

## **Administrative Memorandum – 2013-# For DISCUSSION, DRAFT 7, 11/25/2013**

**To:**

**From:**

**Subject:** Program Standards for the Provision of Home and Community-Based Services (HCBS) and Medicaid Service Coordination (MSC)

**Effective Date:** TBD (quality reviews to commence six months after provider training on the issued ADM, see draft BIP work plan/status report for 11/2013)

### **PURPOSE:**

As part of OPWDD's commitment to support individuals in the most integrated settings appropriate to individual needs and preferences, this Memorandum communicates and clarifies OPWDD's intent to adopt the quality principles and standards that conform to OPWDD regulations and the rules proposed by the Center for Medicare and Medicaid Services (CMS) in the Notice of Proposed Rule Making (NPRM), May 2012, regarding the requirements for settings in which Home and Community Based services (HCBS) funded under the waiver are provided (Part 441.530 or 441.656). OPWDD intends to promulgate State regulations based upon CMS's final rulemaking on this matter. In the meantime, this Administrative Memorandum is designed to promote and communicate the latest OPWDD guidance and to implement enhanced awareness and quality reviews of these standards across the developmental disability service system with intent for continuous quality improvement.

Many of these standards are already included in, or are based on, existing OPWDD regulations at 14 NYCRR Subpart 635-10 and section 633.4 and previous guidance. The proposed CMS regulations provide further support for current OPWDD regulations and policy as well as formalizing some of what OPWDD has considered "best practices".

The guidance and quality standards outlined in this Administrative Memorandum are considered program standards. <sup>1</sup>

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<sup>1</sup> In accordance with Administrative Memorandum #2010-01, "A "program standard" means a standard that, if violated, can lead to potential sanctions, such as a plan of corrective action, which do not include fiscal recoveries. Sanctions that can be imposed for violation of program standards are those specified in Mental Hygiene Law (including plans of corrective actions; non-renewal of operating approvals; suspensions and limitations of operating certificates, and fines or other fiscal sanctions as well as restitution)."<sup>1</sup> This means there are no billing standards intended and included in this Memorandum and as such there is intentionally no shaded language to identify billing standards.

## **APPLICABILITY:**

This Memorandum generally applies to all OPWDD providers delivering HCBS funded waiver services and/or Service Coordination including MSC and Plan of Care Support Services (PCSS), and OPWDD certified settings in which HCBS funded services are provided including Individualized Residential Alternatives (IRAs) and Family Care Homes. HCBS funded services include but are not limited to: Day Habilitation, Residential Habilitation, Prevocational Services, Community Habilitation, and Supported Employment Services.<sup>2</sup>

This Memorandum describes the quality principles and standards that OPWDD deems essential in assessing whether waiver services and supports provided to each individual are person-centered, community based, and delivered in the most integrated setting appropriate to each individual's needs and preferences.

## **QUALITY PROGRAM STANDARDS:**

The following are quality program standards and characteristics for the delivery of HCBS funded services and Service Coordination. These standards address the person centered planning process; delivery of person centered HCBS funded supports and services in integrated settings; promoting and supporting informed choice and rights; and standards applicable to each person's living situation.

It is expected that these standards are promoted and facilitated by all Service Coordinators, OPWDD certified facilities/sites, OPWDD funded HCBS providers/programs, and staff delivering HCBS funded services/supports to individuals in the HCBS waiver.

### ***A. Guidance on the Person Centered Planning Process and Delivery of Person Centered HCBS Waiver Services in Accordance with These Standards:***

Practice guidance on person centered planning and service delivery can be found on OPWDD's website under the "Person Centered Planning" link at:  
[http://www.opwdd.ny.gov/opwdd\\_services\\_supports/person\\_centered\\_planning](http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning).

