



# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

Date: (originally dated) November 18, 2022

Subject: New York Corrective Action Plan Request

Dear Michele,

New York State (NYS) is hereby requesting that CMS provide additional flexibility, via a federal Corrective Action Plan (CAP), with its current deadline of March 17, 2023, to come into full compliance with those Home and Community-Based Services (HCBS) Final Rule Standards that are impacted by the Public Health Emergency (PHE). The PHE is still in effect in New York with surges in cases of COVID-19 happening in counties across the State. By far the most frequent concerns we hear expressed by stakeholders across our system has been COVID-19's impact on reducing availability of staffing and transportation options, both of which have inhibited HCBS providers ability to comply with the community integration aspects of the Rule. Our request is to receive until July 2024 to come into compliance with HCBS standards relating to community integration, or *allowing full access to the greater community to the same degree as those not in receipt of HCBS*. Given that employment opportunities have been inhibited by the PHE for some parts of our State, we also request flexibility in meeting the requirement to ensure employment opportunities are made available to those HCBS recipients who are interested in them. As for the 2022 CMS guidance indicating the requirements for a state's eligibility for a CAP including states meeting eight "non-negotiable" HCBS standards:

New York and its HCBS providers will be fully compliant with the following by March 17, 2023:  
Privacy, dignity, respect, and freedom from coercion and restraint; and  
Control of personal resources.

New York and its provider-owned and controlled residential settings will be fully compliant with the following by March 17, 2023:

- A lease or other legally enforceable agreement providing similar protections;
- Privacy in their unit, including lockable doors, and freedom to furnish or decorate the unit;
- Access to food at any time;
- Access to visitors at any time;
- Physical accessibility; and
- Person-centered service plan documentation of modifications to relevant regulatory criteria (or the additional standards being afforded at all times without the ability to modify them).

New York Department of Health (DOH) Adult Day Health Care Program (ADHCP), Social Adult Day Care (SADC), and Office for People with Developmental Disabilities (OPWDD) are the HCBS program areas/entities that are part of New York's CAP request. They have all described in detail in the forthcoming Statewide Transition Plan (STP) in their respective transition plan CAP sections how their policies and procedures now reflect the settings criteria as well as their substantial efforts to implement the setting's criteria to the fullest extent possible, while describing concrete, time-limited plans to come into full compliance with those criteria. This information is also described below.

## DOH Adult Day Health Care Program

For the ADHCP's to be in full compliance with offering "access to the broader community" on a regular basis, our goal is for remediation and complete compliance to be achieved by July 1, 2024. ADHCP's are slowly reopening after the pandemic. Transportation to community events is a challenge as transportation providers are limited. The vast majority of registrants travel to an ADHCP on transportation services that are arranged by their center and therefore need transportation to access offsite activities. Providers are receiving State guidance and assistance to address this barrier to full community integration.

## DOH Social Adult Day Care Program

As part of the time-limited CAP NYS is requesting for remediation needs identified, the SADC program is requesting to include flexibility for the following standards remediation timeline:

The setting is selected by the individual from among settings options.

- o This is applicable to SADC sites due to the extensive amount of SADC sites that closed due to the PHE, approximately one-third. The SADC Team is coordinating with the Managed Long Term Care (MLTC) Plans and SADC sites to encourage reopening and meeting network adequacy standards.

The setting is integrated in and supports full access to the greater community.

- o Due to the PHE, most SADC sites had to severely limit access to the greater community to ensure the health and safety of their members. In addition, many community involvement opportunities and even transportation were limited due to the PHE. However, most if not all PHE restrictions have since been lifted in the last year and MLTC Plans have been instructed to follow local health department guidance. Assurances that will need to be assessed to verify that SADC members can access activities, where applicable, into the greater community have also begun to commence.

Choice of non-disability specific settings.

- o During the PHE, many non-disability specific settings were closed or shutdown. As the state has removed restrictions, the non-disability specific settings continue to reopen, allowing more opportunities and options for MLTC SADC enrollees.

While the SADC Team has allowed leniency for SADC sites in these specific areas or reporting, the SADC Team will require that MLTC plan and SADC sites attest that these areas are compliant by or before July 1, 2024, should New York's request for a federal CAP be accepted.

