

# WORKING DRAFT AS OF 8/17/14

## Guidance and Instructions for OPWDD's HCBS Settings Assessment:

### PURPOSE:

The Centers for Medicare and Medicaid Services (CMS) have promulgated final regulations for Home and Community Based (HCB) Settings. These regulations prohibit HCBS to be provided in settings that have the qualities of an institution, and seek to ensure that:

- Individuals receive Medicaid HCBS in settings that are *integrated in* and support *full access* to the broader community
- Individuals have a free *choice* of where they live and who provides services to them
- Individual *rights* are not arbitrarily restricted

The final CMS regulations require a transition plan that details the activities the state will engage in to move towards a system that is fully compliant with the new regulations within a maximum time period of five years (i.e., full compliance no later than April 2019, and may be earlier depending upon CMS negotiations on the State's transition plan). OPWDD's Transition Plan includes the "assessment" (i.e., review) of certified residential settings to determine the degree to which the HCBS Settings requirements are met and the areas in which improvements are needed.

***PLEASE NOTE: This assessment is not designed to result in issuing Statements of Deficiency (SODs), but if during the process of the assessment the Survey Team identifies instances of non-compliance that would typically rise to the level of an issuance of deficiencies (either Exit Conference deficiencies and/or SODs) based on existing OPWDD regulations, requirements, and protocols, these deficiencies should be acted upon based on normal operating procedures/practices.***

### STRUCTURE OF ASSESSMENT:

The HCBS Settings Assessment for Certified Residential Settings has been divided into 3 major parts based upon CMS Guidance and CMS Exploratory Questions as well as national resources available at the following link: [www.hcbsadvocacy.org](http://www.hcbsadvocacy.org).

Part I: Agency Level Review

Part II: Person Centered Review

Part III: Site-Based Review

### Instructions:

Beginning 10/1/14 through 9/30/14, DQI survey teams will complete the following:

## WORKING DRAFT AS OF 8/17/14

1. For each HCBS Waiver Provider, complete Part I (Agency-Level Review) only once.
2. For all recertification visits of IRAs and CRs scheduled during this review period, complete Part II Person Centered Review) and Part III Site Review.

**Sampling:**

**Sites:** Every IRA/CR with an operating certificate **that is expiring (due for recertification)**. (this includes both supervised and supportive sites)

\*Approximately 30% of all IRAs/CRs will be in the sample for the HCBS Settings Assessment Tool based on a three year recertification cycle

**People:**

For each certified residential recertification using the HCBS Settings Assessment Tools, follow current DQI sampling instructions for size of the sample (see chart below). To ensure a random sample so that baseline results are not skewed through targeting a sample, the surveyor will select the sample based upon directions to be provided during surveyor training.

For Part II Person Centered Review, all HCBS Settings Assessment Tool questions are to be answered for all people in the sample (i.e., there is no subsample for any questions).

Capacity	Group Home Sample	Apartment ClusterSample
21+	20% maximum 8	30% max. 15
15-20	4	4
9-14	3	3
4-8	2	2
1-3	1	1

# WORKING DRAFT AS OF 8/17/14

## HCBS SETTINGS ASSESSMENT TOOL GUIDELINES

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### Part I: Agency Review:

#### General Instructions:

The Agency Review (Part I), is designed to determine whether agencies are engaging in any activities that will help to set the stage, at an organizational and systemic level, for moving towards achievement of full compliance with the HCBS Settings requirements. It is acknowledged that the answers to these questions represent readiness at the point in time that the tool is administered.

The Agency Review **must involve a direct conversation with high level leader(s) of the agency involved in decision making and execution of the agency's strategic direction such as the Executive Director, Assistant Executive Director, and/or Director of Quality Improvement.** The survey team should request to see applicable documentation as evidence to support interview question responses (e.g., Board minutes; Quality Improvement Plan and related reports; meeting agendas and meeting summaries; evidence of accreditations and COL POMs certifications, etc. as applicable to the questions below).

#### Surveyor Documentation Instructions:

For the following 10 questions,

- Document agency leadership names and titles of all those who were interviewed.
- List the documents that were reviewed for each question, e.g., board meeting minutes, agency quality improvement plan, HCBS settings work plan, etc.

1. ***Agency executive leadership is in the planning process on how to address the CMS HCBS Settings regulations. (Yes or No)***

This probe will help determine agency progress in understanding the HCBS Settings Regulations and systemic expectations and whether executive leadership is planning ahead. Through discussion with Agency Executive Level Staff and review of evidence, assess the following:

- General level of awareness regarding HCBS Settings Regulations
- Whether discussions with the Board, Managers, Staff, Individuals, Parents, etc.

## WORKING DRAFT AS OF 8/17/14

have occurred regarding the requirements, agency considerations, potential impact and/or changes that may be needed and/or to seek input. (If such information sharing is reported, review evidence such as meeting agendas, board minutes, etc)

**Select "Yes" if:**

- Agency leadership is aware of these regulations and has been discussing/analyzing potential areas of concern based on current agency operations.
- The agency has been having conversations internally/externally on the HCBS requirements and possible next steps. For example, requirements have been discussed with agency Board and leadership seeking input from them and other stakeholders.
- There is evidence of this in board meeting minutes, written materials and communications, or other evidence that the agency is moving forward with analyzing, discussing and/or developing a plan.
- The agency does not have to have a fully operational work plan in effect yet but they are **AT LEAST** aware of potential impact and changes that may be needed to their operations and have started to plan activities.

**Select "No" if:**

- There is no evidence that the agency plans to review and discuss the impact of the HCBS settings regulations at the time of the interview.
- There are varied reasons why the agency may be inactive in planning, e.g.: The agency is unaware of the requirements, the agency does not see it as a priority at this time, the agency is waiting to see whether OPWDD provides more guidance; the agency thinks its settings already meet the requirements. Inaction for any reason results in "no".

2. *The agency has a plan to self-assess to determine if HCBS Settings requirements are met and/or what improvements are needed. (Yes or No)*

This probe goes beyond just agency awareness of the HCBS Settings regulations, but rather assesses whether the agency is self-initiating agency assessment and plan development. The expectation is that the agency has gone beyond mere awareness of these regulations (refer to question 1) and have begun **actively** developing a plan that includes concrete information regarding activities to move forward with self-assessment and/or improvements e.g., short-term and long-term goals, and areas to focus on.

**Select "Yes" if there is evidence of the following:**

- The agency has a structured self-assessment process and/or implementation work plan to address HCBS requirements; and/or
- The implementation work plan/assessment identifies focus areas, short-term goals, long-term benchmarks to reflect comprehensive agency progress.

**Select "No" if:**

- If there is no written evidence of the actions the agency plans to take; and/or

## WORKING DRAFT AS OF 8/17/14

- The agency has done no planning.

### ***3. Agency executive leadership and/or management have a written plan to provide information and train staff on the HCBS Settings requirements. (Yes or No)***

The agency has gone beyond mere awareness of these regulations (refer to question 1) and have developed or are developing a written action plan that includes dissemination of information on the HCBS settings requirements to staff and training of staff.

**Select "YES" if:**

- The agency has written evidence of a plan (or has begun a written plan) for dissemination of information to staff and training of staff.

**Select "NO" if:**

- The agency has no evidence that it has done any planning for disseminating information and training of staff.

### ***4. Agency executive leadership and/or management have a written plan to provide information to individuals and family members/advocates on the rights and requirements for HCBS Settings and engage these stakeholders in a dialogue of improvements that may be needed. (Yes or No)***

This question reviews whether the agency has a written action plan to make individuals/family members and advocates aware and informed of the HCBS Settings rights and requirements and engage these stakeholders in a dialogue of improvements that may be needed.

**Select "YES" if:**

- The agency has a written plan/or the beginning of one and/or written action steps that resemble a plan to provide information on the HCBS Settings and to engage these stakeholders in a dialogue regarding the HCBS requirements and improvements that may be needed to operations as a result.
- Examples in the written action plan to provide information to individuals and stakeholders include but are not limited to: newsletters; agency website; pamphlets, flyers, videos, etc. These should be easily available to the people the agency supports.
- Examples of engaging stakeholders in a dialogue of improvements that may be needed for the written plan include but are not limited to: town hall meetings; open board meetings; house meetings; other public forums, etc.

**Select "NO" if:**

- There is no evidence of any written planned actions in this area.
- The written plan or action step document is not clear and/or adequate for the reviewer to determine how the agency plans to proceed to provide information and engage stakeholders in a dialogue.

## WORKING DRAFT AS OF 8/17/14

### 5. *The agency is accredited by an external certifying body. (Yes or No)*

This question is designed to determine whether agencies have specific accreditations by external certifying bodies (e.g., Council on Quality and Leadership (CQL), CARF, etc.).

There are a number of external accrediting organizations that focus on the delivery of positive outcomes for the people served by the agency. Examples include but are not limited to:

- Council on Quality and Leadership (CQL)
- Commission on Accreditation of Rehabilitation Facilities (CARF): An international, not-for-profit organization that promotes quality rehabilitation services by establishing standards for quality and surveying those organizations to assure the standards are being met.
- Council on Accreditation (COA), and
- Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

It is possible that an agency could be accredited by more than one external body.

#### **Select "YES" if:**

- There is evidence that the agency is currently accredited at the time of the assessment by any external accrediting body. Specify the name of all accreditations obtained in the "Rational" Section.

#### **Select "NO" if:**

- The agency is not currently accredited at the time of the assessment or the accreditation has expired or is inactive. An agency in the process of accreditation is not accredited.
- Note: Although an agency may use certified CQL POMs trained interviewers for personal outcome measures, this alone is not considered an accreditation.

### 6. *The agency is actively pursuing accreditation from an external certifying body. (Yes or No)*

An agency could be actively working towards achieving an accreditation but is not yet accredited.

#### **Select "YES" if:**

- The agency is **actively** pursuing an accreditation as **evidenced** by:
  - documentation from the accrediting organization and/or
  - documented communications to/from the accrediting organization and/or
  - demonstrated agency work plan to achieve accreditation
- The agency is **actively** collaborating with other agencies to pursue accreditation as **evidenced** by:
  - documentation from the accrediting organization to the agency or collaborative; and/or
  - documented communications to/from the accrediting organization and/or

## WORKING DRAFT AS OF 8/17/14

- o demonstrated agency work plan to achieve accreditation

**Select "NO" if:**

- The agency has no evidence of active pursuit of an accreditation. Please note that use of CQL certified interviewers for personal outcome measures is not an accreditation in and of itself and if this is all the agency is engaged with or actively pursuing, the answer is No.

**7. The agency uses CQL POMs administered by certified CQL Interviewers. (Yes or No)**

Ask the agency if they conduct CQL Personal Outcome Measure (POM) interviews using CERTIFIED interviewers.

**Select "YES" if:**

- If the agency is accredited by CQL, they would also be using certified CQL interviewers for personal outcome measure interviews.
- An agency may not be accredited by CQL but have staff members that are Certified CQL POMs interviewers. In order to become a certified CQL interviewer, the person needs to be trained and certified **by CQL staff**. Findings and data that is collected regarding Personal Outcome Measures (POMs) is NOT considered to be valid by CQL unless the interview was conducted by someone trained **AND** certified by them. Interviewer certification includes the achievement of inter-rater reliability between interviewer candidates and CQL staff. An agency contracts with CQL and CQL observes interviews to verify and validate the interview process and related decision making regarding the POMs. The agency should be able to provide information to verify that interviewers are certified.

**Select "NO" if:**

- An agency may have incorporated many aspects of CQL POMs into their agency approach to person-centered planning and other quality of life initiatives. They may even conduct interviews with individuals using POMs, but this doesn't mean that the person conducting the interview was CERTIFIED by CQL.

**8. There is evidence that the agency is pursuing the use of certified CQL Interviewers for personal outcome measures/person centered planning. (Yes or No)**

**Select "YES" if:**

The agency has documented **evidence** that they are pursuing:

- Certification for agency staff as CQL POMs interviewers and/or
- A contract agreement with external parties or another agency for the services of certified CQL POMs interviewers.

This evidence can include Board meeting minutes or other written documentation that shows engagement with CQL or other parties towards the goal of obtaining certification (or contracting) for certified interviewers.

