

# TRANSITION PLAN

## For Complying with the CMS Home- and Community-Based Services Medicaid Rule

The CMS-approved New York transition plan can be found at:

<https://oasas.ny.gov/20222023-statewide-transition-plan>

The CMS-approved New York Corrective Action Plan can be found at:

<https://www.medicaid.gov/sites/default/files/2023-07/al-appvd-cap.pdf>

### FOR THE STATE OF NEW YORK

#### SITE-SPECIFIC ASSESSMENTS

*The Centers for Medicare & Medicaid Services (CMS) required states to conduct validated, site-specific assessments of all provider-owned or controlled settings.*

<b>Types of Settings/ Residents and Funding Authorities</b>	<p>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.</p> <ul style="list-style-type: none"><li>• Nursing Home Transition and Diversion Waiver (DOH)</li><li>• Traumatic Brain Injury Waiver (DOH)</li><li>• Children's Waiver (DOH)</li><li>• Home and Community Based Services (HCBS) Waiver (OPWDD)</li></ul>
<b>Compliant/Non-Compliant</b>	<p><u>OHIP Combined Children's Waiver Settings Transition</u></p> <ul style="list-style-type: none"><li>• Number of sites that could come into full compliance:<ul style="list-style-type: none"><li>○ Residential settings: 6</li><li>○ Home and Community Based ONLY settings (All HCBS): 66</li><li>○ Both onsite setting AND HCBS (All HCBS): 128</li></ul></li><li>• Number of sites that cannot comply with final rule:<ul style="list-style-type: none"><li>○ Residential settings: 0</li><li>○ Home and Community Based ONLY settings (All HCBS): 0</li><li>○ Both onsite setting AND HCBS (All HCBS): 0</li></ul></li><li>• Number of sites that are presumptively institutional in nature (i.e., must undergo Heightened Scrutiny):<ul style="list-style-type: none"><li>○ Residential settings: 3</li><li>○ Home and Community Based ONLY settings (All HCBS): 0</li><li>○ Both onsite setting AND HCBS (All HCBS): 0</li></ul></li></ul> <p><u>OPWDD</u></p>

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		<p>IRAs:</p> <ul style="list-style-type: none"> <li>● Number of settings that are compliant: 5,672</li> <li>● Number of settings that are not yet compliant: 251</li> <li>● Number of settings that cannot comply: 0</li> <li>● Number of settings that may be subject to Heightened Scrutiny that have or will comply by March 2023: 243</li> <li>● Total number: 6,166</li> </ul> <p>Day Habilitation:</p> <ul style="list-style-type: none"> <li>● Number of settings that are compliant: 712</li> <li>● Number of settings that are not yet compliant: 15</li> <li>● Number of settings that cannot comply: 0</li> <li>● Number of settings that may be subject to Heightened Scrutiny that have or will comply by March 2023: 0</li> <li>● Total number: 727</li> </ul> <p>Site-Based Prevocational Settings:</p> <ul style="list-style-type: none"> <li>● Number of settings that are compliant: 21</li> <li>● Number of settings that are not yet compliant: 0</li> <li>● Number of settings that cannot comply: 0</li> <li>● Number of settings that may be subject to Heightened Scrutiny that have or will comply by March 2023: 0</li> <li>● Total number: 21</li> </ul> <p>Family Care:</p> <ul style="list-style-type: none"> <li>● Number of settings that are compliant: 1001</li> <li>● Number of settings that are not yet compliant: 0</li> <li>● Number of settings that cannot comply: 0</li> <li>● Number of settings that may be subject to Heightened Scrutiny that have or will comply by March 2023: 0</li> <li>● Total number: 1001</li> </ul> <p><u>Note:</u> Not all of New York's waivers reported specific numbers for settings and their compliance status.</p>
	<b>Reasons for Non-Compliance</b>	<p>Reasons for non-compliance in settings include:</p> <ul style="list-style-type: none"> <li>● Dining room seating restrictions</li> <li>● Access to food 24 hours a day</li> <li>● Choice of setting for meals</li> <li>● Choice of roommate policies</li> <li>● Bedroom doors lacking locks</li> <li>● Visitor policies restricting allowable times for visits</li> <li>● Person-centered planning process requiring remediation</li> <li>● Privacy within the sleeping unit</li> </ul>