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<sup>2</sup> This memorandum does not apply to:

- Delivery of HCBS Respite services;
- Assistive Technology, Adaptive Equipment, and Environmental Modifications funded through the HCBS waiver;

Specifically, except for Respite services, HCBS services funded through the waiver **cannot** be provided in the following institutional settings (HHS NPRM May 2012, pg 26401, 3<sup>rd</sup> column):

- Nursing Facilities;
- Psychiatric Centers;
- Intermediate Care Facilities (ICFs); and
- Hospitals certified for the provision of long-term care services.

This practice guidance on person centered planning and person-driven service delivery is the responsibility of all providers and staff that support the individual not just the author of the person's plan(s). OPWDD expects that these principles and practices are embraced by all providers and staff that work with people with developmental disabilities. Services and supports should be designed to result in greater choice, autonomy and independence and emphasize the outcomes that matter most to each person.

***B. HCBS Waiver Service Provision Is Required in Integrated Settings:***

HCB waiver services and supports must be designed to facilitate full access to the greater community including opportunities to engage in community life; seek employment in competitive settings; engage in meaningful activities; explore meaningful relationships and social roles; reside in the home of choice; and other hallmarks of community living in accordance with individualized needs and goals, and in the same manner as individuals without disabilities. Waiver services and supports provided to each individual must be person-centered, community-based, and delivered in the most integrated setting appropriate to each individual's needs and preferences and not be institutional in nature.<sup>3</sup>

***Informed Choice is Facilitated and Rights Are Protected***

*HCBS service delivery and all settings in which HCBS funded services and supports are provided shall promote the following:*

- Individuals are encouraged to freely choose their daily activities (e.g., when to eat, when to sleep, what to watch on t.v., etc.).
- Informed choice regarding services and supports and who provides them is facilitated and optimized.
- Individuals freely choose with whom to interact.
- Individuals have the right to access sufficient personal funds for daily activities regardless of the day or available staff. Arrangements for larger purchases may be made within a reasonable timeframe as established by regulation 633.15.
- Individuals are treated with dignity and respect.
- Individuals are allowed and supported to have "dignity of risk".
- Individuals are protected from unnecessary restraint.
- Individuals are informed of and provided with a mechanism to file anonymous complaints.
- Certified settings in which individuals receive services are physically accessible to the person.

***Additional Standards in OPWDD Certified Living Spaces:***

All OPWDD certified residential settings in which HCBS funded services and supports are provided shall promote the following in accordance with individual preferences and the strengths, needs, capabilities, and goals of each person in their plan:

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<sup>3</sup> HHS NPRM May 2012 pg. 26401 2<sup>nd</sup> column

- **Food, Meal(s), and Storage of Food Access<sup>4</sup>**

- Individuals have access to food, meal(s), and storage of food (e.g., individuals are allowed to purchase and store their own snacks or special food and keep food for themselves; kitchens, refrigerators, and pantries are not locked and if any safety considerations need to be implemented for a particular individual, the other residents have a means of ready access).
- Individuals have input on food options provided (e.g., choices are offered for meals and/or in menus).
- While it is recognized that mealtimes occur at routine times as is the case in most households, an individual may choose to eat at a different time or may choose to eat their meals alone if desired.

- **Access to Areas of the Home:<sup>5</sup>**

Individuals have access to areas of their home such as kitchens, laundry rooms, cabinets, closets and other rooms of the house. Such rooms do not have posted hours of operation and are not locked. If any safety considerations need to be implemented for a particular individual, the other residents have a means of ready access. Rules may not be posted unless the individuals residing in the home agree to a schedule that enables everyone equal access.

- **Visitors and Freedom of Association<sup>6</sup>:**

- Individual freedom of association, initiative, and autonomy regarding with whom to interact and when to interact is optimized and not regimented.
- Individuals may have visitors of their choice at any reasonable time without facility approval and individuals have the right to privacy with their visitor(s). This also means that individuals have access to the internet and telephone at any time and may choose to have private telephone numbers in their rooms and/or private cell phones for use at any time.
- The facility may require visitors to sign in and/or notify the facility administrator that they are in the facility or other such policies/procedures to ensure the safety and welfare of residents and staff as long as such policies and procedures do not unnecessarily restrict visitors for the convenience of staff and/or regiment freedom of association.

