

Review of New Revisions:

Part 425 Regulations Adult Day Health Care

The Adult Day Health Care Council

April 2024

Proposed in November 2022, not adopted.

Reproposed in December of 2023

Adopted in March 20, 2024

Effective Immediately

New Regs are here:

https://regs.health.ny.gov/sites/default/files/pdf/recently_adopted_regulations/Adult%20Day%20Health%20Care_0.pdf

Changes include:

- ▶ Inclusion of HCBS Settings Rule in Part 425 - person centered planning, references to community based care, registrants rights.
- ▶ Some changes to referral and authorizing entities
- ▶ Change regarding unbundled services payment option
- ▶ Possible changes to nursing services definition
- ▶ No longer a requirement to consider on-site establishment of programs

Part 425.1 Definitions - Snack/hydration

- ▶ (d) *Operating hours for an adult day health care program* are defined as the period of time that the program must be open, operational, and providing services to registrants in accordance with the approval granted by the Department. Each approved adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, and must provide, at a minimum, nutritional services in the form of at least one meal and necessary supplemental nourishment **in the form of snacks and hydration of choice**, and [planned]activities **at planned and at registrant desired times(s)**. In addition, an ongoing assessment must be made of each registrant's health status by the adult day health care program, or by the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, in order to provide coordinated **person-centered** care planning, case management and other health care services as determined by the registrant's needs.

Part 425.1 Definitions - Visit

- ▶ (e) *Visit* is defined as an individual episode of attendance by a registrant at an adult day health care program during which the registrant receives adult day health care services in accordance with his/her **person-centered** care plan. A registrant's individual visit may be fewer than five hours or longer than five hours depending on the assessed needs of the 5 registrant. Registrants referred by an **agency, physician or** a managed [long term] care plan [or care coordination model] will receive services as ordered by those entities in conformance with those entities' comprehensive assessment after discussion and consultation with the adult day health care program.

Part 425.1 Definitions - Person-centered care plan

- ▶ (l) [(m)] Person-centered [C]care plan means identifying goals and developing care plans [the care plan developed] in accordance with section 425.[7]8 of this Part by the adult day health care program. Person-centered care planning is a process driven by the registrant that reflects the services and supports that are important to the registrant to meet their needs identified through an assessment of functional need, as well as what is important to the registrant with regard to the preference for the delivery of such services and supports 42 CFR 441.301(c)(2). Assists registrants in achieving their personally defined outcomes by integrating the registrant in, and supporting full access to, the community while providing registrant dignity and privacy.

Section on PCSP 425.8 still includes traditional components of the care plan.

Part 425.1 Definitions- Unbundled Services Payment Option

- ▶ (m [n]) Unbundled Services/Payment Option means the ability of an adult day health care program to provide less than the full range of adult day health care services to a functionally impaired individual [referred by a managed long term care plan or care coordination model] based on the registrant's comprehensive assessment. The full range of adult day health care services as described in Part 425 will be available to all registrants enrolled in the adult day health care program.
- ▶ We would like to know what the Department has in mind for other payer structures allowed in this provision as MLTCs are removed from the regulation. Seeking DOH guidance on this.

425.2 Application (for CON)

(b) A residential health care facility operator that has been approved by the Department to operate an adult day health care program at its primary site may provide adult day health care services at an extension site only when such use of an extension site has first been approved by the Department under the provisions of Part 710 of this Chapter.

Deletes the following:

[(c) A residential health care facility operator that does not operate an adult day health care program at its primary site may provide such a program at an extension site approved by the Department for such use in accordance with section 710.1 of this Chapter if there is not sufficient suitable space within the residential health care facility to accommodate a full range of adult day health care program activities and services. The Department may conduct an on-site survey of the residential health care facility to determine whether the facility lacks suitable space for an adult day health care program.]

The change removes the requirement to review facility site space for program.

425.4 General Requirements for Operation - Registrant Rights.

P&P on RR should include the following

(3) provide each registrant with a copy of a Bill of Rights specific to operation of the adult day health care program.

These rights include, but are not limited to:

- (i) rights of privacy, dignity, respect, and confidentiality, including confidential treatment of all registrant records;
- (ii) freedom to voice grievances about care or treatment without discrimination or reprisal;
- (iii) protection and freedom from physical and psychological abuse, coercion and restraint;
- (iv) participation in developing the person-centered care plan;
- (v) written notification by the program to the registrant at admission and following the continued-stay evaluation of the services the registrant shall receive while attending the adult day health care program; and
- (vi) right to individual initiative, autonomy, and independence in making life choices, including freedom to decide whether or not to participate in any given activity.

