



NYS Office For People With Developmental Disabilities

Putting People First



Regulatory Reform/HCBS Settings Transition Plan Steering Committee

Meeting 1: July 17, 2014

9:30 AM – 12:00 PM



Welcome and Introductions from Co-Chairs of Committee

**Maryellen Moeser, DQI
Continuous Quality
Improvement Unit**

John Kemmer, NYSARC



**The purpose of the Regulatory Reform/HCBS Settings Transition Plan Steering Committee (July & August):
To provide input/feedback to OPWDD on: (a) Updating HCBS ADM; (b) Person Centered Planning/Process requirements on final reg; (c) Feedback on Assessment Tool; (c) Input on Transition Plan**

Workgroup Members:

- ✓ Represent Stakeholder Groups
- ✓ Obtain feedback/input from Your Group
- ✓ Provide input/feedback on defined deliverables within tight timeframes required

OPWDD Staff:

- ✓ Present Materials/Facilitate Discussions
- ✓ Develop/prepare deliverables and revisions
- ✓ Confer with OPWDD Leadership on decision points/progress
- ✓ Project manage work plans/timelines



Committee Parameters

- ✓ Incredibly Intense Summer July/August Timeline
- ✓ Everyone may not be able to attend all the meetings given the timeframe, however, we will turn meeting summaries around as quickly as we can so that folks can provide written input if they missed the meeting
- ✓ We are building off the work of last year's Committee and the 2013 ADM
- ✓ We are focusing on certified/residential settings during this timeframe only as CMS has yet to issue day settings guidance
- ✓ Need to focus on input on deliverables—we ask that Committee members read material ahead of time, consult with their groups, and come prepared to provide input/feedback in a focused way (or e-mail written input to Maryellen.Moeser@opwdd.ny.gov directly)
- ✓ Systemic challenges will undoubtedly arise through our discussions—we will have a Parking Lot to track these issues for OPWDD Leadership as well as other topics/issues that come up that go beyond the scope of this work group





Meeting Schedule and Content Areas Input Due Dates

Date	Topics	Materials to be Provided No later than 2 days prior to Meeting	Feedback Deadline
7/17/14	Person Centered Planning/Process	Power Point Regulations Draft ADM from 11/2013 and CMS guidance documents	8/7/14
8/7/14	PCP Feedback Redraft of ADM Video Camera Policy	Redraft of ADM version 8 Draft Video Camera Policy or PP Slides	8/18/14
8/21/14	ADM Video Camera Policy HCBS Assessment Tool	Revised ADM version 9 Revised Video Camera Policy HCBS Assessment Tool version 2	8/28/14

All Committee Input/Feedback on the above Materials Due No Later Than the Last Meeting on 8/28/14



HCBS Settings Context/Background– Quick Review



HCBS Settings Final Rule

Key Elements

- The **final rule** is effective March 17th with up to five years for full compliance based upon approval of a state's transition plan
 - Defines consistent definition of community settings **across all HCBS Medicaid authorities**
 - Final rules applies to **all settings**, not just residential
 - Defines **person centered planning** requirements
 - Is based upon the **“nature and quality of participant’s experiences”**



Key Elements of the Final Regulations

- The settings is integrated in and supports full access to the greater community;
- Is selected by the individual from among setting options;
- Ensures individual rights of privacy, dignity and respect and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.

In provider controlled residential settings:

- Individual must have legally enforceable lease/agreement
- Individual has privacy in their living unit including:
 - Lockable doors
 - Choice of roommates
 - Freedom to furnish/decorate
- Individual controls own schedule
- Individual has access to food at any time
- Individual can have visitors at any time
- Physical accessibility to the setting



Person-Centered Planning Requirements Outlined in the Final Rule

- Integration and full access to the community
 - Selection by the individual from several setting options
 - Individuals' rights to privacy, dignity and respect
 - Freedom from coercion and restraint
 - Optimizing autonomy and independence in life choices
 - Facilitating choice of services and who provides them
- * These requirements align with OPWDD's current expectations regarding the person-centered planning process.



Person Centered Planning (PCP) Requirements in the Federal Regs

- The PCP is driven by the individual; includes people chosen by the individual
- Provides necessary info and supports to ensure that the individual directs the process to maximum extent possible, and is enabled to make informed choices and decisions.
- Is timely and occurs at times/locations of convenience to the individual
- Reflects cultural considerations/uses plain language, and in a manner accessible to the individuals and persons who are limited English proficient



Person Centered Planning Requirements (cont.)

