

DOH 1115 Demo Adult Care Facilities

Standard/Quality	Degree of Compliance				Documentation	Citations
	Non-Compliant	Partially Compliant	Silent	Compliant		
<u>All Settings:</u>						
1. Fully integrated into the broader community to the same degree of access as individuals not receiving Medicaid HCBS.		X			<p>Licensed Adult Homes or Enriched Housing Programs, which are governed by regulations at 18 NYCRR 487 and 488, provide long-term residential care, room, board, housekeeping, personal care, case management, and supervision. Assisted Living Programs, which operate under unique certification within an adult home or enriched housing program, are subject to regulation at 18 NYCRR §494.</p> <p>Per regulation at 18 NYCRR §488.2(a), these core services are provided to residents of Enriched Housing Programs in "...community-integrated settings resembling independent housing units..." and the Department requires the Enriched Housing Program to "...be integrated in the community and readily accessible to medical and appropriate commercial and community services facilities..." at 18 NYCRR §488.11(b)(1). By March 2019, the Department will issue guidance to address compliance with this standard with adult homes; and by January 2020 will make a regulatory amendment through the Department's regulatory amendment process, to compel compliance for adult homes.</p>	<p>Click here for link to 18 NYCRR §488.2(a) Click here for link to 18 NYCRR §488.11(b)(1)</p>
a) opportunities to seek employment/ work in			X		<p>Although the regulations do not specifically contain the language in the HCBS standard, by March 2019 the Department will issue guidance to achieve compliance with this HCBS standard. By January 2020, the Department will make a regulatory amendment through the Department's regulatory amendment process, to compel compliance.</p>	
b) engage in community life		X			<p>Per regulation at 18 NYCRR §488.2, these services are provided to residents of Enriched Housing Programs in "...community-integrated settings resembling independent housing units..." and the Department requires the Enriched Housing Program to "...be integrated in the community and readily accessible to medical and appropriate commercial and community services facilities..." at 18 NYCRR §488.11(b)(1). Although the adult home regulations do not specifically contain the language in the HCBS standard, the Department has issued guidance to facilitate compliance by March 2019. By January 2020, the Department will make regulatory amendments through the Department's regulatory amendment process, to compel compliance.</p>	<p>Click here for link to 18 NYCRR §488.2</p> <p>Click here for link to 18 NYCRR §488.11(b)(1)</p>
c) control personal resources				X	<p>The HCBS standard is achieved through regulation 18 NYCRR §487.5(a)(3)(vi) and §488.5(a)(3)(x), which states "A resident shall have the right to manage his or her own financial affairs". Regulations 18 NYCRR §487.6 and §488.6 provide the resident with choices for personal resource management.</p>	<p>Click here for link to 18 NYCRR 487.5(a)(3)(vi)</p>
d) receive services in the community		X			<p>Per regulation at 18 NYCRR §488.2, these services are provided to residents of Enriched Housing Programs in "...community-integrated settings resembling independent housing units..." and the Department requires the Enriched Housing Program to "...be integrated in the community and readily accessible to medical and appropriate commercial and community services facilities..." at 18 NYCRR §488.11(b)(1). Although the adult home regulations do not specifically contain the language in the HCBS standard, the Department will issue guidance to facilitate compliance by March 2019. Further, by January 2020, the Department will make regulatory amendments through the Department's regulatory amendment process, to compel compliance.</p>	<p>Click here for link to 18 NYCRR §488.2 Click here for link to 18 NYCRR §488.11(b)(1)</p>

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2. Selected by the individual among options including non-disability specific settings and an option for a private unit in a residential setting.		X			Regulation 18 NYCRR §494.4(c)(5) reads that the "...Assisted Living Program may care only for a person who...voluntarily chooses to participate in an assisted living program after being provided with sufficient information to make an informed choice..." By March 2019, the Department will issue guidance to Adult Homes and Enriched Housing Programs to facilitate compliance with the HCBS standard. By January 2020, the Department will propose a regulatory amendment through the Department's regulatory amendment process, to compel compliance.	Click here for link to 18 NYCRR §494.4(c)(5)
a) the options are identified and documented in the person-centered service plan			X		While the regulations require an individualized person-centered care plan based on a pre-admission interview, medical evaluation and, for Assisted Living Program participants, a comprehensive assessment tool (UAS-NY), by March 2019, the Department will issue guidance to facilitate compliance with this HCBS standard.	
