



**Department  
of Health**

**Office of  
Mental Health**

**Office of Alcoholism and  
Substance Abuse Services**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner of Health, DOH

**ANN MARIE T. SULLIVAN, M.D.**  
Commissioner, OMH

**ARLENE GONZÁLEZ-SÁNCHEZ, M.S., L.M.S.W.**  
Commissioner, OASAS

**To:** Designated Providers of Adult Behavioral Health Home and Community Based Services  
**From:** New York State (NYS) Office of Mental Health (OMH) & Office for Alcoholism and Substance Abuse Services (OASAS)  
**Re:** Terms and Conditions for Adult Behavioral Health Home and Community Based Services (BH HCBS)  
**Date:** 03/29/19

### ***Terms and Conditions for Adult BH HCBS Providers***

To ensure quality care and participant safety, and to be held in good standing, all designated providers of Adult Behavioral Health Home and Community Based Services must adhere to the below prescribed Terms and Conditions. These Terms and Conditions include compliance with State and federal regulations, policies and guidance, standards of care, and provider manuals. For providers in receipt of designation as of the date of this memo, full compliance with these Terms and Conditions must be achieved within 60 days of the agency memo and must be attested to using the Adult BH HCBS Designated Services Authorization Attestation.<sup>1</sup>

#### **1. State and Federal Regulations:**

- a) The Provider will maintain its standing as an enrolled Medicaid provider (or at which time they become an enrolled Medicaid provider) and shall comply with the rules, regulations and directives pertaining to Medicaid providers including [18 NYCRR 504](#). The forms needed to become an enrolled Medicaid provider can be found on the [eMedNY website](#).
- b) The Provider represents and warrants that staff, including sub-contracted/per diem staff, who will be providing services,
  - i. are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the “federal healthcare programs”),
  - ii. have not been convicted of a criminal offense related to the provision of healthcare items or services, and
  - iii. are not, to the best of the Provider’s knowledge, under investigation or otherwise aware of any circumstances which may result in an employee or sub-contractor being excluded from participation in the federal healthcare programs.

This shall be an ongoing representation and warranty during the term of this Designation and the Provider will notify OMH/OASAS of any change in the status of the representations and warranty set forth in this section.

- c) The Provider represents and warrants that staff, including sub-contracted/per diem staff, who will be providing services have undergone required background checks prior to providing services in an unsupervised setting, in accordance with MHL 31.35, 14 NYCRR 550, 14 NYCRR 816 and SSL 424-a. These background checks are as follows:
  - i. The Justice Center’s Criminal Background Check System
  - ii. The Staff Exclusion List

<sup>1</sup> If your agency will be unable to attest to compliance within 60 days, you are required to contact the State via email at [Adult-BH-HCBS@omh.ny.gov](mailto:Adult-BH-HCBS@omh.ny.gov) to inform us of your specific concerns.

- iii. The Statewide Register for Child Abuse and Maltreatment (SCR)-NB.<sup>2</sup>
- d) The Provider will formulate and implement a written management plan to protect health history information related to an individual who has been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) or a Human Immunodeficiency Virus (HIV)-related illness or a HIV infection or laboratory tests performed on an individual for HIV-related illness. The Provider will ensure staff, to whom confidential information is disclosed as a necessity for providing services and in accordance with Article 27-F of the Public Health Law, are fully informed of the penalties and fines for re-disclosure in violation of the New York State law and regulation.
- e) The Provider will safeguard the confidentiality of information. The Provider shall maintain the confidentiality of all such information regarding services provided in conformity with the provisions of applicable State and Federal laws and regulations, including but not limited to Article 27-F of the New York Public Health Law, Social Security Act, 42 USC 1396a (a)(7), 42 C.F.R. Part 2, New York Mental Hygiene Law section 33.13 and The Health Insurance Portability and Accountability act (HIPAA) at 45 CFR Parts 160 and 164. Any breach of confidentiality by the Provider, its agents or representatives shall be cause for OMH/OASAS to terminate the Provider's Designation.
- f) The Provider will ensure that services are provided in settings that are compliant with the CMS Final Rule (§441.301(c)(4) and §441.710). Each Provider is responsible for reviewing [the CMS Home and Community Based Services \(HCBS\) Final Rule and supplementary guidance](#) to insure compliance with the Final Rule.
- g) The Designation of any provider to deliver Adult BH HCBS described in the Provider Manual *does not* replace or supersede any other licensure requirements that may be applicable to providers acting within their scope of practice in accordance with NY State Educational licensing requirements.