- Includes strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all planning participants
- Clear and accessible alternative dispute resolution process
- Offers informed choice to the individual regarding the services and supports they receive and from whom
- Includes a method for the individual to request updates to the plan as needed
- **Records the alternative HCBS settings that were considered by the individual**



The Person-Centered Plan Must Reflect:

- Clinical and support needs as identified through an assessment of functional need;
- individual strengths, preferences, goals and desired outcomes;
- That person chose their living setting;
- Services/supports both paid and unpaid that will assist the person to achieve goals;
- Risk factors and measures in place to minimize them, including individualized back- up plans and strategies when needed.



Person Centered Planning & Modifications to these Rights

- Positive interventions and supports used prior to any modifications
- Regular collection and review of data to measure the effectiveness of the modification
- Established time limits for review of the modification
- Informed consent of the individual
- Assurance that the interventions and supports will cause no harm to the individual



Major Changes from 5/2012 NPRM And Previous Work Group Focus

- ✓ Person Centered Planning and Process Requirements including Rights Modification Rules Related to HCBS setting Rights
- ✓ Available CMS documents including “Exploratory Questions”, “Settings that Isolate”, Preamble to Federal Regulations with CMS’s responses to questions
- ✓ Heightened Scrutiny Process
- ✓ Conceptually--the move from proposed to final regulations and how we need to approach this
- ✓ Fluidity of CMS’s “dialogue with states”
- ✓ Statewide approach/transition plan vs. OPWDD transition plan
- ✓ CMS may conduct on-site reviews to facilitate confirmation of a state’s determination of whether certain settings are compliant ¹⁴



CMS Guidance
Documents Published to
Date:

- ✓ Settings that Isolate
 - ✓ Heightened Scrutiny Process
 - ✓ **Exploratory Questions**
(provided with meeting materials)
- Other non-CMS resources—
hcbsadvocacy.org

Additional CMS Guidance
Pending:

- ✓ Transition Planning
- ✓ Public Input Requirements
- ✓ Person Centered Planning
- ✓ Application of the settings requirements to non-residential settings
- ✓ Changes to the 1915 c Technical Guide