425.4 - General Requirements for Operation

- ▶ (4) be selected from among options by the individual and be physically accessible to the individuals supported;
- ▶ (5) be integrated in and support full access to the greater community;
- ▶ (6) facilitate an individual's informed choice about their services and who provides them; To the best of your ability with the staffing available/attempt to hire.
- ▶ (7) provide freedom and support for individuals to control their own schedules and activities; Signage and communication of options and timing of them.
- ▶ (8) provide individuals access to food (meals and/or snacks) and visitors at any time; Reasonable options are sufficient, food does not have to be visible, communication required.
- ▶ (9) offer individuals participation in developing the person-centered care plan; and
- ▶ (10) provide written notification by the program to the registrant at admission and following the continued-stay evaluation of the services the registrant shall receive while attending the adult day health care program. Change P&P to provide every 6 months.

425.4 - General Requirements for Operation

425.4(b) Administration. Without limiting its responsibility for the operation and management of the program, the operator must designate a person responsible for:

(iv) arranging for in-service orientation, training and staff development; and assuring that staff possess the competencies and skill sets necessary to meet the needs safely and in a manner that promotes each registrant's rights, and physical, mental and psychosocial well-being; and

425.4 (c) Policies and procedures for service delivery. The operator must:

(2) ensure that written policies and procedures, consistent with current professional standards of practice, are developed and implemented for each service and are reviewed annually and revised as necessary;

This will require P&P for orientation, training and evaluation in registrants' rights and HCBS Rule

425.5 - General Requirements for ADHC Settings - completely new section

425.5 General requirements for Adult day health care settings.

(a) the operator must assure that the adult day health care program has all the qualities of a Home and Community-Based Service (HCBS) setting:

(1) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

(2) The setting is selected by the individual from among setting options including nondisability specific settings. The setting options are identified and documented in the person-centered care plan and are based on the individual's needs and preferences.

(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(4) The setting optimizes, but does not regiment, individual initiative, autonomy and independence in making life choices, including but not limited to, daily activities, physical environment, access to meals and snacks as desired at any time, and decisions concerning individuals with whom to interact. Visitors are not restricted.

(5) The setting facilitates individual choice regarding services and supports, and who provides them.

425.6 Adult day health care services

► In addition to the existing list of services:

(8) restorative rehabilitative and maintenance therapy services; [(8)]

(9) planned therapeutic or recreational activities that reflect the interests, cultural backgrounds and the communities of the registrants and provide the registrants with choices, including access to offsite activities;

[(9)] (10) pharmaceutical services; and

[(10)] (11) referrals for necessary dental services and sub-specialty care.

(b) The following services may also be provided:

(1) specialized services for registrants with HIV or AIDS and other high-need populations;

425.7 Admission, continued stay and registrant assessment

(3) register an applicant only upon appropriate recommendation from the applicant's practitioner or operator's medical director after completion of a personal interview by appropriate program personnel;

(We have concern that allowing medical director authorizations will trigger OMIG review.)

(4) register an applicant only after determining that the applicant is not [receiving the same services from another facility or agency.] enrolled in another adult day health care program

425.8 Person centered care plan

The operator must ensure that:

(b) Each registrant's person-centered care plan process must be commensurate with the level of need of the registrant, and the scope of services and supports available and must[include]:

(1) [designation of a professional person to be responsible for coordinating the care plan]include registrant led input and include people chosen by the registrant;

(2) provide necessary information and support to ensure the registrant directs the process to the maximum extent possible and is enabled to make informed choices and decisions, with the registrant's representative having a participatory role, as needed and as defined by the registrant, unless State law confers decision-making authority to the legal representative;

(3) be timely and occur at times and locations of convenience to the registrant;

(4) reflect cultural considerations of the registrant and be conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient;

(5) include strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all planning participants;

(6) offer choices to the registrant regarding the services and supports the registrant receives and from whom;

(7) include a method for the registrant to request updates to the care plan, as needed; and

(8) record the alternative home and community-based settings that were considered by the registrant.