## 2. Policy, Manuals, and Guidance Documents

- a) The Provider shall comply with the [Adult Behavioral Health Home and Community Based Services Provider Manual](#) that sets forth procedures for providing these services, which may be amended from time to time. In the event this manual is amended; the amendments shall apply to these Terms and Conditions.
- b) The Provider shall comply with the [New York State Health and Recovery Plan \(HARP\) / Mainstream Behavioral Health Billing and Coding Manual](#) that sets forth procedures for providing these billing and claiming, which may be amended from time to time. In the event this manual is amended; the amendments shall apply to these Terms and Conditions.
- c) The Provider shall comply with the [Adult BH HCBS Workflow Guidance, revised 10/01/17](#), that sets forth procedures for access to Adult BH HCBS by HARP members, which may be amended from time to time. In the event this guidance is amended; the amendments shall apply to these Terms and Conditions.

---

<sup>2</sup> Please be advised that this check is conducted through the Office for Child and Family Services (OCFS) and may take several weeks to complete.

- d) The Provider acknowledges that OMH, OASAS, DOH, or Local Government Units (including the Department of Health and Mental Hygiene in New York City), may conduct an audit or inspection of this Provider, including the right to inspect any books or records, including member records, and interview any staff or clients, and that any books or records requested by such offices shall be made available upon such request. (An Adult BH HCBS Standards of Care tool will be issued at a future date.)
- e) The Provider will participate, at the request of OMH, OASAS, or Center for Medicare and Medicaid Services (CMS), in any evaluation and monitoring activities including reports, monitoring visits, satisfaction surveys, and member-specific outcomes.
- f) The Provider is attesting, via the Authorization Attestation, that it has developed or amended its **policies and procedures** to include the following as they relate to Adult BH HCBS:
- i. intake, including the referral process and completion of the service-specific evaluation;
  - ii. discharge, including the process for transferring a member to another service provider or level of care;
  - iii. communication and collaboration with Health Home Care Managers, Recovery Coordinators, and other collaterals, as appropriate;
  - iv. service planning and development of the Individualized Service Plan (ISP); documentation of services provided, including completion of the service encounter notes;
  - v. crisis and emergency response;
  - vi. compliance with all applicable requirements of state and federal laws, regulations and OMH/OASAS guidance;
  - vii. quality improvement and utilization review;
  - viii. incident reporting and review;
  - ix. record retention specific to the provision of services;
  - x. staff training and workforce development;
  - xi. community safety for staff;
  - xii. confidentiality and disclosure of member records in accordance with state and federal laws;
  - xiii. verification of employment history, personal references, work record, and qualifications, as well as criminal history record checks of employees; and,
  - xiv. grievance process for service recipients which ensures the timely review and resolution of recipient complaints and which provides a process enabling recipients to request review by the State when resolution is not satisfactory. Provider must have a compliance officer or other administrative structure available to process and address grievances and/or recipient complaints.
- g) The Provider is attesting, via the Authorization Attestation, that the organization has mechanisms that promote the competency of its workforce. This includes registration in the [Center for Practice Innovation \(CPI\) learning management system \(LMS\)](#) and other required training as directed by OMH and OASAS.

### 3. Reporting Requirements

- a) The Provider must complete an annual Consolidated Fiscal Report (CFR) and must report these services under the appropriate program code(s). CFRs are required by all service providers who operated a certified program, are designated as a BH HCBS service provider, and/or received funding from the Office of Mental Health and/or Office of Alcoholism and Substance Abuse Services. Please review the current Consolidated Fiscal Report [Transmittal Letter, Manual, and Appendices](#) for more information. Additional information regarding document submission information may be found on the [OMH](#) and [OASAS](#) websites.

To complete the above, the Provider must establish itself as an OMH or OASAS provider within the interagency system by completing an Agency Contact Form. Completion of this form allows the provider to obtain an agency code and user ID, if it hasn't done so already. This form may be obtained by emailing the OMH [Bureau of Rehabilitation Services and Care Coordination](#).

### 4. Designation Status

- a) The Provider will notify OMH/OASAS of any material change in the disclosures set forth in its application for designation. Examples of material changes may include, but are not limited to, a change in CEO or primary contact for Adult BH HCBS or a change in address/ sites.
- b) Sole practitioners and/or group practices are only eligible for designation if they are able to meet and attest to all Terms & Conditions outlined herein.
- c) The Provider's Designation may be withdrawn at any time upon mutual consent of OMH/OASAS and the Provider.
- d) Per the State's Policy on NYS Oversight and Monitoring of Adult BH HCBS Designated Providers, the State may terminate the Provider's designation, upon written notice of termination to the Provider, if the Provider fails to comply with the terms and conditions of Adult BH HCBS and/or with any laws, rules, regulations, policies or procedures affecting Adult BH HCBS, or if the health, safety or well-being of a HARP member is at risk or if a HARP member is injured and has been determined it is due to the fault of the Provider. Fault shall include acts of negligence, omission and deliberate harm or a failure to properly supervise an employee or subcontractor.
- e) In no event, shall the State be liable for expenses and obligations arising from the services(s) in the Provider's Designation after the termination date. The Provider shall not submit any claims for payment for services, expenses or obligations incurred after the date of termination of the Provider's Designation.