- **Roommates<sup>7</sup>:**

- Individuals are provided with opportunities to work with the facility to achieve the closest optimal roommate situation. Individuals that have issues with their roommates are encouraged and supported to work things out with their roommates and/or to receive assistance from the facility staff/facility/provider in coming up with alternatives.

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<sup>4</sup> HHS NPRM May 2012, pg. 26401 3<sup>rd</sup> column

<sup>5</sup> ibit

<sup>6</sup> ibit

<sup>7</sup> ibit

- The facility has a mechanism to assess roommate satisfaction/dissatisfaction and provides individuals with a confidential opportunity to discuss issues or concerns regarding their roommates. The facility also provides education to individuals on self advocacy and supports them in resolving these issues and/or in moving to another room or residence if the person chooses to do so.

- **Personal Space and Privacy<sup>8</sup>:**

- **Privacy:** Individuals have the ability to lock their rooms for personal privacy and to control access from unwanted external entry. The locking mechanisms will allow for the entry of support or help in an emergency.

Individuals may keep their own key and may lock the door to their private space. Individuals are allowed to have keys to the house they live in.

- **Personal Items and Decorations:** Individuals are encouraged and supported to decorate and keep personal items in their rooms (decorations must conform to building/fire safety codes and licensure requirements/rules in certified settings and must not violate the law)

**REQUIRED IMPLEMENTATION ACTIONS EXPECTED OF HCBS WAIVER PROVIDERS AND MSC VENDORS/SERVICE COORDINATORS:**

OPWDD expects all HCBS waiver providers and MSC Vendors/Service Coordinators to ensure full commitment and integration of these quality principles and program standards in all certified sites and be infused in the planning, monitoring, implementation and delivery of HCBS funded waiver services and supports and Service Coordination.

1. **Governance:** The Board of Directors of each organization has appropriate oversight of the organization's commitment to these standards and the organization's continuous quality improvement plans and strategies involving these principles.
2. All organizational policies and procedures, training materials, and other applicable documents should be consistent with these standards and ensure that the organization implements policies, procedures, and practices that clearly define its commitment to the promotion and protection of individual rights.
3. Organizational self-assessment practices that review the degree to which the organization is embracing and exhibiting these quality standards in day to day operations and strategies for continuous quality improvement as a result of the self-assessment should be undertaken.
4. Agency training, orientation, and other applicable and ongoing communication, training, and learning mechanisms should be reflective of these expectations including teaching and encouraging respect for each individual supported as a unique individual with unique preferences, interests, and goals— teach listening, learning and responding in ways that honor individuals and increase individual control teach about individual rights, dignity, and self-determination and how to support individuals to exercise control and choice in their own lives.
5. Communication with stakeholders including staff and individuals served on these principles and soliciting feedback from individuals served and their advocates on how to do better through

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<sup>8</sup> ibit

satisfaction surveys, focus groups, residence meetings, and other applicable forums should be undertaken.

6. Practices should be undertaken that make clear that the needs and preferences of people supported determine the types of supports provided. Promote practices that enhance individual decision making e.g., over schedules, activities, and staff hiring, training, supervising, evaluation, and firing, and in other areas where individual input and autonomy can be promoted and facilitated.

#### **REVIEW BY THE OPWDD DIVISION OF QUALITY IMPROVEMENT**

The Division of Quality Improvement will be revising applicable survey protocols to integrate the above quality program standards, guidance, characteristics and expectations. Applicable protocols will cover: Person Centered Planning and service delivery expectations; reviews of certified sites that provide home and community-based waiver services; and Medicaid Service Coordination. DQI will review these quality program standards through person centered reviews of individual services and supports and site based service delivery as well as organizationally through the systems the provider has implemented to promote and facilitate these standards.

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