**Select "NO" if:**

## WORKING DRAFT AS OF 8/17/14

- There is no indication/evidence that the agency is taking action to obtain or contract with CQL POMs certified interviewers.
- An agency may have once had CQL POMs certified interviewers but let the certifications expire.
- An agency may have incorporated many aspects of CQL POMs into their agency approach to person-centered planning and other quality of life initiatives. They may even conduct interviews with individuals using POMs, but this doesn't mean that the person conducting the interview was CERTIFIED by CQL.

### *9. The Agency systemically uses a person centered planning methodology. (Yes or No)*

Person centered planning is foundational and sets the stage for the HCBS Setting regulations. Without implementation of true person centered planning the requirements of the HCBS settings regulations cannot be met.

Person-centered planning supports people with disabilities to express their needs, wishes, goals and their preferred supports through methods that reflect their individual culture and communication style. It also requires that others who participate in the planning are committed to PCP using cues from and the perspective of the individual.

Person centered planning is not a new concept although it has evolved over the past fifteen to twenty years. There is no one universal person centered planning methodology. However, all person centered planning methodologies have the same basic objective: To support individuals with intellectual and developmental disabilities to lead lives that are meaningful and purposeful to them, and that allow them to participate fully in their homes and communities to the extent they are willing and able to do so.

More information on person centered planning methodologies (and those listed below can be found on OPWDD's website at:  
[http://www.opwdd.ny.gov/opwdd\\_services\\_supports/person\\_centered\\_planning/various-person-centered-planning-methodologies](http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning/various-person-centered-planning-methodologies)

#### **Select "YES" if:**

The agency can provide **evidence** of consistent use of person centered planning methodology(ies) throughout the organization that touches all individuals served. Evidence may include policy and procedures for person centered planning, training curriculums and routine training of all applicable staff in the methodology, and planning materials that indicate the use of the methodology throughout the agency's programs, supports, and services, etc.

Examples of person centered planning methodologies include but are not limited to:

- CQL POMs
- Personal Futures Planning (Beth Mount, 2000)

## WORKING DRAFT AS OF 8/17/14

- Planning Alternative Tomorrows with Hope (PATH) O'Brien, Pearpoint and Kahn, 2010)
- Making Action Plans (MAPs) O'Brien, Pearpoint, & Kahn, 2010
- Essential Lifestyle Planning (ELP) Smull & Sanderson, 2005
- Facilitated Discovery
- Wheelpower, Steering Your Way to a Life of Distinction (SANYS 2009, O'Brien 2008)

Document the name of the person centered planning methodology used in the Rational section.

**Select "NO if:**

- There is no evidence of a pervasive and systemic use of formal person centered planning methodology(ies) endorsed and used by the organization.
- Agency leadership may indicate awareness of person centered planning methodologies and may believe the organization uses person centered planning, but there is no evidence of the systemic use of a person centered planning methodology.

**10. The Agency implements a Quality Improvement Plan that includes activities to measure and improve the quality of life of individuals served. (Yes or No)**

A Quality Improvement Plan (QIP) is a systemic and organized framework for quality improvement which serves as the foundation to continually improve the performance of the agency and the quality of life of people served. It identifies standards, goals, objectives, and the activities necessary to meet them.

A comprehensive Quality Improvement Plan typically includes the following key areas :

- Goals and objectives for quality service delivery
- Processes, structures, and methods to gather information on agency performance to identify and address quality concerns (e.g., self-assessment and remediation processes; satisfaction surveys of staff and people served and families);
- Setting targets for improvement in agency determined focus areas over a designated period of time(e.g., annually)
- Assuring data sources, aggregation and analysis
- Roles and responsibilities for quality assessment and improvement
- Prioritizing identified problems and setting goals for their resolution;
- Identification of internal and external reporting requirements and assuring completion of same;
- Education and training strategies for agency managers, clinicians, and staff re: the QIP
- Developing or adopting necessary tools, such as practice guidelines, satisfaction surveys and quality indicators.

## WORKING DRAFT AS OF 8/17/14

- Board approval of the Quality Improvement Plan

Some focus areas we want to see in an Agency Quality Improvement Plan that addresses quality of life of individuals served includes but is not limited to the following:

- Rights and self-advocacy
- Increasing Community inclusion/full access to the broader community
- Competitive employment
- Self-direction/self-determination
- Meaningful relationships/natural supports/community connections
- Enhancing/improving person centered planning
- Other areas that reflect measuring and improving the quality of life of individuals served

**Select "YES" if:**

- The agency presents a current Quality Improvement plan that appears comprehensive and includes a focus on quality of life of individuals served (e.g., one or more of the focus areas outlined above) and there is evidence of its implementation (e.g., tracking/analyzing of data related to goals and objectives).

**Select "No" if:**

- The agency presents a document that they call a Quality Improvement Plan but:
  - it does not contain information outlined above and/or
  - it does not address measurement and goals related to improving individual quality of life, and/or
  - it focuses only on regulatory compliance and/or addressing deficiencies cited by OPWDD
  - There is no evidence that the Quality Improvement Plan is implemented.
- There is no written Quality Improvement Plan

**Rationale:**

Include a brief description that justifies the Yes or No, e.g., for No, "agency has a Quality Improvement Plan but it only focuses on regulatory compliance", "agency has a QI Plan but no evidence of implementation", "agency has no written Quality Improvement Plan".

# WORKING DRAFT AS OF 8/17/14

## Part II: HCBS Assessment—Person Centered Review

### GENERAL INFORMATION AND INSTRUCTIONS:

The fundamental theme and basis for compliance with the new federal HCBS Settings regulations is that “compliance” as CMS defines it, is largely based upon each individual’s **experience and outcomes** living and receiving services in the setting. As such, there is no “one size fits all” approach to compliance. However, person centered planning and person directed service delivery is the essential building blocks that drive everything else contained in the HCBS Settings Assessment. Listening and learning from EACH person, and making every effort to help the person to address their priority goals and outcomes, are key ingredients to these standards.

#### Interviewing the Person:

**At all times, the preferred person to interview by the survey team is the person living in the home. The survey team must make every effort to conduct a face to face interview with each person in the HCBS Settings Assessment sample and if this is not possible, the survey team must document the reason why. However, the survey team should still observe the person and attempt to communicate/interview the person even if a surrogate is also present.**

It is recognized that some individuals are unable to directly provide this information to you. You may gain some information to answer assessment items during your observation of the person in their environment, activities, and interactions. Whether or not the individual is your direct interview source, there is also information to be gained by speaking with others who know the person very well. Some family and staff members are very attentive to what does and does not interest or benefit an individual and are excellent at expressing their best judgment of what the person would say if they could. Based on what you read and observe, use your judgment to determine whether they are speaking from their own or the individual's point of view.

**For each question in the person centered tool, the survey team will note who was interviewed that lead to the question determination. More than one person can be noted as well.**

Please note that talking to paid staff should not be the **only** basis for making the determination for the assessment questions.

The way all questions and guidance is written assumes that the survey team is talking to the person. The surveyor will need to determine, in their own judgment and after

## WORKING DRAFT AS OF 8/17/14

attempting to communicate with each person face to face, whether someone else who knows the person best will need to be interviewed to obtain the answer to the assessment question.

### Guidance/Directions for Interview Questions:

Please note that the guidance for some of the below questions are grouped together as the guidance and probes apply to a set of questions rather than an individual question.

Please also note that most of the questions reference talking to the person. As indicated above, it is recognized that the person may not be able to directly provide the information to you. In these cases, use the guidance above to interview the best and most appropriate people who know the individual best.

### Services and Supports Planning Process:

#### 1. HABILITATION PLANNING:

**Standard:** The Habilitation Planning process is person-centered and reflects the goals and outcomes of the person.

*a. The person's Habilitation Plan is person centered. (Yes or No).*

Habilitation services help a person learn the skills and/or get the supports needed to pursue personal interests and aspirations and to live as independently as possible in the community. ***Upon review of the habilitation plan, interviewing the person is critical to answering whether or not their habilitation plan reflects what is meaningful and important to them.***

Residential staff is expected to foster true person-centered planning through the habilitation planning process. You should see evidence of true person centered planning that is person-driven; guided and shaped by the very individual at the center of the plan. Based upon discussion with the people involved and documentation determine whether the planning involved a comprehensive process that includes discussions with not only that individual, but his or her circle of support (both paid staff and natural supports) as well. Those discussions should have revealed how that person wants to live. The plan should identify the individualized supports preferred by the individual and determined to be most appropriate to help the individual move toward the life he or she considers meaningful and productive. The plan should be designed so that habilitation services are delivered in a way that

## WORKING DRAFT AS OF 8/17/14

ensures that the person has as much control in his/her life as possible.

When interviewing the person ask about his/her interests and priorities and whether they have the support needed to pursue those interests. Ask about their plan, including direct questions related to the specific activities and outcomes addressed in their plan. Ask people if they know how/why these activities and desired outcomes are in the plan. Did they agree to them/choose them? You may also ask how long they have been working on specific outcomes identified in their plan.

Through the discussions and documentation review, use your best judgment to determine whether the habilitation plan seems aligned with the person's priorities. It does not have to be all encompassing of each and every desire of the person, but habilitation services per the plan must contribute to their priorities and what is most meaningful to each person.

**Select "Yes" if there is evidence of the following:**

- The habilitation plan is individualized and person centered. This means that the plan was developed in conjunction with the person and reflects his/her priorities, preferences, goals and needs.
- Although the habilitation plan doesn't have to exactly match ISP valued outcomes, there should be a thread of similarity reflecting the goals and dreams that have been discovered during the person-centered planning process.
- The habilitation plan is reflective of the person's CURRENT desires and needs **based on your interview with the person** (or if necessary, a surrogate that knows the person well).

**Select "No" if:**

- The person did not participate in plan development unless this was their decision/choice not to.
- The person's perspective and preferences and priorities were not considered during the planning process.
- The plan is not a current reflection of the individual's status, wants, needs, interests, goals. E.g., The person reports interests and desires that are important to them which are largely unrepresented in their plan.
- The person (supports or family/advocate) reports that the individual is bored or uninterested in the activities outlined in their plan.
- The plan is written in a "generic" manner. The activities/goals/desired outcomes and/or the strategies to achieve them lack personalization, individualized considerations and guidance, etc.

- b. The Person's Habilitation Plan (or alternative plan documentation) reflects the community-based activities that the person wants, including desired frequency and supports needed (Yes or No).**

## WORKING DRAFT AS OF 8/17/14

Please refer to guidance in 1a above regarding considerations for ensuring that the plan is person centered and reflects the priorities that are important to the person. Also, ensure appropriate interviews as described in 1a. When interviewing the person, ask about his/her interests. In addition, consider the following:

Habilitation services help a person learn the skills and/or get the supports needed to pursue personal interests and aspirations and to live as independently as possible in the community.

The person's habilitation plan and/or alternative documentation created for this purpose should also reflect the varied community activities for which the person has expressed or demonstrated interest. This may include community activities intended to assist the person with functional skill, but should also include identification and planning for community integration based on individualized interests and priorities in leisure and recreation, associational desires (e.g. church membership, social activities and social groups, clubs of shared interests), shopping and purchasing desired or needed items, etc. The planning should go beyond just basic functional, easily "billable" activities.

The plan should reflect that there are activities beyond a functional nature. It may also be appropriate though, to acknowledge what training and skills are needed for the person to be able to access their community interests with more independence.

Upon interview with the person, use your best judgment regarding your overall impression of the person's habilitation plan and corresponding documentation.

**Select "Yes" if there is evidence of the following:**

- The Habilitation plan/documentation reflects community related interests and priorities that are important to the person.
- The habilitation plan/documentation reflects related activities that will enhance the person's ability to participate in community activities and interests (such as training in using public transportation, training on becoming more independent with finances, discovery and research of new opportunities, etc)

**Please note that section 4, community access and section 12, person's schedule includes question related to whether the person's priorities in the planning process are being supported/implemented by residential staff.**

**Select "No" if:**

- Community related interests are absent from the person's documentation or habilitation plan, and instead reflect only functional activities such as tooth brushing without any corresponding long-term goal towards increased integration and independence.

## WORKING DRAFT AS OF 8/17/14

c. *The person is supported to make their own informed choices through the person centered habilitation planning process. (Yes or No).*

People have the right to make choices in their lives, whether they are simple every day choices or more important life defining choices. Implicit in choice making is the dignity of risk which recognizes that risk taking is necessary for normal growth and development. Although we recognize the importance of risk taking, people also have the right to be protected from unnecessary physical, psychological, or social harm.<sup>1</sup> Balancing the right of a person to make informed choices that are likely to involve risk with the need for necessary protections is a fundamental dilemma of all service providers and circles of support in the system. Considerations having meaningful discussions with the person about the pros and cons of choices and defining tolerable risk vs. non-negotiable risk and engaging in defensible decision making through person directed dialogue.