425.8 Person centered care plan (cont'd)

(c) The person-centered care plan must reflect the services and supports that are important for the registrant to meet the clinical and support needs as identified through an assessment of functional need, as well as what is important to the registrant with regard to preferences for the delivery of such services and supports. The written plan must also:

(1) reflect [2] the registrant's pertinent diagnoses, including mental status, types of equipment and services required, case management, frequency of planned visits, prognosis, rehabilitation potential, functional limitations, planned activities, nutritional requirements, medications and treatments, necessary measures to protect against injury, instructions for discharge or referral if applicable, orders for therapy services, including the specific procedures and modalities to be used and the amount, frequency and duration of such services, and any other appropriate item.

[3](2) reflect the registrant's strengths and preferences, the medical and nursing goals and limitations anticipated for the registrant and, as appropriate, the nutritional, social, rehabilitative and leisure time goals and limitations;

[4](3) set forth the registrant's potential for remaining in the community; [and]

[5](4) include a description of all services to be provided to the registrant by the program, informal supports and other community resources pursuant to the personcentered care plan, and how such services will be coordinated;

(5) reflect that the setting in which the registrant receives services is chosen by the registrant;

(6) reflect risk factors and measures in place to minimize them, including individualized backup plans and strategies when needed;

(7) be understandable to the individual receiving services and supports, and the individuals important in supporting them. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities or with limited proficiency in English;

(8) identify the individual and/or entity responsible for monitoring the plan;

(9) be finalized and agreed to, with the informed consent of the registrant (and/or persons identified by the registrant) in writing and signed by all individuals and providers responsible for its implementation;

(10) be distributed to the registrant and other people involved in the plan;

(11) include those services, the purchase or control of which the registrant elects to self-direct; and

(12) prevent the provision of unnecessary or inappropriate services.

425.11 Nursing services

- ▶ (d) ensure that nursing services are provided to registrants under the direction of a registered professional nurse who is on-site in the adult day health care program during all hours of the program operation. **Based on the care needs of the registrants, a licensed practical nurse may provide the on-site services under the supervision of a registered nurse;**
- ▶ Removed: [Based on the care needs of the registrants, for a program located at the sponsoring licensed residential health care facility, a licensed practical nurse may provide the on-site services when a registered professional nurse is available in the nursing home or on the campus to provide immediate direction or consultation;] and
- ▶ Although the change in wording would ordinarily imply a change in the requirements, the State Register's response to comments says that the requirement has *not changed*. The response says that the only change is the “removal of the requirement for a program to be located in the sponsoring licensed residential health care facility, thus *broadening the scope of registered professional nurse availability for supervision.*”
- ▶ Therefore, we assume this regulation still allows an ADHC program on the site or campus of a nursing home, based on the care needs of the registrants, to use an LPN to provide on-site services in program under the supervision of an RN in the nursing home.
- ▶ Best practice calls for an RN on site in the program during all hours of program operation.

425.12 Food and nutrition services

The operator must:

- (a) provide nutritional services for each registrant;
- (b) provide meals and nutritional supplements, including modified diets when medically prescribed, to registrants who are on the premises at scheduled **and registrant desired** meal/**snack** times and, where appropriate, to registrants in their homes in accordance with the identified needs included in registrant **person-centered** care plans;
- (c) ensure that the quality and quantity of food and nutrition services provided to registrants are in conformance with section 415.14 of this Subchapter, exclusive of the requirements specified in section 415.14(f);
- (d) ensure that nutrition services are under the direction of a qualified dietitian, as defined in section 415.14 of this Subchapter; and
- (e) ensure that dietary service records for the adult day health care service are maintained in conformance with sections 415.14(c)(1) and (2) of this Subchapter.
- (f) Provide individuals with access to snacks and meals at any time and obtain registrant feedback on foods of preference.**

425.15 Activities

425.[14]15 Activities. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must:

(a) ensure that activities are an integral part of the program, are age appropriate, and reflect the registrants' individual interests and cultural backgrounds in coordination with the registrant's person-centered care plan;

(b) ensure that activities involve integration in and full access of individuals to the greater community, control personal resources and ability to engage in community life to the same degree of access as individuals not receiving home and community-based services;

ADHCC will report back on outstanding questions.

- ▶ Revised Part 425 with new changes delineated:

https://regs.health.ny.gov/sites/default/files/pdf/recently_adopted_regulations/Adult%20Day%20Health%20Care_0.pdf

- ▶ Part 425 new current version:

<https://regs.health.ny.gov/volume-c-title-10/content/part-425-adult-day-health-care>

Please reach out to ADHCC if you have additional questions.