Experience Assessment Template – early 2022

- Additional FAQs as needed to respond to provider questions

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Additional Resources, cont.

- **To register for training opportunities:** nydohpcptraining.com/events

- **NYSDOH HCBS Final Rule website:**
    - https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm

- **NYSDOH HCBS Statewide Transition Plan:**
    - https://www.health.ny.gov/health_care/medicaid/redesign/hcbs/docs/2018-11-07_hcbs_final_rule.pd

- **CMS HCBS Final Rule website:**
    - https://www.health.ny.gov/health_care/medicaid/redesign/docs/hcbs_final_rule.pdf

- **For additional questions about the self-assessment:** please email us at: HCBSSADCSiteAssessments@health.ny.gov

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QUESTIONS AND ANSWERS

For additional questions about the self-assessment: please email us at: HCBSSADCSiteAssessments@health.ny.gov

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Thank You