In order for a person to make meaningful choices and decisions, the following things need to be present in the person's life. Based on your understanding of what is important to the person, including your interview with the person, and elements in their habilitation plan and documentation, look for indications and examples of the following things present in the person's life and/or experience:

- Concrete and varied *life experiences with needed* supports to help the person gain an understanding of options and opportunities
- *Social support networks* to help the person in choice-making, including family, friends, peers, and staff.
- Opportunities for *creative alternatives* and a *flexible* approach that can meet the person's needs and expectations, while still fitting within available resources<sup>2</sup>

The agency and agency staff don't necessarily have to agree with the person's choices but there is an obligation to educate and train the person on the impact that those choices have. The education content should be consistent and credible. Staff should act on those choices of the person, as long as those choices don't threaten the health and safety of the person or others. It is important for the residence to demonstrate and document that thoughtful discussion and meaningful conversations have occurred with the person in an individualized way. Making an informed choice means that the person is empowered with information about the pros and cons of the decision, and given possible alternatives, while still being allowed to take calculated risks.

**Select "Yes" if there is evidence of the following:**

- The person was offered informed choice of services and supports and who

<sup>1</sup> The Right to Choose, A Training Curriculum, Instructors Manual, by Barry Warren, Ph.D. 1993

<sup>2</sup> CQL Guidance on Person Centered Planning, Page 13

## WORKING DRAFT AS OF 8/17/14

provides them. CMS expects that all services and support options will be articulated and discussed with the person.<sup>3</sup>

Select "No" if:

- d. The person's plan (Habilitation Plan/IPOP) reflects the risk factors and positive safeguarding measures in place to minimize them including individualized back-up plans and strategies when needed. (Yes or No)*

**Question c above focuses on whether the person is supported to make informed choices in the planning process. This question focuses on whether there are positive safeguarding measures and back up plans in place to support the person's informed choices. Guidance from question c above and d below is helpful.**

Waiver service providers are expected to encourage and support individuals to have greater degrees of choice, autonomy, and control over their own lives and emphasize the outcomes that matter most to each person.

Person centered planning should result in the individual expressing their right to make informed choices even if these choices come with risk or risk is perceived to the individual and/or the organization. The support planning process and resultant plan should enable the individual to manage identified risks and agree upon appropriate safeguards so that they have the freedom to live their life in the way that they choose.

The person's planning should focus on positive safeguarding that may not necessarily result in risk elimination. This should result in assisting the person to choose options that will help keep them as safe as possible and manage the challenges and associated risks inherent in a community integrated life.

Any risk, whether real, assumed and/or perceived should not be used as an objection to the person being able to engage in community life in the way that is most meaningful to the person. Fundamental to this process is flexibility, creativity, and individualized approaches to risk consideration through meaningful conversations and consideration with the individual and the people that matter most to the individual. Through this dialogue, it is also helpful to consider the consequences to the individual of not taking the risk. Often the potential consequences of not taking a risk could have an impact on the individual's ability to learn, grow and develop through new experiences and challenges that would come about through taking the risk.

<sup>3</sup> 79 Federal Regulation at 2,989

## WORKING DRAFT AS OF 8/17/14

A critical aspect of the person-centered planning process is engaging a person and his/her circle of support in meaningful discussion on areas of health and well-being. Opportunities for personal growth can sometimes be limited because there are concerns about a person's vulnerability in specific areas. By discussing specific safeguards and strategies to mitigate those risks, a person in conjunction with his/her circle of support can make informed decisions regarding what risks are tolerable.

Another critical aspect of this is also having back-up plans in the event that things don't go as planned or circumstances change.

The person should not be prevented or limited from opportunities because there has not been enough discussion related to alternative ways to make their dreams and priorities a reality.

Staff must **support** and **assist** the person to **both** exercise his/her right to make informed choices **and** be responsible for the outcomes of his/her actions.

It is also important to note that some risks may be non-negotiable—the bottom line is that there are person centered and meaningful discussions taking place that get at what the person wants to do and positive approaches to safeguarding is occurring.

### Probes:

- Are there strategies for making sure that the person and his/her circle of support made informed choices based on meaningful discussions?
- Upon interviewing the person, does it appear that they are aware of potential risks that might occur? How would they handle those risks? Does it appear that they have made informed choices about those risks?
- Do the person's habilitation plan and/or IPOP specify necessary, individualized safeguards that are needed to in order for the person to engage in community opportunities?
- Do the person's safeguards support rather than impede the important valued outcomes that are outlined in their service plan?  
Does the habilitation plan/IPOP include back-up plans and strategies in the event that circumstances or events might change? E.g., If a staff person calls in to their shift, is there a plan for how the person will get to a scheduled event such as a class or club meeting or does it end up being canceled?  
If the person uses public transportation, do they know what to do if they miss the bus that they were supposed to take?
- Upon interview with the person, and review of their documentation, are restrictions and safeguards thoughtfully justified, and developed with the intention of creating meaningful opportunities for the person (rather than just restricting their independence)

### *Some Interview Questions with the person:*

- Do you feel safe where you live? Is there anywhere that you don't feel safe?
- What would you do in an emergency?
- Do you feel like staff keeps you from doing things that you want to do because

## WORKING DRAFT AS OF 8/17/14

they are afraid you will be hurt or harmed? If so, do you know why?

- Do you know what to do if something went wrong, like you missed the bus, staff didn't show up to pick you up from a community event, or you got lost?

**Select "YES" if:**

- A Strength and Risk Inventory (or other documentation that demonstrates meaningful discussion of choice and positive approaches to safeguarding) is present in the person's file and/or the findings from the inventory are clearly identified in the person's plan. Its use has resulted in the identification of specific risk areas in a person's life. The identified risks have resulted in the development of safeguards that have been documented in the habilitation plan and/or IPOP?
- The person reports an awareness of important safeguards and specific ways to be safe when participating in activities that are important to them and these safeguards are documented in the person's plan.

E.g, The person has participated in education classes about how to have healthy relationships, or has received training and support on how to take public transportation independently, or has received training and supports to allow them independent access to their own bank account. In these examples, rather than be prevented from these opportunities for more independence due to risk concerns, there are specific strategies in place to help ensure the person's health and well-being while they participate in these activities.

**Select "NO" if:**

- The person reports dissatisfaction and feels limited in his/her ability to try new things and become more independent without having any clear understanding as to why
- Documentation reflects limitations and safeguards without taking into account the person's abilities and goals. Safeguards do not appear person-centered and specific to the individual.
- Safeguards and/or restrictions identified/implemented appear excessive in relation to the person's need/risks, with inadequate justification as to why they are in place, and with no long-term strategies identified to lessen those limitations.
- Action has not been taken to identify risks and/or strategies to address.

*e. The person's habilitation plan is understandable and accessible to him/her (Yes or No).*

CMS expects the planning process to reflect the person's cultural considerations. Information should be provided in plain language and in an accessible manner. Auxiliary aids and services must be available at no cost to the person. For persons with limited English proficiency, similarly, language services must be available at no cost.<sup>4</sup>

<sup>4</sup> 42 CFR 435.905b

## WORKING DRAFT AS OF 8/17/14

Look at the habilitation plan and determine if it has been written clearly and in plain language. A verbal explanation of the plan should be offered/provided to the person and/or their representative.

The person should understand, if capable, why they have a habilitation plan, and what is in it. The individual should have meaningful access to their plan (e.g. low literacy materials and interpreters especially in instances where the person and/or their representatives have limited English proficiency (LEP).

If the person is non-verbal or has difficulty communicating or reading, the Habilitation Plan should be developed in as accessible a way as possible for the person (e.g., pictures, diagrams, verbal recording of the information, video, etc.) In certain circumstances, depending upon the person's strengths and capabilities, this question may need to be answered from the perspective of the family member/advocate who knows the person best.

**Select "YES" if:**

**Based on the following it is apparent that the person (or surrogate if necessary) has an understanding of their Hab Plan, otherwise, Select "No":**

- The person knows that they have a habilitation plan and what is in it.
- The person knows where a copy of their plan is if they want to see it.
- The person can name an area or goal in their plan that they are working on.
- The plan is written in plain English or is otherwise accessible in such a way that makes it easily understood.
- If English is the person's second language, is a copy of their plan available in the person's primary language?

The bottom line of this question is that the staff make every effort to make the person's plan accessible and understandable to them.

**f. *The person knows how he/she can make a service or support request within their residence.***

**This question requires an interview with the person and/or the person's family member/advocate that knows them best and if necessary, staff.** A person should know who to go to when there are concerns about a service or support, and how to make changes to the services that are received. Staff should support and encourage the person to express choices and needs as part of the person-centered planning process.

**Interview with the person:**

- Who would you go to if you wanted to ask for more help or support?
- If you are unhappy with something, who would you tell?
- Do you feel that staff listens to you when you want to make a change?

## WORKING DRAFT AS OF 8/17/14

- Do you understand that if you are unhappy with a service or support that you receive, you can make changes?

**Select "Yes" if:**

- The person (or advocate who knows the person best) responds to interview question with a viable method for how they go about making a service/support request to residential staff.

**Select "No" if:**

- There is no indication that the person knows who to talk to or how to go about making a request for supports/services in the residence.

*g. The person is satisfied with the level and type of individualized support/service provided to him/her in the setting and in the community.*

This question requires an interview with the person and/or the person's family member/advocate that knows them best and if necessary, staff.

**Interview with the person:**

- Are you happy with the support and services that you currently have? Have you asked for a meeting to discuss a change?

**Additional probes:**

- Based on your interview with the person, is your overall impression that the person is satisfied with their services and supports to meet their needs, goals and interests in the home and in their community? Or do they feel that they have needs and interests that are unaddressed?
- Is the person adequately supported to make decisions for him/herself?
- The person reports they are adequately supported in their home and
- Does the person feel like staff is responsive to them when they are unhappy with something or do they feel ignored and disregarded?
- Does the person feel like they have enough independence or do they feel that they are overprotected without knowing why?
- Is an "either" / "or" approach used when responding to the person's requests? If one need or choice may not be possible, are other alternatives considered that can meet the person's needs or was the choice simply dismissed?

**Select "Yes" if:**

- Based on interview and the probes above, the person (or surrogate if necessary) expresses satisfaction overall with supports and services in the setting and community provided by the residence.

**Otherwise Select "No":**

## WORKING DRAFT AS OF 8/17/14

### 2. HOUSING PROTECTIONS:

**Standard:** The person has a legally enforceable agreement that addresses eviction processes and appeals comparable to the jurisdiction's tenant landlord laws; and the person has been informed of and understands these rights/protections and when they would be required to relocate.

CMS's intent is that in order for a residence to be considered Home-and-Community-Based, the resident has a lease or written residency/occupancy agreement that provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's land-lord tenant law. <sup>5</sup>

*These questions should be answered using BOTH documentation and interview with the individual and/or his/her representative.*

Please note that the written agreement may also state any *limits* on furnishings and decorating sleeping or living units in addition to any eviction or discharge process that is outlined.

It should not include any modifications/limits to any of the person's other HCBS Settings rights except the

- a) *The person has a lease or other written occupancy/agreement that provides protections and appeals/ due process from eviction. (Yes or No)*<sup>6</sup>

**Select Yes if:**

- There is evidence of a written occupancy agreement that specifies due process and appeals regarding the person's residential setting. This can be a written residential/occupancy agreement that outlines 633.12 rights and specifies the circumstances upon which the person would be required to relocate and the due process provided in these circumstances.

**Select No if:**

- There is no evidence of a written occupancy agreement that includes due process/appeals and specifies circumstances where the person would be required to relocate and the due process protections required by the agreement to be provided in these circumstances.

<sup>5</sup> 2960 Federal Register / Vol. 79, No. 11 / Thursday, January 16, 2014 / Rules and Regulations

<sup>6</sup> Adapted from CMS Exploratory Questions for Residential Settings, Page 6

## WORKING DRAFT AS OF 8/17/14

*b) There is evidence that the person and/or their representative has been informed of their due process rights and under what circumstances he/she would be required to relocate. (Yes or No)<sup>7</sup>*

It is the agency and residential setting's responsibility to ensure that residents are fully informed of their rights, including when eviction or involuntary discharge is necessary. There should be written evidence of a lease or occupancy agreement or another comparable written agreement with the agency, in the person's file.