## NEW YORK TRANSITION PLAN FOR COMPLYING WITH THE CMS HOME- AND COMMUNITY-BASED SERVICES MEDICAID RULE (continued)

	<b>Transition plans</b>	For systemic assessment, New York reviewed state statutes, regulations, contracts, policies, and manuals to assess compliance with the Final Rule. Specific site assessments were conducted and validation activities included additional desk-review of settings' policies and procedures, training documentation, certification and licensure activities, or other evidence of compliance. For settings in partial compliance or not in compliance, remediation plans are created and technical assistance is provided. For settings presumed by CMS and/or the State not to comply with the Final Settings Rule, the state will request heightened scrutiny screenings for settings. To make the determination for Heightened Scrutiny, staff will review virtual site assessments, conduct on-site validation assessments, provide ongoing technical assistance and submit a Corrective Action Plan. For settings found out of compliance and unwilling to comply, the State will assist in the relocation of participants. Ongoing monitoring and quality assurance activities will be conducted moving forward.
<p><b>SETTINGS PRESUMED INSTITUTIONAL</b></p> <p>CMS presumes some settings have qualities that are institutional or isolating in nature. These settings must go through a heightened scrutiny review by CMS.</p> <p><i>CMS presumes the following types of settings have institutional or isolating qualities:</i></p> <ul style="list-style-type: none"> <li>• <i>Category 1: Located in a hospital, nursing facility, or other institutional setting.</i></li> <li>• <i>Category 2: Located adjacent to a public hospital, nursing facility, or other institutional setting.</i></li> <li>• <i>Category 3: Have the effect of isolating people from the broader community.</i></li> </ul>		
	<b>% Presumed Institutional (No. of Residents Affected)</b>	<p><u>DOH Office of Aging and Long Term Care (OALTC) Assisted Living Programs (ALP) and Adult Care Facility (ACF)</u></p> <ul style="list-style-type: none"> <li>• Category 2: 44 ACFs, 34 of which are ALPs</li> </ul> <p><u>AIDS Waiver</u></p> <ul style="list-style-type: none"> <li>• Category 1: 0 settings</li> <li>• Category 2: 2 Adult Day Health care Programs settings</li> <li>• Category 3: 0 settings</li> </ul> <p><u>OHIP Combined Children's Waiver</u></p> <ul style="list-style-type: none"> <li>• Category 1: 0 settings</li> <li>• Category 2: 0 settings</li> <li>• Category 3: 3 residential settings: planned overnight respite and Crisis Overnight Respite</li> </ul>

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		<p><u>OALTC, Nursing Home Transition and Diversion (NHTD) &amp; TBI</u></p> <ul style="list-style-type: none"> <li>• Category 1: 1 Structured Day Program</li> <li>• Category 2: 3 settings <ul style="list-style-type: none"> <li>○ 2 Structured Day Programs</li> <li>○ 1 Hospital Transitional Rehabilitation Center Structured Day Program</li> </ul> </li> <li>• Category 3: 0 settings</li> </ul> <p><u>OPWDD</u></p> <ul style="list-style-type: none"> <li>• Category 1: 2 settings</li> <li>• Category 2: 0 settings</li> <li>• Category 3: 75 settings</li> <li>• Setting type: <ul style="list-style-type: none"> <li>○ 64 settings: IRAs</li> <li>○ 13 settings: Day Habilitation</li> </ul> </li> </ul>
	<b>Type of Setting/Residents</b>	The types of settings presumed institutional included: IRAs, Day Habilitation, ALPs, Structured Day Programs, overnight respite, ACFs, and Adult Day Health Care settings.
	<b>Reason for Presumption</b>	Between New York's waiver programs, all 3 categories involved in presuming a setting as institutional were represented.
	<b>Heightened Scrutiny Process</b>	<p>The Heightened Scrutiny process varies slightly between overseeing agency or funding agency, but generally includes:</p> <ul style="list-style-type: none"> <li>• Reviewing virtual site assessment findings including remediation next steps to become compliant</li> <li>• Including on-site validation assessments to verify virtual assessments</li> <li>• Providing ongoing technical assistance</li> <li>• Submitting a Corrective Action Plan to remedy HCBS Final Rule compliance.</li> <li>• Submitting a Heightened scrutiny packet to CMS</li> <li>• Submitting evidence packets for public comment</li> </ul>
<b>NON-COMPLIANCE COMMUNICATION</b>		
	<b>% Cannot/Will Not Comply (No. of Residents Affected)</b>	It is anticipated all programs will meet full compliance of the Rule.
	<b>Type of Setting/Residents</b>	N/A
	<b>Reason for Determination</b>	N/A