## Office for People with Developmental Disabilities

OPWDD, its staff, and the provider network have worked tirelessly throughout the national PHE in order to support individuals and their families to stay as healthy and safe as possible and to live their lives with purpose. OPWDD employed many methods to ensure that individuals and their families have been able to maintain as many supports and services of their choice as possible, in spite of the gravity of health risks associated with COVID-19 and the resulting impact on HCBS services and staffing. OPWDD worked closely with providers and stakeholders to support individuals and their families in maintaining community-based supports and services by authorizing the provision of Day, Community Habilitation, Site-Based Prevocational,

and Respite services using telehealth, streamlining the approval process for service requests during COVID, and allowing service provision in a wider array of settings, for example.

Despite the progress toward full compliance with the HCBS Final Rule, as outlined here, the OPWDD HCBS system is under increasing strain. Longstanding workforce shortages have been exacerbated by the COVID-19 pandemic, making it increasingly difficult for people to access the services and supports they need. People are seeking choice and control, but often find that workforce shortages impact their choices. COVID-19 has exacerbated this already challenging trend, with service providers reporting a chronic inability to recruit and retain direct support staff and significant staff vacancy rates requiring them to close programs or reduce operations due to staffing shortages. In addition, and prior to COVID-19, data indicated a substantially lower rate of employment for people with disabilities (34.4% for those ages 18-64) than for those without disabilities in NYS (76.4%). The COVID-19 pandemic further affected employment rates and delivery of employment supports and other day program services.

As a result, OPWDD, in conjunction with the New York State Department of Health (DOH), is requesting to be a part of NY's CAP in order to have sufficient time to remediate standards that are out of compliance and have been impacted by the PHE. These standards are access to the broader community and opportunities for employment.

OPWDD will employ a number of initiatives to remediate and monitor these standards that have been impacted by the PHE, which are described below.

Access to the broader community – OPWDD will implement short-term and long-term strategies to invest in the direct support workforce and initiate broad system-outreach to improve access to the community following the COVID PHE. In the short-term, OPWDD will make significant new investments in the direct support workforce. New federal funding through the American Rescue Plan Act (ARPA) is enabling OPWDD to make immediate and significant new investments in the direct care workforce. This funding includes a supplemental, one-time payment to support current DSPs and family care providers who worked during the pandemic and remain employed in the OPWDD service system with an additional bonus if the worker is fully vaccinated against COVID-19. Furthermore, the ARPA spending plan also includes Workforce Longevity and Retention Bonuses. OPWDD submitted to CMS an Appendix K application, requesting the authority to make temporary changes to its HCBS waiver to accommodate these plans. CMS approved the Appendix K in November 2021, and OPWDD then began working to implement the financial incentives to provide critical economic support to the direct support workforce.

Over the long-term, OPWDD will seek to strengthen the recruitment and retention of DSPs to build and sustain a robust and diverse workforce. OPWDD intends for these investments in the direct support workforce to increase retention of Direct Support Professionals (DSPs), decrease the vacancy rate and reduce the turnover rate. OPWDD will monitor and report this outcome data through the NCI Staff Stability Survey, administered annually to OPWDD providers and will report this data through its public website.

Ongoing Workforce Development Strategies and the ARPA workforce recruitment and retention investments will complement ongoing and planned OPWDD activities to strengthen the direct support workforce and expand workforce development partnerships that increase the talent pipeline.

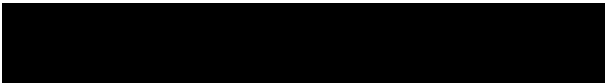
Opportunities for employment – New York State will make investments of \$27.76 million over four years to increase individuals' with disabilities participation in the workforce. This significant

investment is funded through State general fund investments and will augment Medicaid funding for employment supports. These efforts will improve provider quality and capacity, which is a fundamental step toward OPWDD enhancing vocational, educational, employment and training programs, as outlined in Governor Hochul's 2022 State of the State address.

OPWDD is also examining the potential to incorporate outcomes-based payment models into its employment services and to incentivize day program providers to deliver a continuum of day service options including prevocational and career planning services. OPWDD will continue to train care managers about employment and vocational services so that they can consider employment services and employment as the first option for services for people who wish to work.

New York understands that the contents of the CAP are preliminary and may be subject to change as a result of discussions with CMS in order for the CAP to receive CMS approval. New York will ensure stakeholders are informed of any substantive updates to the CAP that result from those conversations. We appreciate your consideration of our request and look forward to continuing our work in partnership to bring these settings into full compliance with the Rule, trusting that the additional time will help us do so more effectively.

Thank you,  
Madeline



New York Home and Community-Based Services Final Rule Implementation

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