**Select Yes if:**

- There is written documentation that shows evidence that the agency/residence has informed the person and/or their representative of the housing protections and under what circumstances he/she could be required to relocate.
- The written documentation can include but is not limited to the following:
  - written lease or occupancy agreement signed by the person and/or their representative that includes information outlined in "a" above
  - A notice of rights document that outlines 633.12 objections to discharge that is signed by the person and/or their representative as long as it includes the circumstances under which the person could be required to relocate and the due process/appeals/protections provided

**Select No if:**

- There is no evidence/written documentation as indicated above that shows that the person and/or their representative was informed of these housing protections and due process/appeals.

*c) The person and/or his/her representative know their rights to due process if he/she is required to relocate (Yes or No).<sup>8</sup>*

Beyond written documentation, it is important to interview the individual and/or his/her representative to determine if he/she has *awareness* of these rights.

**Interview with the person:**

- One of your rights living in this residence is that you have protections if the agency ever asks you to move out or move to another residence. Have you ever been made aware of this?
- Do you have any paperwork that lists your rights to live in this home?

**Select Yes if, in your judgment through the interview process, any of the following is present (otherwise, select No).**

- The person and/or their representative is aware of the housing protections as outlined in "a" above and/or;
- The person and/or their representative can produce a written document that

<sup>7</sup> Adapted from CMS Exploratory Question for Residential Settings, Page 6

<sup>8</sup> Adapted from CMS Exploratory Questions for Residential Settings, page 6

## WORKING DRAFT AS OF 8/17/14

outlines their rights to housing protections/due process and the person/representative has an understanding that the paperwork contains this information and/or;

- The person and/or their representative can describe the process that will occur when someone is asked to relocate from the residence.

### 3. RIGHTS:

**Standard: The individual is aware of their rights, how to address their concerns, and is supported to do so.**

#### **Probes for documentation review:**

- Is there evidence in the person's file that they have been made aware of rights and the process for objecting to services in plain language in a manner they can understand e.g., if the person cannot read, there is evidence that his/her rights were explained to him/her and the representation?
- Are there any documents available to the person in the residence that explains various rights in more detail and how to make an anonymous complaint?
- Individuals receive and can access information about their rights
- Individuals receive and can access information regarding how to make an anonymous complaint
- The person's habilitation plan is individualized in such a way that it reflects the rights and preferences important to the person as well as the unique approach that is needed to help the person to advocate for their rights.

#### **Interview with staff:**

- What do you consider to be the person's rights?
- Has the person ever reported any concerns or complaints about the way they were treated or with the services that they are receiving? If so, how was that handled?
- How do you handle any complaints from individuals or family members/advocates? Provide examples.
- If the person has difficulty communicating, are there other ways that you have communicated important issues like rights and how to express concerns to the person?
- Are there other ways you have helped the person to increase understanding and expression of his/her rights?
- How do you help people advocate for their rights. What are some examples?

#### **Interview with the person:**

- If you ever had a problem with someone or something, is there someone you would tell? Who is that person?
- Is there anyone in the home that you would be uncomfortable talking to about your concerns? Who and why.
- Do you know how to make an anonymous complaint?
- Do you know what some of your rights are?
- Which rights are most important to you?
- Does staff help you to exercise those rights?
- Do you receive information about what your rights are as an American, or as an

## WORKING DRAFT AS OF 8/17/14

employee, or as a person receiving services?

- Have you ever felt like any of your rights or concerns were ignored by staff in your home. Explain.

*a) The person is provided with information about his/her rights in plain language (Yes or No)*

*See guidance for Habilitation Planning under "e" for expectations for accessibility and plain language.*

*Select Yes if:*

- There is evidence and/or other documentation that indicates that rights were explained and provided to the person and/or his/her representative in plain language.

*Otherwise, select No*

*b) The person knows who to contact and/or the process to make an anonymous complaint (Yes or No)*

*Select Yes if upon interview:*

- The person and/or his/her representative can tell you who they would contact to make an anonymous complaint and/or how they would go about doing it.

*Otherwise, select No*

*c) Facility staff supports the person to understand and advocate for their rights (Yes or No)*

*Select Yes if:*

- Through interview with staff examples are provided on how the staff supports the person to understand and advocate for their rights (within the last 6 months), or,
- There is documentation in the person's plan that indicates how the person is supported to understand and advocate for their rights and evidence that this support was provided (within the last 6 months)

*d) The person is comfortable discussing their concerns with facility staff and/or provider staff (Yes or No)*

*Select "YES" if:*

- The person seems comfortable in expressing him/herself with staff

## WORKING DRAFT AS OF 8/17/14

- The staff seem responsive to the person
- Staff intervene when the person needs further assistance, and/or empowerment to understand the impact of decisions
- Staff's response towards the person is individualized and reflective of the person's preferences

### **Community Access and Support:**

#### 4. INTEGRATION AND COMMUNITY ACCESS:

**Standard:** The setting where the individual resides is integrated and supports full access to the greater community.

The CMS regulation states, "The setting is integrated in and supports full access of individuals receiving 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."<sup>9</sup>

- a. The person is encouraged and supported to have full access to the community based upon their interests and preferences for meaningful activities to the same degree as others in the community. (Yes or No)*

**This question should be verified via Interview, observation, and documentation review**

"FULL ACCESS" means that staff of the residence and/or Agency promotes, facilitates, and supports full access to the community for the person that is typical of the degree of access that non-disabled people have to their local community.

In general, the less experience a person has with life in the community, the more likely he/she is to need support and opportunities to try different activities.<sup>10</sup> Staff should

<sup>9</sup> 3030 Federal Register / Vol. 79, No. 11 / Thursday, January 16, 2014 / Rules and Regulations, last column

<sup>10</sup> Adapted from The Council on Quality and Leadership Quality Measures 2005 Personal Outcome Measures Measuring Personal Quality of Life, page 96

## WORKING DRAFT AS OF 8/17/14

encourage and support the person to take part in the community in a way that is meaningful to the person and that is in addition to activities the person engages in as part of their day program.

**Note:** There are very rural settings that may preclude the person from frequenting their local communities in the same manner as people living in an urban setting, but ***this is also true for the public at large.*** The key part of this question lies in the phrase "***to the same degree of access*** that ***non-disabled people*** have to their local community".

### Interview with the person:

- When was the last time that you did something in the community outside of your day program or a group trip with everyone in your house? Who helped you to do this? Who did you do this with?
- What kinds of things do you like to do in the community? Do you get to do these things?
- How do you know when these things are happening?
- How do you know what there is to do?
- Do people you talk to tell you about things that they do that you would also like to do? Have you been able to do those things? Why Not?
- Is there anything that you would like to do that you don't get to do?
- What do you need to be able to do this activity when you want to do it?
- If you could spend your free time doing anything you wanted, what would it be?
- How often would you like to get out in the community to do the things that are important to you?

**Note:** *Interview with the individual is important.* Additional indications of community attendance may also be verified via personal allowance records and through community logs/activity logs or daily notes kept by the residence but this does not preclude an interview with the person.

### **"Yes" reflects a majority of the following PLUS evidence described in last bullet:**

- The person has ***access to information*** (*flyers, newspapers, internet, word of mouth*) to learn of activities occurring outside of the setting which he/she may be interested in and choose to participate
- The person is ***connected*** to experiences and events according to their individualized interests. For example, if the person likes horses, staff doesn't just assist the person to obtain magazines on horses, but also facilitates experiences for the person to have real contact with horses.
- The person is supported through staff ***facilitation, promotion and supports***, to take on ***social roles and membership opportunities in the community*** that are of interest to him/her. This can include but is not limited to: volunteer, choir member, neighbor, sister, serving on a committee, being in a club, etc.
- The person is supported to have ***access to information*** to learn about social role options in the community in which he/she may be interested.

## WORKING DRAFT AS OF 8/17/14

- The person receives needed assistance and supports to **engage** in community activities and perform social roles that are of interest
- The person is supported to at least **try** new activities to determine if they are of interest to him/her.
- This could also include assistance, support, and training in navigating public transportation and **access** to get to these activities. Where public transportation is unavailable (e.g., bus, subway, cab), the person is supported through other means/resources to access the broader community in the way that he/she chooses (e.g., finding volunteers, natural supports, other agency staff/agency transports).

### AND

- There are specific and **recent examples** of when the individual was encouraged and supported to have full access to the community (these example should be no later than 2-3 weeks old) to the same degree as others who are not disabled. This may be verified both through documentation and through interviews with individuals and staff.

This should not be an isolated instance of support, but rather, there are routine efforts and future plans also apparent.

**Note:** "same degree as others" does not mean that all individuals in the home were transported to an activity via the agency bus unless once individuals arrived they were **encouraged and supported to interact with others who are not disabled** rather than stay as an entire group that is insulated from the public at large.

**Example:** Agency transports individuals to the County Fair with drop off and pick up times. Staff and other supports are provided for individuals to pursue their own interests/activities while at the fair in an individualized way, not together as an entire group.

### **The answer to this question would be "No" if:**

- There are barriers or obstructions that serve to **isolate** the person from full access to the community and agency/facility/staff is not doing anything about these barriers/obstacles timely
- There **is lack of facility staffing** to support opportunities for community access and the agency/facility is not working to find/use creative and effective solutions to these barriers
- If nothing is done to help the person access the broader community, the answer to this question is "No". If the person appears isolated from full access to the broader community, the answer is "No".
- If the **only time** the individual goes into the community is when everyone or a group of individuals in the home goes together in the agency bus/van and participates together in the same activities, the answer is "No".
- Does it appear that all individuals attend the same types of activities with little choice of options or evidence of individualized interests?

## WORKING DRAFT AS OF 8/17/14

- Documentation and interviews suggest that individuals typically *only* frequent the same types of stores such as the local dollar store or coffee shop with little variance or options presented and usually in larger groups (4 or more).

***b. The person regularly participates in unscheduled and scheduled community activities in the same manner as individuals not receiving HCBS. (Yes or No)***<sup>11</sup>

This question verifies if the person is able to access the community in the frequency and manner that he/she wants, just like any other adult. It determines if the person is accessing the community *as much as* he/she desires to do so, to the same degree as the community at large.

Does the person access the community regularly? Ask the person (and/or staff) to describe *how* they access the community (public transportation, walking, taxi, staff, etc) and who assists them in facilitating this.

- Does the entire program or residence always go together to all community activities or is it individualized based on the person's choice? Is the person able to refuse an activity that he/she does NOT want to participate in?
- Is the person able to come and go at any time as they choose?
- Are there curfews or "house rules" mandating when individuals have to be home?
- Does the person talk about attending activities that they are interested in? (For example, does the person mention that they love watching baseball games but has never or rarely has the opportunity to attend an event?)
- Is adequate staff usually available to meet individual requests for community activities? Through observation and interview, does the facility appear to be well-staffed or do you hear "lack of staff" as a major reason why certain community activities and interests cannot be carried out. (For example, is a person able to attend the church of his/her choosing on Sundays as often as desired?)
- Are impromptu community experiences possible?

**Unscheduled and Scheduled Activities** for purposes of this question can include:

- Shopping
- banking, errands, appointments
- exercise and gym membership
- lunch with family, friends, or others that are not paid to have lunch with the person
- recreational activities in the community such as boating, amusement parks, fairs; club meetings; etc.
- competitive integrated employment and/or integrated volunteer work (i.e., integrated employment or volunteer work does not include when only disabled

<sup>11</sup> CMS exploratory question number 2 first bullet

## WORKING DRAFT AS OF 8/17/14

individuals are interacting together).

- This can include anything ranging from taking a walk to Stewarts and having a cup of coffee to going out to dinner with friends or family.

For purposes of this question **regularly** should be defined **by the person**, in accordance with what their wishes and desires are and should be reflected in the person's Habilitation Plan/other documentation that becomes part of the Plan (see section 1: Habilitation Planning, question 2 for more guidance on this). It should not include **only** activities that are part of the person's day program hours if the person attends day program as this assessment is reviewing the person's home/community life through his/her residential supports.