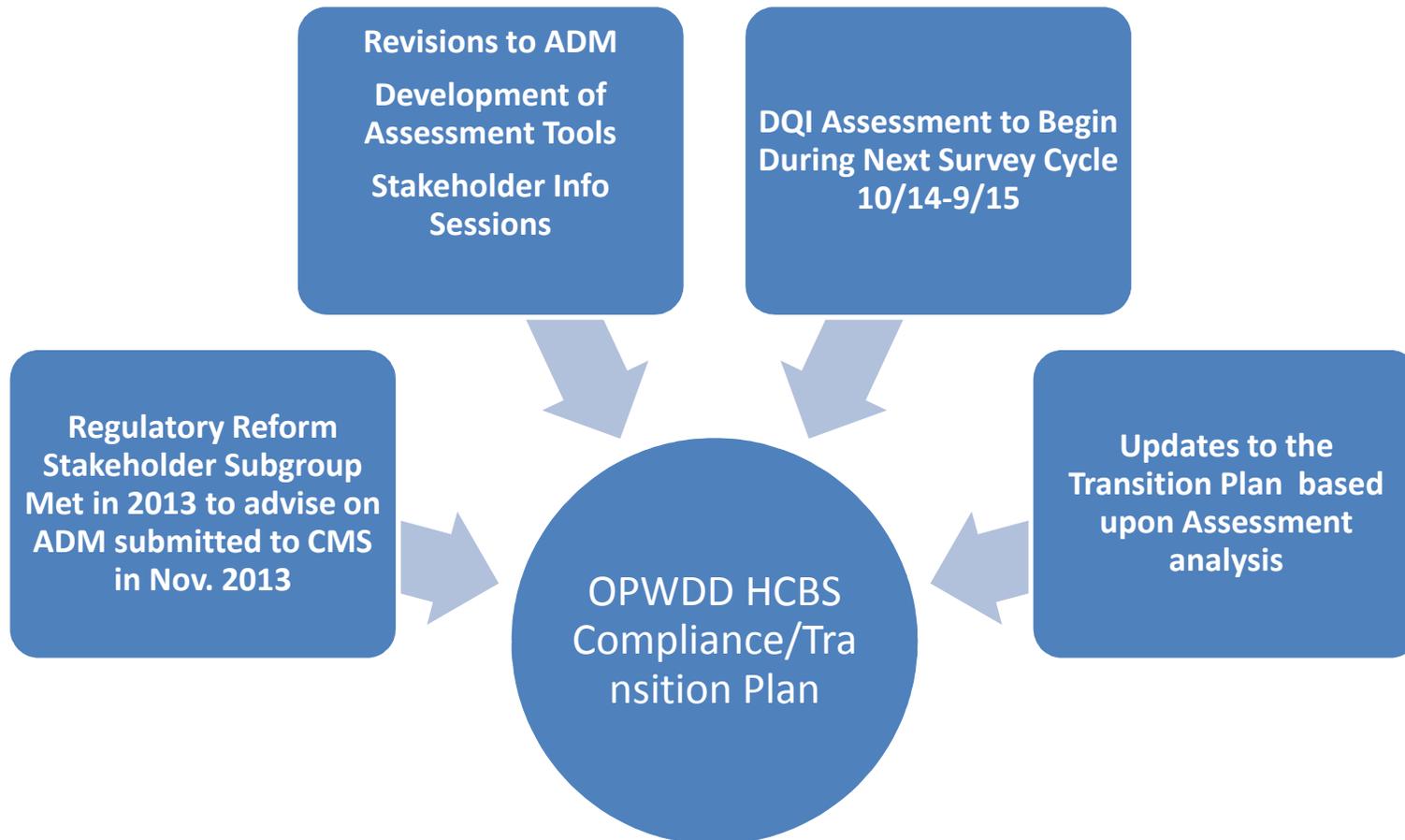


Major Challenges with HCBS Settings Final Rules and Moving Through Them

- Tight Timelines and Resources
- No guidance yet on day setting implications and other guidance areas TBD
- Aspirational nature of the rules leave much open to interpretation
- Lack of guidance from CMS on state transition plans and expectations
- “Settings that isolate” and CMS heightened scrutiny process; ICF conversions
- Fluidity of Policy Issues



Elements of OPWDD's Transition Plan Submitted with Waiver Renewal 7/1/14





HCBS Settings Transition Plan Timeline

Summer 2014 Activities

- Develop transition plan materials for CMS including waiver application appendixes (Completed)
- Revise ADM based on final regulations
- Compile stakeholder comments from public posting for consideration in implementation plan
- Draft HCBS Assessment Tool
- Work with NYS HCBS Settings Statewide Committee on State's transition plan
- Evaluate OPWDD's rules, regulations, program guidance, policies, etc. for what needs to be changed to comply fully with final rules
- Reconvene Regulatory Reform Stakeholder Work Group to provide input/feedback on revising the ADM and other transition plan components



HCBS Settings Transition Plan Timeline

Fall 2014 Activities

- Finalize ADM and Assessment Tool and Publish for Stakeholders
- Begin to administer HCBS Settings Assessment Tool 10/1 and Collect Baseline Data
- Continue Briefing Stakeholders and working on State Transition Plan
- Continue to work on OPWDD requirements framework

Winter 2014/2015 Activities

- Continue to administer HCBS Settings Assessment Tool and Collection of Baseline Data



HCBS Settings Transition Plan Timeline

Spring/Fall 2015 Activities

- Continue to administer HCBS Settings Assessment Tool

Fall/Winter 2015 Activities

- Analyze results of HCBS Settings Assessment for Baseline data
- Use baseline information to develop more detailed transition plan and timeline
- Stakeholder input process on Revised Transition Plan
- Submit revisions to the Transition Plan to CMS



Person Centered Planning and Process – Final CMS Regulations– Discussion and Next Steps

Anne Swartwout, MSC
Statewide Coordinator/MFP



Discussion Points

- Most of the CMS PCP requirements are already required by OPWDD
- Areas that likely require additional clarification/guidance from OPWDD:
 - Rights modifications
 - Compliance timeframe for HCBS/PCP
 - Other areas?



OPWDD's Rights Modification Guidance

Refer to handout of a draft for providers to use when deciding if a Behavior Support Plan is needed when rights need restriction or modification.