# NEW YORK TRANSITION PLAN FOR COMPLYING WITH THE CMS HOME- AND COMMUNITY-BASED SERVICES MEDICAID RULE (continued)

	<b>Communication Strategy</b>	A specific communication strategy was not described.
	<b>Assistance to Residents?</b>	If a facility is unable to comply, 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 met and that there are no lapses in services.
<b>ONGOING MONITORING</b>		
	<b>Monitoring Procedures</b>	<p><u>DOH Office of Aging and Long Term (OALTC) Adult Day Health Care Program (ADHCP)</u></p> <p>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:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• The annual Program Survey Report has been edited to include a section asking questions that pertain to the HCBS Rule standards.</li> <li>• Community integration will be reviewed yearly and during surveys.</li> <li>• 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</li> <li>• Person-centered plans will be reviewed for sampled registrants during the triennial relicensure surveys</li> <li>• 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, as well as other HCBS and ADHCP policies.</li> <li>• 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</li> </ul> <p><u>DOH Office of Health Insurance Programs (OHIP) Managed Long Term Care (MLTC)</u></p> <p>The Bureau of Managed Long Term Care (BMLTC) provides oversight, maintains regulatory compliance, and ensures consistency with</p>

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	<p>industry standards through review of MLTC plans' service delivery and education given by MLTC plans to their providers. 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.</p> <ul style="list-style-type: none"><li>● References and Resources: provide tools, resources, guidance, policies and procedures and timelines to MLTC plans, as needed based on changes or updates.</li><li>● Communication Channels: BMLTC has an active program specific mailbox that MLTC plans, and stakeholders may submit inquiries to.</li><li>● MLTC Surveillance Unit: DOH has a dedicated surveillance unit charged with the continuous monitoring and oversight of the MLTC plans operating in NYS.</li><li>● 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 MLTC programs.</li><li>● Reporting and Systems Units: BMLTC has a unit that reviews reporting from health plans on an annual, monthly, and quarterly basis, and handles necessary member specific systems' inquiring which may occur daily.</li></ul> <p><u>DOH OHIP Medicaid Managed Care (MMC)</u></p> <p>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.</p> <ul style="list-style-type: none"><li>● BMCCS Operational surveillance includes standardized tools developed for each of the specific components included in HCBS Final Rule guidance. 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.</li></ul>
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	<ul style="list-style-type: none"><li>● 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.</li></ul> <p><u>DOH Office of Aging and Long Term Care (OALTC) Nursing Home Transition and Diversion (NHTD) &amp; Traumatic brain Injury (TBI) 1915(c)</u></p> <ul style="list-style-type: none"><li>● Ongoing monitoring and quality assurance of participant's residential settings, whether they be Provider Owned Residential Settings or private homes, will be completed on an annual basis through the service plan.</li><li>● The participant and their Service Coordinator are responsible for completing the service plan.</li><li>● 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, and audits. 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.</li></ul> <p><u>DOH OHIP Social Adult Day Care (SADC)</u></p> <p>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.</p> <ul style="list-style-type: none"><li>● Support and Education: Continuously provide tools, resources, guidance, and timeline to MLTC Plans and SADC sites.</li><li>● 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.</li><li>● 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</li></ul>
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	<p>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.</p> <ul style="list-style-type: none"><li>● Operational Surveys: The DOH MLTC Surveillance Unit is enhancing these surveys to include a more in-depth focused examination of SADC site compliance.</li></ul> <p><u>Office for people with Developmental Disabilities (OPWDD)</u></p> <ul style="list-style-type: none"><li>● 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.</li><li>● 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.</li><li>● 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.</li></ul> <p><u>New York State Office of Mental Health (OMH)</u></p> <ul style="list-style-type: none"><li>● Adult Behavioral Health (BH) HCBS designated providers are designated by both OMH and Office of Addiction Services and Supports (OASAS). 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</li></ul>
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		<p>reviews, and staff and client interviews to ensure compliance with state and federal standards.</p> <ul style="list-style-type: none"><li>● 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. 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).</li><li>● 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 or must support the individual with identifying a plan to move to the setting of their choice.</li><li>● Health Home Care Management- 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 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."</li></ul> <p><u>New York State Office of Addiction Services and Supports (OASAS)</u></p> <ul style="list-style-type: none"><li>● OASAS conducts annual monitoring reviews to evaluate program compliance with the HCBS Final Rule and other State and federal requirements.</li><li>● OASAS conducts interviews with staff and tenants, as well as a review of tenant files, to ensure effective management of the program.</li><li>● Monitoring focuses on overall program management, admission procedures, service plans, documentation of service and housing quality standards.</li><li>● Housing providers are required to submit a monthly report to OASAS, regarding current census, admissions, discharges and educational/vocational information.</li><li>● Moving forward, this annual review will also be utilized to ensure that all units maintain compliance with the HCBS Final Rule.</li><li>● Guidance for providers regarding HCBS requirements was incorporated into the Permanent Supportive Housing Program</li></ul>
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		<p>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 monitor monthly reports submitted by providers. Staff also performs periodic check-ins with providers either through telephone or email.</p>
	<b>Quality Assurance Measures</b>	<p>More information about ongoing monitoring and quality assurance measures can be found in New York's January 1 submission <a href="#">here</a>.</p>