**"In the same manner"**: means that individuals participate in activities that include having contact and interactions with others in the community **who are not part of the setting and who are not paid to spend time with the person** (i.e., staff or other residents). These contacts and interactions occur directly with the person.

**Note:** Community size may influence level of participation. For example, when the number of options is limited by the location or size of the community, the type and variety of participation should match that of others in the community.<sup>12</sup>

**Example:** An elderly person in the residence may have no interest in going out as much as other younger peers in his/her residence, but upon interview, if that person is satisfied with how often and what types of activities they participate in that interest them, and they are not isolated from the broader community, than this question is marked "YES".

### Interview with the person:

- What kinds of things do you do in the community? (shopping, banking church, get nails or hair done, go out to eat, go to the movies, go to the park, library, saw a ball game, etc.).
- How **often** do you do these things?
- When was the last time you \_\_\_\_\_. Shopped, got your hair done, ate out, etc.
- What kinds of things do you like to do in the community?
- How **often** do you like to get out into the community to do these things?

### Interview with staff or others:

Select Yes if:

<sup>12</sup> Ibid, page 97

## WORKING DRAFT AS OF 8/17/14

- c. *The person is satisfied with his/her level of access to the broader community and the support provided to pursue meaningful activities for the period of time that he/she desires. (Yes or No)*

OPWDD expects providers to work systemically to find creative and innovative ways to support and assist individuals to have full access to the community in accordance with the person's preferences for meaningful activities and his/her need for support. This may mean using agency staffing resources more creatively, helping the person to access natural support networks, and other methods.

**Probes:**

- Does the person ever want to go out and do something but cannot because there is no one to assist them?
- Is there **enough staff** available? Or does lack of staffing prevent a person's ability to participate in community events of their choosing? (Example: a person is unable to access the community because staff is too busy providing basic needs to residents, others may require 1:1 staff or have high medical needs, and there simply isn't enough staff on shift to make this a feasible option and the agency is doing nothing to address it.
- Is staff supported enough by the agency **financially** in order to allow the staff to support the varied and individualized community interests of the residents? (A person may have enough personal income to support a community interest but if staff isn't adequately supported financially by the agency to accompany the person, attending an event might not be feasible for the person and therefore opportunities are limited for the person). It is expected that the agency utilize creative options (e.g., fund raising, ask for ticket donations, etc.) to overcome this barrier.
- Does the setting have enough **access to viable transportation options**? If agency vehicles are limited, are there public transportation options?
- Are there unpaid, natural supports available such as family and friends that can support the person's desire to participate in various community events and opportunities?
- Do the agency and/or residence proactively attempt to link to community resources and natural support networks to ensure opportunities for individuals supported?
- Is this an area of focus in the organization's quality improvement plan?

**Select "Yes" if:**

- The individual does not express dissatisfaction with his/her ability to go out and participate in the community.
- He/she does not mention systemic and ongoing barriers to his/her ability to access the community that the agency/facility should be assisting to resolve e.g., site rules, staffing challenges, lack of transportation, etc.
- The person is satisfied with level of engagement with the broader community.
- Service plan activities aimed in meeting the person's desired level of community

## WORKING DRAFT AS OF 8/17/14

access/activities are being implemented and the person is satisfied.

### Select "NO" if:

- The person reports dissatisfaction with their ability to participate in meaningful activities and there is no clear or obvious agency limitation, barrier, or justification beyond their control for this lack of access. E.g., the person tells you that they are bored on the weekends and would like to go roller skating but there aren't enough staff to take him/her; and/or the agency/residence is not proactively taking steps to resolve (if the agency is taking steps to resolve, sufficient evidence must be provided, otherwise the answer is No).
- Service plan activities aimed in meeting the person's desired level of access are not being implemented and the person is dissatisfied or negatively impacted.

### 5. RELATIONSHIPS:

**Standard: The setting facilitates and supports the person to pursue and maintain relationships that are important and meaningful to the person.**

#### **Interview with the person:**

- Who do you like to spend time with outside of your residence or day program? Does staff help you to see or talk to them when you want to?
- Do you have contact with family members? Does staff help you to see or talk to them when you want to?
- Do you see your friends and family enough?
- Are there times when you wanted to see or talk to your family or friends and you needed help but didn't get any help?
- Does staff respect your choices about who you want to hang out with and be around?
- Do you have anyone in your life that you feel you can talk to about your private feelings, whether they are good or bad feelings?
- Is the level of contact that you have with your friends and family enough?

#### **Interview with staff:**

- Do you know who is important to the person?
- Is the person happy with how much he/she sees those people?
- What assistance does the person receive to help maintain/develop their relationships?
- Are there any specific reasons or barriers that prevent the person from seeing who is important to him/her? Can the agency do anything to help change that?

#### **Examples of ways to help continue these connections:**

- Cell phone or personal telephone in the person's room (at person's expense but staff can help the person make this choice if appropriate)
- Access and support with using a computer for social network opportunities, Skype, e-mail, etc
- Assistive communication devices

## WORKING DRAFT AS OF 8/17/14

- Transportation
- Access to adequate staff or natural supports to help access those important relationships
- Fostering spiritual connections through church and other organizations, if that is important to the person.
- Education and training to help the person learn how to develop healthy relationships and make good choices with who they want to spend their time with and be around.

*a. The person is encouraged and supported to foster and/or maintain relationships that are important and meaningful to him/her. (Yes or No)*

**Select Yes if:**

- There is sufficient evidence through interviews and documentation that shows there is ongoing and consistent support to assist the person to foster and maintain the continuity of his/her important relationships.

**Otherwise Select No**

*b. The person regularly interacts with people who are important to him/her. (Yes or No)*

For purposes of this question **regularly** should be defined **by the person**, in accordance with what their wishes and desires are and should be reflected in the person's Habilitation Plan/other documentation that becomes part of the Plan (see section 1: Habilitation Planning, question 2 for more guidance on this).

**Select Yes if:**

- Through interview and documentation there is evidence that the person regularly interacts with people who are important to him or her.

**Select No if:**

- The person is not regularly interacting with people who are important to him/her (that are not paid to spend time with him/her)

*c. The person is satisfied with the number and type of important relationships he/she has and the frequency/duration of interaction. (Yes or No)*

**Select Yes if:**

- Through interview, the person expresses satisfaction with the number and type of important relationships that he/she has and how often he/she

## WORKING DRAFT AS OF 8/17/14

interacts with them (who are not paid).

**Select No if:**

- The person expresses dissatisfaction with his/her lack of relationship status. For example, the person may be dissatisfied that he/she does not have a boyfriend/girlfriend.
- The person expresses dissatisfaction with how often he/she is able to see people who are important to him/her and this is within the control of the residence to improve but nothing is being done. For example, the person may want to see his/her sister at least once per week but has only been able to see his/her sister once per month because of residential barriers.

### SETTING CHARACTERISTICS AND PERSONAL EXPERIENCE:

#### 6. INDIVIDUAL CONTROL OF PERSONAL RESOURCES:

Standard: The individual controls his/her personal resources.

- a. *The person decides how to spend their personal discretionary funds (same as #57 universal protocol--the person's PA is spent on items/activities of their choosing). (Yes or No).*

This question should be addressed the same as #57 on the Universal Protocol, "The person's Personal Allowance is spent on items/activities of their choosing".

- b) *The person is supported to spend their personal funds on what they want when they choose to do so (Yes or No).*

This question should be answered through documentation review and interview with the person and staff. This question assesses if there is sufficient support to assist the person to spend their personal funds when they want to and on what they choose to spend it on.

**Interview with the person:**

- If you ask for spending money and have enough in your account, does staff provide it to you?
- Who decides what you spend your money on/what you buy?
- Do you need help with spending your money? Do you receive help?
- Do you receive help in making decisions about HOW you spend your money, when you need help?
- Do you use a bank account? Do you do your own banking? Does staff help you with banking? Does staff do your banking with or without you? Does staff control your bank account? Can you make decisions and access it yourself too?
- Do you receive a paycheck? What do you do with your paycheck? Do you

## WORKING DRAFT AS OF 8/17/14

keep it; go to the bank with it? Or, are you asked to hand it over to staff?  
Do you know what they do with it?

### Additional probes:

- Does the person have a checking or savings account in his/her name, with control over the funds?
- Does the person have access to those funds when they choose?
- If the person earns a paycheck, are they aware that they are not required to sign it over to the provider?<sup>13</sup>
- Does the person spend their money on items/activities of their choosing?
- If a person needs support/assistance or training with how to manage their income, is that support provided?

### c) The person agrees with/is satisfied with their Personal Expenditure Plan (PEP) and their level of access to their own funds when desired. (Yes or No)

These questions assess the level of involvement of the person in their Personal Expenditure Plan (PEP). The same principles outlined in section 1 for person centered planning and informed choice should be used by the agency in assisting the person to develop their PEP. Probes include:

- Does the person have a checking or savings account in his/her name, with control over the funds?
- Does the person have access to those funds when they choose?
- If the person earns a paycheck, are they aware that they are not required to sign it over to the provider?<sup>14</sup>

### Interview with the person:

- Do you have a copy of your PEP?
- Do you know how much money you are able to have and why?
- Is there anything about your PEP and access to your money that you are not happy about? Have you expressed this to staff?
- Does the agency control your bank account or can you make decisions and access it yourself too?
- If you receive a paycheck, are you asked to hand it over to staff without knowing why they want you to hand it over?

## 7. RESPECT:

**Standard: The setting ensures the person's rights of dignity and respect**

<sup>13</sup> CMS exploratory questions page 2

<sup>14</sup> CMS Exploratory Questions

## WORKING DRAFT AS OF 8/17/14

- a. *The staff interacts and communicates with the person in a respectful and dignified manner. (Yes or No)*

**Observation is required for this question.** Respect is more than just the absence of negative comments or actions. Supports for the person should emphasize his/her capabilities, and requires that staff listen thoughtfully to the person's need for assistance and allow him/her to make choices. Dignity and respect means promoting self-esteem. The person has the right to be heard, and to give consent to the actions and daily activities of staff and that staff request from them.

**Observations/probes:**

- Does staff talk to the person like he/she is a small child? Or does staff shout like he/she doesn't understand?
- Does staff speak to and refer to him/her by their preferred name? Do staff instead use an unsolicited "nickname, or "sweetie" and "hon" ?
- Does the person greet and chat with his/her staff comfortably?
- Does staff converse respectfully with the person while providing care and assistance?
- Does staff talk to other staff about the person within ear shot as if the individual was not present?
- Does staff converse with other staff rather than the person.
- Does staff eat with the person during mealtimes?
- Is the person treated fairly and respectfully by staff?
- Is there evidence that staff is encouraging the person to make his/her own choices rather than make those choices for him/her?
- Do staff interactions reflect that the person's opinions, feelings, and preferences are listened to?
- Does the person seem visibly uncomfortable and upset when interacting with staff?

**Interview with the person:**

- How does staff treat you?
- Are you treated/spoken to like an adult?
- Do you feel comfortable talking to staff? Are there any staff that make you feel uncomfortable or that you do not want to be around? Why?
- Does staff listen to you when you need help or ask questions? Do they make you feel like you are important?
- Have there been times when you felt that you were not treated with respect? When/what was the situation?
- Do you have any complaints about how you have been treated by anyone? Did you express these complaints to anyone? If so, who did you tell and was anything done about it?

**Select Yes if:**

**Note:**

An isolated example of a disrespectful interaction or practice does not automatically mean that this question is a No. Look at the overall environment of the setting, and whether the person is treated respectfully, like an adult.

## WORKING DRAFT AS OF 8/17/14

Select No if:

*b. The person is supported to make decisions about their grooming and to dress in clean clothes appropriate to time, day, weather, and preferences. (Yes or No)*

This question is best answered via observation of the setting and staff, as well as interview with the person. Interview with the person is essential to answering this question.

The person has the right to be heard regarding what clothes he/she wants to wear and his/her grooming habits. Does the person want to grow hair long, or wear a beard or shaved with no beard? Does the person have a specific clothing style or personal expression that is important to him/her? Does the agency support the person adequately to make those decisions about clothing and personal style?

**Interview questions and probes:**

- Who decides what clothes you wear? Who picks out your clothes each day?
- Do you want staff help deciding what to wear? Do you get the help you want? What kind of help?
- Does staff tell you what to wear or do they try and help you make your own good choices about what makes you feel comfortable?
- Do you like the clothes that you wear? Do they fit ok?
- Do you have clothes in your favorite color?
- Who decides when you shower/bathe? Do you like shower or bath better?
- Who decides when you brush your teeth, etc?
- Did you choose your hairstyle? Where do you go to get it cut/styled? Did you choose the place?