Wrap Up and Next Steps



The Revised HCBS Settings ADM will help set the stage for:

- ✓ Implementation of HCBS Settings Assessment;
- ✓ Interpretation and Understanding of the HCBS Settings Standards; and
- ✓ OPWDD's promulgation of Future Regulations on this topic



Next Steps

- Redraft of ADM will be circulated the week of July 28th . Please be prepared to offer input during 8/7 meeting or via e-mail to Maryellen.moeser@opwdd.ny.gov.
- Final input on PCP/Rights Modifications due no later than 8/7 meeting
- Circulation of Draft OPWDD Video Camera Policy for confidential review by work group (TBD)
- Circulation of draft HCBS Assessment Tool (shooting for 8/11 for 8/21 discussion)



APPENDIX SLIDES

from OPWDD presentations on

HCBS Settings



What does this all mean for NYS Providers?





Rights in provider controlled residential settings

- legally enforceable lease/agreement
- privacy in their living unit including:
 - Lockable doors
 - Choice of roommates
 - Freedom to furnish/decorate
- Individual controls own schedule & access to food at any time
- Visitors at any time
- Physical accessibility to the setting



Individual must have legally enforceable lease/agreement

CMS: If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law

- In discussions with CMS we stressed the rights in NY for due process



Individual has privacy in their living unit

- Individuals have the ability to lock their rooms for personal privacy The locking mechanisms will allow for the entry of support or help in an emergency.
- People have the right to privacy in their home
 - Staff training and operations of the home
 - Informing people of their rights
 - The Person Centered Planning Process

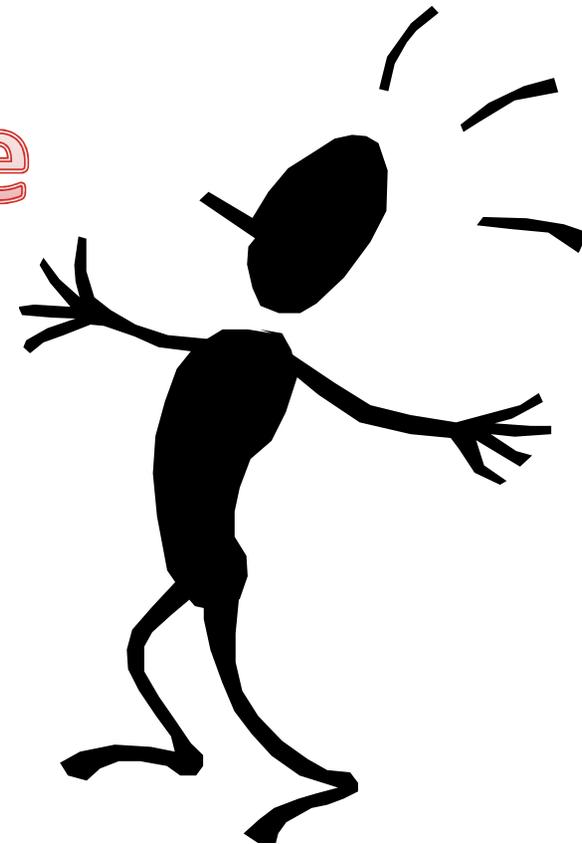


Choice of roommates

- Choice of Roommate
- There is a mechanism to assess roommate satisfaction/dissatisfaction
- Individuals have confidential opportunities to discuss issues or concerns regarding their room mates.
- Education on self advocacy and support is provided to assist in resolving issues and/or in moving to another room or residence if the person chooses to do so.



Freedom to
furnish/ decorate





Individual controls own schedule

- Individual has access to food at any time
 - There can be a routine, but there is flexibility to allow meals at other times
 - Individuals can purchase and store their own snacks or special food
 - 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



Visitors at Any Time

- **CMS in final rule assessment of comments:** “in certain living situations the preferences of others must also be respected. We expect that there will need to be communication and coordination between all parties affected “
- There can be policies/procedures to ensure the safety and welfare of residents and staff that do not unnecessarily restrict freedom of association



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Getting Ready

- **Assess** your operations
- **Use CMS resource page-**
 - See CMS Exploratory Questions
www.medicaid.gov/hcbs
- Learn more and be prepared for additional due diligence (and documentation of these efforts)
- Think about how to **integrate these requirements** into operations, staff training & the person centered planning/service delivery process.