b) the options are based on the individual's needs, preferences, and for residential settings, resources available for room and board.		X			Regulation 18 NYCRR §494.4(c)(5) reads that the "...Assisted Living Program may care only for a person who...voluntarily chooses to participate in an assisted living program after being provided with sufficient information to make an informed choice..." While the regulations support an individualized person-centered care plan based on a medical evaluation and, for Assisted Living Program participants, a comprehensive assessment tool (UAS-NY), by March 2019, the Department will issue guidance to facilitate compliance with this HCBS standard.	Click here for link to 18 NYCRR §494.4(c)(5)
3. Ensure an individual's rights of privacy.						
				X	This HCBS standard is achieved under 18 NYCRR §487.5(a)(3) and 18 NYCRR §488.5(a)(3), which provide for resident's rights, including the right "...to have privacy in treatment and in caring for personal needs..."	Click here for link to 18 NYCRR 487.5(a)(3) Click here for link to 18 NYCRR 488.5(a)(3)
a) Ensure an individual's rights of dignity and respect.		X			18 NYCRR §487.5(a)(3) and 18 NYCRR §488.5(a)(3) provide for resident's rights, including the right "...to receive courteous, fair and respectful care and treatment, and not to be physically, mentally or emotionally abused..." By March 2019, the Department will issue guidance and by January 2020, update its regulations to include this specific language from the HCBS standard.	Click here for link to 18 NYCRR 487.5(a)(3) Click here for link to 18 NYCRR 488.5(a)(3)
b) Ensure an individual's rights of freedom from coercion and restraint.			X		By March 2019, the Department will issue guidance and by January 2020, update its regulations to reinforce this HCBS standard.	
4. Optimize and doesn't regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.						
		X			Adult Homes are required, per 18 NYCRR §487.7(g)(1)(iv)-(v), to assist "...each resident to maintain family and community ties and to develop new ones" and "...encourage resident participation in facility and community activities..." Enriched Housing Programs are required, per 18 NYCRR §488.7(g)(2)(iv)-(v), to assist "...each resident to maintain family and community ties and to develop new ones" and "...encouraging resident participation in enriched housing and community activities..." Further, 18 NYCRR §487.5(a)(3)(xii) indicates that residents of adult homes "...shall be permitted to leave and return to the facility and grounds at reasonable hours..." By March 2019, the Department will issue guidance and by January 2020, update its regulations to reinforce this HCBS standard so that all settings housing residents who receive HCBS allow for the safe access to and from the facility at all hours.	Click here for link to 18 NYCRR §487.7(g)(1)(iv)-(v) Click here for link to 18 NYCRR §488.7(g)(2)(iv)-(v)
5. Facilitate individual choice regarding services and supports, and who provides them.						
		X			Regulation 18 NYCRR §487.7(g)(1)(vii) requires the Adult Home to assist the resident "...in obtaining and maintaining a primary physician or source of medical care of choice..." Regulation 18 NYCRR §488.7(e)(2)(vii) requires the Enriched Housing Program to assist the resident "...in obtaining and maintaining a primary physician or source of medical care of choice..." By March 2019, the Department will issue guidance and by January 2020, update its regulations to reinforce this HCBS standard.	Click here for link to 18 NYCRR §487.7(g)(1)(vii) Click here for link to 18 NYCRR §488.7(e)(2)(vii)
Provider Owned or Controlled Settings:						
6. A specific place that can be owned, rented or occupied				X	This HCBS standard is directly supported by regulations 18 NYCRR §487.5(d) and	Click here for link to 18 NYCRR §487.5(d)

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under a legally enforceable agreement by the individual receiving services.					<p>§488.5(c) which indicate that "...each operator shall execute with and provide to each resident...a written admission agreement which shall constitute the entire agreement of the parties..." and contain at least the required provisions of the regulation. Per regulations 18 NYCRR §487.5(d)(3) and §488.5(c) each Admission Agreement must state that "...any modification or provision of the agreement which is not in compliance with law or regulation shall be null and void..."</p> <p>Termination of the Admission Agreement must be in accordance with 18 NYCRR §487.5(f) and §488.5(e), especially 18 NYCRR §487.5(f)(16) and 18 NYCRR §488.5(e)(15) which require the operator to "...institute a special [court] proceeding pursuant to section 461-h of the Social Services Law..." if the resident objects to such termination. We will issue person-centered planning guidance by March 17, 2019 in accordance with 42 CFR 441.301(c)(4)(vi)(F), stating that any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), will be supported by a specific assessed need and justified in the person-centered service plan for those living or receiving HCBS in provider-owned and controlled adult homes/adult care facilities.</p>	<p>Click here for link to 18 NYCRR §488.5(c) Click here for link to 18 NYCRR §487.5(e) Click here for link to 18 NYCRR §488.5(c) Click here for link to 18 NYCRR §487.5(f) Click here for link to 18 NYCRR §488.5(e)(15)</p>