**Observation:**

- Is the person wearing clothing that fits appropriately?
- Is it personalized?
- Is the clothing appropriate for the weather conditions?
- Do individuals look adequately groomed?
- Is there a shower schedule, etc.? How do individuals feel about that?

Select Yes if:

- 

Answer "NO" if:

- Examples: The person is wearing huge pants that are falling off, or a very warm jacket in the middle of summer.
- The person expresses that they would like choice of what they wear and they do not have any choices.

## WORKING DRAFT AS OF 8/17/14

- Individuals grooming needs are not addressed and it is negatively impacting their social acceptance.

### 8. Restrictions, Interventions, and Rights Modifications:

Standard: The individual is free from coercion, and unnecessary restrictive/intrusive interventions/restraints and rights modifications.

- a) The person and/or family member/advocate does not report being subjected to coercion, and/or **unnecessary** intrusive interventions/restraints or rights modifications during the interview. (Yes or No)

This question must be answered through interview with the person and/or the family member/advocate who knows the person best. **The key to answering this question is how the person perceives the actions.**

See definitions below if further guidance is needed on "coercion" or unnecessary intrusive interventions, restraints or rights modifications.

**COERCION:** is defined as persuading someone to do something by force or threats.

- Do staff yell at the person, or threaten them with a consequence for not complying with their request?
- Ask the person if they ever feel like they are forced to do something without having a choice in the matter, and without knowing why?

Refer to Part 633.16 and the Behavior Supports Protocol for definitions of restrictive/intrusive interventions and restraints.

- b) The person's BSP (if required) or other Plan documentation (if BSP is not required), includes a description of the positive approaches that have been tried but have not been successful, leading to inclusion of the current interventions or rights modifications (same as #17 on new BSP protocol if BSP is required). (Yes, No or Not Applicable)

This question is the same as #17 on the BSP routine protocol if a BSP is required. If a BSP is not required, other Plan documentation should still include a description of the positive approaches that have been tried and have not been successful prior to the use of the current intervention.

## WORKING DRAFT AS OF 8/17/14

- c) The person's BSP (if required) or other Plan documentation (if BSP is not required), includes a description of the person's behavior and/or individualized specific assessed need, that justifies the inclusion of the restrictive/intrusive intervention(s) and/or rights modification (same as #16 on new BSP protocol if BSP is required). (Yes, No or Not Applicable)
- d) The person is not subjected to restrictive or intrusive interventions, restraints, or rights modifications without informed consent (same as #19 and #21 if a BSP is required). (Yes, No or Not Applicable)
- e) For any restriction, intervention or rights modification, there is evidence that the modification is time limited and revisited periodically (same as #23 and #24 if a BSP is required). (Yes, No or Not Applicable)

**Note:** Not Applicable should only be chosen for b-e if there are no rights modifications of any kind including those applicable to Part 633 and the new HCBS Regulations.

There are explicit requirements for providing evidence and specific documentation whenever there are modifications or changes to a person's rights, including:

- civil rights as a US citizen
- rights guaranteed under NYCRR Part 633.4
- rights as spelled out in CMS' HCBS settings regulations

For purposes of these questions, consider those rights that apply to provider-owned or controlled HCBS Residential Settings, as stated in the HCBS Settings regulations issued by CMS. Remember that a person's habilitation plan is a part of their overall person-centered service plan

Documentation of modifications/restrictions for Provider-owned or controlled residential settings under CFR 441.301 (C)(4)(vi)(A)-(D):

Any modification of rights must be supported by a **specific assessed need** and **justified in the person-centered service plan**. The following requirements must be documented in the person-centered service plan (or behavior support plan):

1. identify a specific and individualized assessed need
2. document the positive interventions and supports used prior to any modifications to the person-centered service plan
3. document less intrusive methods of meeting the need that have been tried but did not work.
4. include a clear description of the condition that is directly proportionate to the specific assessed need
5. include a regular collection and review of data to measure the ongoing effectiveness of the modification.

## WORKING DRAFT AS OF 8/17/14

6. include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated
7. include the informed consent of the individual
8. include an assurance that interventions and supports will cause no harm to the individual.

If a person has a restriction in place because of a **behavioral concern**, he/she should already have a behavior support plan in place that addresses the elements above. The BSP is where any limitations that relate to HCBS settings should also be documented in those instances. Verify that any changes or limitations to the rights outlined in HCBS settings are documented accordingly with the requirements listed above including informed consent, data collection, positive interventions, and time limitations for periodic reviews.

In the event that one of the HCBS settings rights are limited for a person because of **health or safety concerns (such as using a bed rail because of epilepsy)**, it may not be necessary or appropriate to develop a behavior support plan. However, the requirements in #'s 1-8 still apply and need to be documented. In those instances, the limitation/restriction may fit appropriately into an individualized Plan of Protective oversight (IPOP), habilitation plan, or safeguard section of the ISP.

*\*\* In all instances of a modification or limitation to these rights, there **MUST** be an **assessed need** documented. This assessed need must be justified and the limitation must be agreed to as part of the person-centered planning process. The modification or limitation must be revisited on a regular basis and should be modified as the person's needs change. \*\**

### Observations:

- Based upon interview, documentation, and observation, is there any evidence that the person's rights have been restricted or modified?
- If rights have been restricted (whether for health/safety, or for behavioral concerns), has the process outlined above in #'s 1-8 been followed and documented accordingly?

### Examples of rights modifications:

- Not being permitted to have access to food at any time
- Having rules as to when the person can receive visitors (the HCBS setting regulation states that individuals can have access to visitors at any time
- Not having freedom to control one's own schedule

- f) **The person's support staff has completed and is annually recertified in an OPWDD-approved training course in positive behavioral strategies and physical intervention techniques (if applicable) (similar to #7 Agency BSP). (Yes, No or Not Applicable).**

Currently PROMOTE and SCIP-R is the only OPWDD –approved training courses

## WORKING DRAFT AS OF 8/17/14

inclusive of positive behavioral strategies and approved physical intervention techniques.

Verify that staff that will be required/responsible to support the individual s are trained in all techniques specifically necessary to appropriately support the person. Staff must be trained in the positive behavior strategies in addition to any needed physical interventions. Training is required annually and should be within the current 12 months.

- Review the agency's training records to verify that applicable staff members have completed the SCIP-R or PROMOTE training and that they are certified annually (within the year).
- In addition to the above training, verify staff that will be required/responsible to support the individual were trained in the individual's plan and the specific positive techniques, other strategies and physical interventions specifically necessary to appropriately support the person.
- Training must be provided to any staff member expected to implement strategies in the plan either alone or in support of other staff members. This training should be provided prior to working alone with the person and whenever a plan is revised.
- Through interview of staff working with the individual, observation if opportunity presents, and documentation review as needed, verify that staff has been adequately trained BSPs that they are responsible to implement.

Note: While it is OPWDD's expectation that all service providers transition to PROMOTE as the training curriculum for positive and physical behavioral strategies, this will take multiple years to complete.

If the agency uses a curriculum you are not familiar with and you are unsure of OPWDD approval, contact your Area Director.

### Select YES if:

Staff working within the site and expected to support the person's behavioral needs are:

- Current in PROMOTE or SCIP-R training AND
- Trained in the current Behavior Support strategies identified in their plan; AND
- If necessary during observation, implement positive and negative interventions correctly per the plan

### Select NO if:

Staff working within the site and expected to support the person's behavioral needs are:

- Not current (within the year in PROMOTE or SCIP-R training; AND/OR
- Not trained in the current Behavior Support strategies identified in their plan; AND/OR
- When needed, are observed to fail to implement identified strategies or implement them incorrectly

## WORKING DRAFT AS OF 8/17/14

### 9. PRIVACY:

Standard: The person has privacy in the setting that they reside.

- a) *staff knock and receive permission before entering the person's room/living space (Yes or No)*
- b) *the person is afforded the right to lock his/her bedroom door (Yes or No)*
- c) *the person has privacy in the bathroom and can close and lock the bathroom door (Yes or No)*
- d) *assistance is provided in private, when needed by the person (Yes or No)*
- e) *The person has access to and is supported to make private phone calls and/or send private e-mails/text messages when it is convenient to him/her. (Yes or No)*
- f) *The person is allowed to have a private phone/computer in their room; and a private cell phone for their use if he/she desires and can afford it at his/her own expense<sup>15</sup>. (Yes or No)*

The privacy of an individual should be respected in all aspects of life. Preservation of the person's **right to privacy** is a basic human dignity. The residence and staff must ensure that the person's need for privacy is respected and protected. This includes being able to have private conversations, having a say in who has access to their personal possessions and living space, as well as having privacy in bathing, grooming, and dressing. This question must be answered through observation of the residence and interview with the person.

#### Observations:

- Does staff talk with the person about private issues in front of others?
- Does staff communicate among themselves about the person in front of others?
- Does staff respect the person's privacy by asking the person's permission before entering his/her bedroom or living space, or do they just enter without requesting permission? Does their bedroom door close and latch. Does it lock if desired?
- Does the bathroom provide privacy for the person? Can the door be closed and locked?
- Is the individual is afforded privacy in the bathroom and bedroom, which is only breached based on identified clinical needs for assistance and supervision related to their safety?
- In shared bedrooms, does the person have the degree of privacy desired and possible?
- Does the person have the opportunity to speak on the telephone, open and read mail, and visit with others, privately?
- Does the person ever have the opportunity to be by him/herself throughout the day or evening?

<sup>15</sup> CMS Commentary page 71

## WORKING DRAFT AS OF 8/17/14

- Is personal medical information posted in areas visible to everyone?
- If applicable, is the person given the opportunity to take their medications and receive treatments privately with staff, (or is the med cart rolled out to a public area for everyone to view<sup>16</sup>)?
- Is the individual supported, assisted, reminded to facilitate their own privacy?
- Are the individual, their peers and housemates supported, reminded, assisted to respect each other's privacy?
- Are other potential barriers to the person's privacy observed?

### Interview with the individual:

- Do you feel like you have enough privacy when you get dressed, use the bathroom, or take a shower?
- Can you decide who is able to come into your bedroom?
- Do you have your own key to your bedroom? Do you know what staff also has a key?
- When you talk on the phone, do you feel like you have enough privacy to have a private conversation? Can you use a computer to send messages or use Skype or Face Time privately (if desired/applicable)?
- Can you be by yourself when you want to be?
- Do you feel like staff respects your privacy?

### Regarding private use of a telephone:

An individual may elect to have a personal cell phone or private telephone in his/her room if personal funds may allow it, but the residence must ensure at minimum that the person can conduct private telephone conversations and e-mail conversations even if he/she cannot afford their own private telephone and/or computer in their bedroom.

- Is the layout of the residence conducive to private telephone conversations?
- Does it appear that the person has the opportunity to access the telephone or computer e-mail privately?

### Regarding locking of bedroom doors:

The regulation does not require the individual to provide keys to anyone, and the language is meant to curtail the issuing of resident keys to all employees and staff regardless of the employees responsibilities thus granting unlimited access to the person's room. This provision indicates that **ONLY appropriate staff** should have access to the person's room and this is based upon staff responsibilities.

**Example:** It may be necessary for the property manager or program manager to have keys to the person's bedroom but it likely is not appropriate for the transportation staff or delivery person to have access to the person's bedroom keys.

- The individual should have a say and agree to the people that can have access to their bedroom or living space. This will likely need to involve all staff employed at the residence.
- An individual's use of the room key MAY be modified if it is supported by a specific assessed need and agreed to in the person-centered service plan.
- If the person does not have possession of their bedroom key, can they explain why? Can residence staff explain why?
- If the person does NOT have access to their bedroom key, is there written

<sup>16</sup> Example provided by Ralph Lollar during CMS-NYS call 7/25/14

## WORKING DRAFT AS OF 8/17/14

evidence to indicate why in their service plan and documentation?

### 10. CHOICE OF ROOMMATE:

**Standard:** The individual is satisfied with their residential setting (of their choosing) and has a choice of roommate.

**This question must be answered through interview, observation, and documentation.**

CMS has clarified that a residence is **NOT** required to make sure that every individual receiving HCBS has their own bedroom when receiving residential services. However, the rule does require that individuals be provided **options** of residential settings, including an option of a **private** room. This includes providing them with information about all relevant potential options, not just options and environments readily available. The person's preferences in deciding where he/she lives, and with whom they live are a priority. Sometimes options are limited but the agency should be making a concerted effort to find creative solutions to honor the person's individual preferences as much as possible in their current environment, until their chosen option can be accessed. The residence should be aware of the needs and preferences of the individual and should respond accordingly to requests that are within their control to influence.

It is important to determine whether the person is satisfied with his/her current living situation. It may be necessary to verify through documentation review that the agency has taken steps to address any dissatisfaction that the individual has reported to you.

- In the event that the residence or agency does not have any appropriate private room alternatives, they are required to refer the individual to **other opportunities** where the person's request can be honored.
- CMS has also clarified that the financial resources available to the person may impact what specific options are available to him/her.
- If the individual **chooses** to share a room, the individual also must have a **choice** of roommate.

#### **Interview questions for the person:**

- Did you choose where you live now?
- How did you choose where you live?
- Did someone else decide where and with whom you would live?
- Do you know about the different home/living options possible?
- Did anyone explain to you what options you have about where to live and who you can live with?
- Do you prefer living alone or with a roommate?
- If you have a roommate, do you like living with him/her?
- Do you feel your choices about where you live and who you live with are listened to, are respected, and supported by staff?
- If you could make a change about where you live or who you live, what would it be?

**Verification:** Interview the person, and if more information is needed regarding the

## WORKING DRAFT AS OF 8/17/14

status of his/her living arrangement, obtain more information through record review and interview with staff.

If it appears that the individual is **not** satisfied with his/her current living arrangement, verify if the dissatisfaction is recognized and if concerted efforts are being made to change that. It is the agency's obligation to educate the person about the range of choices that are available, and to support the person in making an informed decision regarding his/her living situation. It is important for the agency to provide ways for the person to explore all of his/her living options.

If the person is dissatisfied, the residential setting staff is responsible to notify the person's MSC and/or others that can assist the person to experience and/or locate alternative options. Documentation must be available to support a "Yes" to b.

*a) The person is satisfied with their roommate/living situation and **does not** express a desire (when questioned) to move to another living setting and/or with another roommate. (Yes or No)*

**Select Yes if:**

- The person is satisfied with their living arrangement and roommate and does not express a desire to move or to have another roommate.

**Otherwise, select No.**

*b) If the person is **not** satisfied with their roommate, there is evidence that staff is **proactively** working to find an alternative arrangement based on the person's needs, choices, and preferences in a timely manner. (Yes, No or Not Applicable)*

It is expected that individuals are provided with opportunities to work with the setting to achieve the closest optimal roommate situation. Individuals who have issues with their roommates and do not want to live with them anymore should receive timely support and assistance from the setting staff and/or provider in coming up with alternatives. This may involve the need to work with the person's MSC.

**Answer Yes if:**

- There is evidence that residential staff is assisting the person timely to find an alternative roommate/living arrangement and/or is helping the person to resolve differences to their satisfaction if appropriate.
- If the person wants another roommate, the answer would only be yes if evidence/documentation/interviews indicate that the residential staff/provider is doing everything that they can to work on alternatives.
- If the person wants to move to another residence, the answer would be yes, if the evidence/documentation/interview indicates that the residential staff/provider is doing everything they can to assist the person including regular

## WORKING DRAFT AS OF 8/17/14

conversations with the MSC and family members/advocates; discussions of options with the person, visits to alternative living settings, etc.

**Answer "NO" to this question if:**

- There are clear indications that the person is not satisfied with their current living situation, and the agency is aware, but there is no evidence of proactive action being taken to help the person to locate alternatives and/or to improve the situation.

**Only Answer Not Applicable if the answer to a, "the person is satisfied with their living arrangement/roommate" is "Yes".**

### 11. FREEDOM TO DECORATE/CHANGE PERSONAL ENVIRONMENT:

**Standard:** Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

- a) The person's personal living space(s) reflect his/her individualized interests and tastes (e.g., color choices, linen preferences, photographs, posters, knick knacks, etc) (Yes or No)*
- b) The person is supported to make changes to furnishings and decorations in their personal space when they choose to. (Yes or No)*

**This question must be answered through observation and interview with the individual.**

A person's bedroom space should reflect their interests and what is important to them. A setting will likely appear institutional if bedrooms are not individualized according to the person's interests and preferences. After observation and interview, determine if the person has had a say in how his/her bedroom is decorated. The agency should be assisting the person in making decisions about personal expression and interests that are meaningful to the person and to decorate their environment in the way that they choose.

Some individuals may be identified clinically to have difficulty maintaining a nicely appointed bedroom (e.g. damage property), or to be negatively impacted by environments with stimuli, for example. This individualized information regarding the assessed need must be clearly and descriptively and clinically documented. In addition the residence is still expected to explore, develop and implement strategies identified in an individualized plan, to provide as personalized an environment as possible within clinical necessity, while providing supports to address/minimize the associated behaviors.

**Select "Yes" if:**

- Based on review of the person's person-centered service plan or habilitation plan and interview with the person, does his/her bedroom reflect hobbies,

## WORKING DRAFT AS OF 8/17/14

interests, collections, family/friends, and memorable events?

### Interview with the individual:

- Who decorated your bedroom? Did you get the chance to tell them how you like your bedroom decorated?
- Did you pick out your curtains and comforter?
- Is there something you wish you can have or decorate your bedroom with that you were told not to? If so, do you know why?
- If you want to repaint the color of your room, get a new comforter, or change something else in your bedroom, do you feel supported enough by staff to make those changes?

### 12. SCHEDULE:

*The setting optimizes the person's autonomy and independence in making life choices including the freedom and support to control one's own schedule.*

- a) The person is aware that he/she is not required to follow a particular schedule for waking up, going to bed, eating, leisure activities, etc. (Yes or No)*
- b) The person is encouraged and supported to make their own scheduling choices according to their preferences and needs. (Yes or No)*
- c) The person has access to such things as televisions, radio, computer internet, and leisure activities that interest him/her and he/she can schedule and enjoy these activities at his/her convenience. (Yes or No)*
- d) The person is satisfied with his/her schedule of activities and knows how to request assistance with changes if he/she wants to. (Yes or No)*

The individual's options should not be limited to a choice between a planned group activity and nothing. CMS explains that individuals "must be afforded choice regarding the activities in which they wish to participate including whether to participate in a group activity or to engage in other activities which may not be pre-planned."<sup>17</sup>

See guidance on informed choice under Habilitation Planning, question 1 c.

<sup>17</sup> 79 Fed. Reg. at 2,978.

## WORKING DRAFT AS OF 8/17/14

**This question must be answered using observation and interview.** It may be necessary to verify via documentation review that the person is routinely provided opportunities to make choices among options that are meaningful to them, and being actively supported to make decisions regarding activities and schedule.

**Guidance regarding control of one's schedule:** This question determines if the person's setting and schedule is regimented rather than based on individual choice and preferences. Refer to the person's ISP for information on valued outcomes, goals, preferences, and needs. Then verify through observation and interview with the individual and staff if these factors are reflected in the person's daily living.

Probes:

- Is the person aware that they don't have to follow a structured and regimented house schedule (such as, wake up at 5am, eat at 6pm, shower at 7pm, bed by 9pm)?
- Does the house have a shower schedule, a dining schedule, a laundry schedule? What does the person think about that?
- Is the person's routine individualized and different from others in the setting or does everyone follow the same schedule for all activities?
- Does the person have access to in-house activities such as watching TV, radio, and other leisure activities that interest him/her? Is he/she able to access those activities when he/she chooses? (or does everyone have to go to bed by 10pm, or watch the same TV shows as his/her housemates regardless of choice, for example)
- Is the person encouraged, taught, and provided the opportunity to plan his/her own daily activities, including mealtimes, community events, and other activities on a regular basis? This may also apply to weekly and monthly routines.

**Answer "NO" if:**

- The person's activity schedule is regimented with little choice or decision-making
- The person's schedule and activity choices are the same ones as everyone else in the residence with little evidence of any individualized choice-making or preferences, and/or opportunities to do so.
- There are blanket house rules about watching TV, curfews, playing music, phone calls and using computers, etc.
- The person expresses dissatisfaction with the opportunity to control his/her own schedule and make choices about activities, and:
- if there is little evidence available via interview with staff or documentation review to verify that the person's preferences are being respected and acted upon

**Answer "yes" if:**

- the person is satisfied with the amount of support they receive to make choices about activities and interests, routines and scheduling
- The person's schedule and activities appear to be individualized and their priorities for activities are being supported

## WORKING DRAFT AS OF 8/17/14

### 13. ACCESS TO FOOD:

**Standard: The individual has access to food at any time.**

CMS states in the commentary to the regulations that, “we disagree with the commenter’s’ belief that a residential setting cannot reasonably accommodate an individual’s preference on a 24-hour per day basis. The opportunity for individuals to select the foods they eat, store food in their room, eat in their room, and to decide when to eat are all ways in which the access to food requirement can be met.<sup>18</sup>

A person should not be presented with narrow meal and snack options, decided by someone else without input from the person. Food options should not be unreasonably limited. CMS notes that requirement would not be satisfied by choice between a granola bar or pitcher of water and crackers.<sup>19</sup>

The requirement does not pertain to providing *full* dining services or meal preparation 24 hours a day, but rather applies to ACCESS to food at all times.<sup>20</sup>

These questions should be answered using observation and interview. Remember, any modification or restriction to a person’s food choices or mealtimes must be supported by a specific assessed need and justified in the person-centered service plan or behavior support plan. Look for written documentation to support a modification or restriction for the person.

It is also recognized that in some cases others in the home might be impacted by the modifications needed for a particular person. For example, if someone’s individualized assessed needs indicates that a modification is necessary that the person cannot have access to food at any time there might be a need to have pantries and the refrigerator locked as there is clear evidence that an individual needing modifications will seek out food and that other positive approaches to safeguarding have not been successful. This type of modification affects everyone in the household. In these cases, there must be arrangements made so that other individuals can have the right to access to food at any time. These arrangements might include the ability to ask staff to open the pantry at any time and/or the person having a locked pantry in their own room for storage of their own food.

**Probes:**

- Is the person able to have a meal at the time and place that he/she prefers?
- Is the person able to request an alternative meal if they want to?
- Is food and snacks accessible and available at any time?
- Are cabinets, refrigerators, and the pantry unlocked, and the person is able to access the food?
- If the person prefers to eat alone, is that honored?
- Is the dining area dignified? Does the person use a bib or eat on Styrofoam

<sup>18</sup> 79 Federal Register 2965-2966

<sup>19</sup> 79 Fed. Reg. at 2,965-66.

<sup>20</sup> CMS preamble page 73

## WORKING DRAFT AS OF 8/17/14

plates and plastic utensils?

- Does the person have assigned seating with no choice in where to sit? <sup>21</sup>  
If choice or access regarding food and eating are altered in any way, is the specific assessed need identified in a person centered plan/behavior support plan?

### Interview with the individual:

- Do you get to choose what you eat?
- Do you get to choose where and with whom you eat?
- Are you able to get food when you want to even if it's not at a mealtime?
- Do you get to go grocery shopping and/or help pick the food you like to eat?
- Are you able to keep your own food in your bedroom if you want to?

*a) The person can choose to eat when they want to eat even if mealtimes occur at routine/scheduled times (Yes or No)*

Select Yes if:

- The person

*b) the person is able and supported to purchase and store their own food/snacks, special food and keep this food available for their use at any time if they choose to (Yes or No).*

Select Yes if:

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### 14. VISITORS:

Standard: Individuals are able to have visitors of their choosing at any time.

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<sup>21</sup> CMS exploratory questions

## WORKING DRAFT AS OF 8/17/14

- a. *the person knows and understands that they can have visitors of their choosing at any time. (Yes or No)*
- b. *the person is encouraged and supported to invite their friends, family, relatives, significant others/boyfriends/girlfriends to their home if they choose to when they choose to. (Yes or No)*
- c. *the person has privacy with their visitor(s) if they choose to. (Yes or No)*

**These questions should be answered via interview with the individual and staff.** During some visits observation may be possible. It is understood that in a shared living situation, the needs of other residents must also be respected, but there should be an effort to communicate and coordinate between the affected parties<sup>22</sup> rather than having blanket house rules restricting when and how a person can receive visitors.