a) The individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the jurisdiction's landlord/tenant law or equivalent.				X	<p>This HCBS standard is directly supported by regulations 18 NYCRR §487.5(d) and §488.5(c) which indicate that "...each operator shall execute with and provide to each resident...a written admission agreement which shall constitute the entire agreement of the parties..." and contain at least the required provisions of the regulation. Per regulations 18 NYCRR §487.5(d)(3) and §488.5(c) each Admission Agreement must state that "...any modification or provision of the agreement which is not in compliance with law or regulation shall be null and void..."</p> <p>Termination of the Admission Agreement must be in accordance with 18 NYCRR §487.5(f) and §488.5(e), especially 18 NYCRR §487.5(f)(16) and 18 NYCRR §488.5(e)(15) which require the operator to "...institute a special [court] proceeding pursuant to section 461-h of the Social Services Law..." if the resident objects to such termination. We will issue person-centered planning guidance by March 17, 2019 in accordance with 42 CFR 441.301(c)(4)(vi)(F), stating that any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), will be supported by a specific assessed need and justified in the person-centered service plan for those living or receiving HCBS in provider-owned and controlled adult homes/adult care facilities.</p>	<p>Click here for link to 18 NYCRR §487.5(d) Click here for link to 18 NYCRR §488.5(c) Click here for link to 18 NYCRR §487.5(e) Click here for link to 18 NYCRR §488.5(c) Click here for link to 18 NYCRR §488.5(e)(15)</p>
7. Each individual has privacy in their sleeping or living unit:						
			X		<p>By January 2020, the Department will update its regulations and by March 2019, issue guidance to reinforce this HCBS standard. We will issue person-centered planning guidance by March 17, 2019 in accordance with 42 CFR 441.301(c)(4)(vi)(F), stating that any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), will be supported by a specific assessed need and justified in the person-centered service plan for those living or receiving HCBS in provider-owned and controlled adult homes/adult care facilities.</p>	
a) units have entrance doors lockable by the individual with only appropriate staff having keys;				X	<p>Regulation at 487.11(h) and 488.11(e) indicate that doors to residents' sleeping rooms (or apartments, in the case of enriched housing programs) may be locked providing the doors can be unlocked from the outside and that keys are available to staff at all times. By March 2019, the Department will issue guidance and by January 2020, make regulation amendments to reinforce this HCBS standard, which will include a statement that a documented justification must be included on a person-centered care plan for any resident who is assessed as being inappropriate for a locking door, including the need to document alternatives considered and attempted and the resident's informed consent.</p>	<p>Click here for link to 18 NYCRR §487.11(h)(4) Click here for link to 18 NYCRR §488.11(e)(2)</p>

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b) Individuals sharing units have a choice of roommates in that setting;			X		By January 2020, the Department will update its regulations and by March 2019, issue guidance to reference roommate choice and issue guidance to further facilitate compliance with this HCBS standard. We will issue person-centered planning guidance by March 17, 2019 in accordance with 42 CFR 441.301(c)(4)(vi)(F), stating that any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), will be supported by a specific assessed need and justified in the person-centered service plan for those living or receiving HCBS in provider-owned and controlled adult homes/adult care facilities.	
c) Individuals have the freedom to furnish and decorate their sleeping or living units within the setting;			X		By January 2020, the Department will update its regulations and by March 2019, issue guidance to further facilitate compliance with this HCBS standard. We will issue person-centered planning guidance by March 17, 2019 in accordance with 42 CFR 441.301(c)(4)(vi)(F), stating that any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), will be supported by a specific assessed need and justified in the person-centered service plan for those living or receiving HCBS in provider-owned and controlled adult homes/adult care facilities.	
8. Individuals have the freedom and support to:						
a) control their own schedules and activities;			X		By January 2020, the Department will update its regulations and by March 2019, issue guidance to facilitate compliance with this HCBS standard. We will issue person-centered planning guidance by March 17, 2019 in accordance with 42 CFR 441.301(c)(4)(vi)(F), stating that any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), will be supported by a specific assessed need and justified in the person-centered service plan for those living or receiving HCBS in provider-owned and controlled adult homes/adult care facilities.	
b) have access to food at any time.		X			Regulation 18 NYCRR §488.8(c)(3) requires that Enriched Housing Program residents "...have free access to kitchen facilities for the purpose of preparing their own non-congregate meals and snacks..." Adult Home regulations do not currently require access to food at any time, but are specific to the number of meals and snacks to be provided and the maximum number of hours between meals. By March 2019, the Department will issue clarifying guidance and by January 2020, update its regulations to further facilitate compliance with this HCBS standard. We will issue person-centered planning guidance by March 17, 2019 in accordance with 42 CFR 441.301(c)(4)(vi)(F), stating that any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), will be supported by a specific assessed need and justified in the person-centered service plan for those living or receiving HCBS in provider-owned and controlled adult homes/adult care facilities.	Click here for link to 18 NYCRR §488.8(c)(3)

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9. Individuals are able to have visitors of their choosing at any time.	X				Current regulations are not specific to residents having their choice of visitors at any time as facilities may have policies regarding access to visitors and visiting hours. 18 NYCRR §485.14(b) describes the minimum required visiting hours for each adult home and/or enriched housing program. Additionally, under 18 NYCRR §485.14(g), when the facility has reasonable cause to believe a visitor or visitors may jeopardize the safety of residents and/or staff, the operator may consider and document alternative positive interventions and supports and less-intrusive methods that did not successfully meet the resident's identified needs, obtain the resident's informed consent to any restriction, and provide assurance that any restriction will not cause harm to any resident. By January 2020, the Department will update its regulation and by March 2019, issue person-centered planning guidance in accordance with 42 CFR 441.301(c)(4)(vi)(F), stating that residents are able to have visitors of their choice at any time and any modification of the additional conditions, under 42 CFR 441.301(c)(4)(vi)(A) through (D), will be supported by a specific assessed need and justified in the person-centered service plan for those living or receiving HCBS in provider-owned and controlled adult homes/adult care facilities.	
10. The setting is physically accessible to the individual.		X			This HCBS standard is supported by regulation 18 NYCRR §487.3(b) and §488.3(b), which state that the operator must "...operate and maintain" the Adult Home or Enriched Housing Program "in compliance with the regulations of the department and with applicable statutes and regulations of other State and local governmental jurisdictions..." This assumes local laws and ordinances related to handicap assessibility. The Department will issue guidance to strengthen compliance with this HCBS standard by March, 2019.	Click here for link to 18 NYCRR §487.3(b) Click here for link to 18 NYCRR §488.3(b)
Heightened Scrutiny: (Note: if any site meets any of the below criteria then they fall under heightened scrutiny)	YES (Indicate How Many)		No		List Heightened Scrutiny Sites - Use Additional Sheets If Necessary	
11. Are any settings in facilities that also provide inpatient institutional services?	Yes (45)				The 2016 ALP Self-Assessment identified 45 Assisted Living Programs that are on the same grounds of, or in the same building as, or adjacent to, a nursing home. DOH has identified Assisted Living Programs that may have the effect of isolating	
12. Are any settings in facilities on the grounds of, or immediately adjacent to a public institution?			X		18 NYCRR §488.11(b)(2) states that enriched housing programs shall not be located within existing adult care, health-related, skilled nursing or medical facilities, single room occupancy buildings (SRs) or hotels. Per the Regional Office Program Managers, to their knowledge, no facilities are located immediately adjacent to a public institution.	Click here for link to 18 NYCRR §488.11(b)(2)
13. Do any of the settings serve to isolate individuals in receipt of Medicaid-funded HCBS from the broader community?	Yes (16)				The 2016 ALP Self-Assessment identified 16 Special Needs Assisted Living Residences which provide Assisted Living Program services. This is an unintentional consequence of the Dementia residents who require heightened supervision as a result of their unsafe wandering behavior. The number will fluctuate based on services at any point in time person-centered needs and plan, based on individual.	
Please confirm that Respite Care provided in any institutional setting under the state's various HCBS programs is not permitted for a duration of longer than 30 days.					Temporary residential care (i.e., respite) may be provided for up to 120 days in any twelve month period in an adult home or enriched housing program. See citation >	Click here for link to SSL §461-k1(c)