The person should have the opportunity to develop close, private and personal relationships without having unnecessary barriers or obstacles imposed on him/her. Potential barriers restricting the person from having visitors should be addressed.

Look for evidence that the residence actively supports the ability of the person to maintain meaningful relationships. The person should be aware that they may invite people of their choosing to visit them at home, and be assisted to do so. Even if the person expresses little to no interest in having visitors to his/her home, the person should understand that it is his/her right.

The visitors should have access to all appropriate areas of the facility when visiting and should not be denied entry to common areas and/or the person's room. The facility may require visitors to sign in and/or notify the facility administrator that they are in the residence or complete other procedures to ensure the safety and welfare of residents and staff. However, procedures should not unnecessarily restrict visitors for the convenience of staff and/or to restrict the person from freedom of association with Those they choose.

Visitation overnight must be allowable, subject to limits in lease or other agreement that prevent visitation from being stretched into legal occupancy.<sup>23</sup>

Some individuals may not express or not be capable to express interest in visitation by family, friends, workmates, and other associates. However, residential staff is expected to support all individuals to maintain and/or develop social relationships to the degree desired by the person. This obligation is continuous and should not be aborted based on an individual's past responses. Staff can remind individuals that they may invite people to the home and that they will support them in any way possible. They may also use certain events as an opportunity to suggest to the person how to engage a friend

<sup>22</sup> CMS preamble to federal regulations page 75 (2249 F/2296-F)

<sup>23</sup> 79 Fed. Reg. at 2,966.

## WORKING DRAFT AS OF 8/17/14

in the event (e.g. Saturday is your birthday and you said you wanted a BBQ. What do you think about inviting Sally to join the party?) For individuals who cannot/will not express their desire or interest, staff should be observant of their reaction to family members and people. If they and others in their circle agree that the person may benefit from visits with people the individuals seems to enjoy, they should provide the supports to facilitate such visits including in the residence.

### Interview with the individual:

- Do people/friends/family visit you here in your home?
- Do you like/would you like to have people visit you in your home?
- Are you provided with the support you need (help) to schedule visits with family and friends?
- Do you choose what time you have visitors?
- Do you have enough privacy when you have visitors?

### Additional probes:<sup>24</sup>

- Are visitors allowed at any time at the setting or are there designated and specified visiting hours?
- Is there a visitor's meeting area that is restricted from the rest of the residence?
- Are there specified visiting hours posted?
- Is the atmosphere comfortable, and supportive of small group conversation?
- Does the person's record indicate those friends/family socialize and visit in the residence?

## 15. ACCESSIBILITY OF THE SETTING:

**Standard:** The setting (and its amenities) is physically accessible to the person and meets his/her needs.

- a. the person has a key to the front door of the residence and can come and go whenever he/she chooses to. (Yes or No)*
- b. the person has full/unrestricted access to typical spaces in a home including a kitchen with cooking facilities and the refrigerator; dining area; laundry; and comfortable seating in the shared areas and is supported to use these typical spaces and appliances in the home. (Yes or No)*
- c. the setting reflects the person's needs and preferences. (Yes or No).*

**Guidance:** These questions should be answered through interview, observation, and documentation review.

The person should have access to their home and to all typical spaces in the home, with as much independence as possible as determined by the person, their skills and

<sup>24</sup> CMS exploratory questions

## WORKING DRAFT AS OF 8/17/14

individualized needs for environmental, adaptive and human supports. Environmental modifications, the use of technology, and personal assistance from staff are all ways that a person can have greater control over and more independent access of their environment. Some people may need specialized training and encouragement to feel comfortable fully accessing and utilizing their home and its features. However, a residence may also have unnecessary "house rules", locked areas, and other practices that prevent a person's increased access to his/her own environment.<sup>25</sup> These questions determine if the person is being supported to increase his/her independence to move about his/her home and community.

### Interview with the person:

- Do you have a key to the front door?
- Would you like to have a key to the front door?
- Can you come home when you want when you are away from the residence?
- Can you leave the residence when you want?
- Does staff decide when you are able to leave the residence for an event or activity and come home?
- Is there anywhere in the house you are not allowed to go/be in?
- Is there anywhere in the house you cannot get in (e.g. cannot accommodate w/c or locked)
- Is there anywhere in your house that is locked? What do you do if you need/want to get in?
- Can you use the kitchen and laundry room alone/without staff?
- Do you know how to use appliances and equipment like the microwave, telephone, and washer/dryer?
- If you don't know how to use appliances, are you being taught how to use them by staff?
- Can you get around the house okay? Can you open the doors? Can you turn on lights?
- Is there anything that would make it easier for you to get around your home or the community?
- Are there places in the house that only staff can use?
- Are there things in the house that only staff can use? (may want to probe, appliances, TV,

### Observation:

After interviewing the person and reviewing their record, observe the residence and determine if it appears to meet the person's needs for movement and independence. Consider the following probes:

- Does the person have all the necessary adaptive equipment that he/she needs to move around more independently?
- Is there anything that the person has difficulty doing or cannot do because of lack of modifications or adaptations?
- Is the residence providing individualized supports for the person related to interest and ability to access and use his/her environment?
- Are there locked areas of the residence that the person is not allowed to

<sup>25</sup> Adapted from CQL Personal Outcome Measure Guidance 2005, pages 69-71.

## WORKING DRAFT AS OF 8/17/14

access? If so, is there a justification as to why this is necessary?

- Does it appear that the residence has a lot of blanket, generalized “house rules” regarding access to the house and/or areas of the house or features of the house, or when residents can come and go from the residence?
- Does it appear that the residence is effectively meeting the needs of the person regarding support and encouragement to get around and access his/her environment more independently?

**Answer “YES” if:** the limitations present for the person are based solely on his/her needs, the person has given informed consent, and the person is satisfied with the degree of access that they have to the environment.

**Answer “NO” if:** The person’s use of and access to his/her environment is prevented through house rules, the physical layout of the residence, locked common spaces without informed consent, or because of other arbitrary or unjustified reasons.

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# WORKING DRAFT AS OF 8/17/14

## Part III: Site Review

### INTEGRATED SETTING AND COMMUNITY ACCESS

#### General Information

##### **BACKGROUND:**

441.301 (c)(5)

Home and community based settings do **not** include the following:

- (i) a nursing facility
- (ii) an institution for mental diseases
- (iii) an intermediate care facility for individuals with intellectual disabilities
- (iv) a hospital
- (v) any other locations that have qualities of an institutional setting, as determined by the secretary.

- Any setting that is located in a building that is also publicly or privately operated facility that provides inpatient institutional treatment, or
- in a building on the ground of, or **immediately adjacent** to, a public institution, or
- **any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS** will be presumed to be a setting that has qualities of an institution unless the Secretary determines **through heightened scrutiny**, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.

**According to the regulations, CMS presumes certain settings have institutional qualities and, as a result, cannot be considered HCBS settings.** A presumption, however, is not the last word. A state can attempt to overcome a presumption. To do so, the state must submit information to CMS that shows that the setting actually does not have institutional qualities and has the qualities of an HCBS setting. The presumption applies to three categories of settings, because these settings tend to isolate and segregate persons with disabilities:

1. Settings that share a building with a facility that provides inpatient institutional treatment.
2. Settings that are on the grounds of, or immediately adjacent to, a public institution such as a state psychiatric hospital.
3. Settings that have the effect of isolating Medicaid HCBS consumers from the broader community of persons not receiving Medicaid HCBS.

**The basic analysis is the same for each of these three categories. The initial issue is isolation, and CMS has concluded that there is a risk of isolation if a consumer is living in a setting from one of the three categories listed above.** In settings with such a risk of isolation, HCBS funding will be allowed only if the state can show that the setting does

## WORKING DRAFT AS OF 8/17/14

not have institutional qualities and instead has HCBS Qualities. <sup>26</sup>

A residence that is located **on** the grounds of the Developmental Center campus property or in a facility that provides inpatient institutional treatment is not considered to be a Home and Community Based Setting., according to CMS regulations without a heightened scrutiny process as described in CMS regulations.

**Immediately Adjacent** is defined as a residence that *directly borders* a developmental center property at any given point.

**CMS defines public institution as:**

"Section 435.1010, specifies that the term public institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. Medical institutions, intermediate care facilities, child care institutions and publicly operated community residences are not included in the definition, nor does the term apply to universities, public libraries or other similar settings". <sup>27</sup>

### 1. On/adjacent to institutional setting: (HEIGHTENED SCRUTINY):

Standard: The setting is not on or adjacent to an institution

- a. the setting and/or site is not located in a building on the grounds of a public institution. (Yes or No)*

Select "Yes" if:

- The residence is **not** located **on the grounds** of or in a building on the grounds of a **public institution**. This refers to any public institution, see definition above. not necessarily only those that serve individuals with ID/DD, for example; those providing health care, nursing, psychiatric, addiction services, or protection/justice services.

*Otherwise, Select No.*

- b. The setting/site is not located in a building that is also **publically or privately operated facility that provides inpatient institutional treatment.** (Yes or No)*

<sup>26</sup> Just Like Home, An Advocates Guide to State Transitions

<sup>27</sup> CMS Commentary 2249-F/2296-F, page 96-97

## WORKING DRAFT AS OF 8/17/14

**Select "Yes" if:**

- The residence is **not** located in a building that is also publically or privately operated facility providing inpatient institutional treatment, regardless of type of treatment or service population.

**Otherwise Select No.**

*c. The setting/site is not immediately adjacent to a public institution. (Yes or No)*

**Select "Yes" if:**

- The residence property **does not** share a boundary with a public institution. See definition of public institution above.

**Otherwise, select No.**

**2. The setting is not isolated from the community and/or does not have the effect of isolating individuals from the community (HEIGHTENED SCRUTINY):**

**Standard: the setting is NOT isolated from the community/does not have the effect of isolating individuals from the broader community.**

This set of questions looks at both the physical characteristics of the setting and the geographical location as well as how the setting is operated in order to determine whether the setting has the effect, through the way it operates and provides supports, of isolating individuals.

**Examples of Settings that CMS considers potentially isolating, requiring a heightened scrutiny process includes:**

- There are multiple residential sites on the same piece of property, using shared staff and resources resulting in individuals primarily associating with other disabled individuals or paid staff.
- The location of the residential site does not allow for access to neighbors, businesses, and the local community of individuals who do not receive HCBS. i.e., people who live in the home primarily only associate with other people who are also disabled and/or paid staff.
- The setting is set up and operated in such a way that individuals do not have experiences outside the setting, then the setting has the effect of isolating people.
- The residential site appears to look clinical and institutional both inside and out.

CMS already has identified certain settings that generally could lead to isolation including: **farmsteads, gated/secured communities, and residential schools**. CMS also has identified "multiple settings co-located and operationally related" as potentially isolating. In addition, in the release of the regulations, CMS noted that "size can play an

## WORKING DRAFT AS OF 8/17/14

important role in whether a setting has institutional qualities and may not be home and community based.” CMS declined to set a single federal standard as to size.<sup>28</sup> A potential problem is the concentration of a large number of persons, without meaningful interaction with the broader community. Large population settings may be most suspect, particularly when a high percentage of the setting’s residents are persons with disabilities.<sup>29</sup>

*a) The setting is **NOT** part of a group of multiple settings that are co-located and/or clustered and operationally related. (Yes or No)*

**Select Yes if:**

- The home is **NOT** part of a cluster of multiple group homes for people with intellectual/developmental disabilities that are operated by the same provider and located within close proximity of each other e.g., next door to each other; on the same block; behind each other; on the same property; etc.

**Select No if:**

- The home is located in a gated/secured community
- The home is located on a farmstead
- The home is co-located with other group homes on the same block, next door to each other, etc.; operated by the same provider.

*b) The setting is located in the community among private residences, retail businesses, banks, etc. that is frequented by non-HCBS enrolled individuals. (Yes or No)*

**Select Yes if:**

- The home is among other private homes in the community and/or retail businesses, banks, grocery stores, parks, and other services frequented by non-HCBS individuals.
- The home may be in a rural location that is residential. In this case, the answer would still be Yes even if there are no other residences/businesses around if it is possible that a family could build a home nearby or a business that would be frequented by others could be developed.

**Select No if:**

<sup>28</sup> 79 Fed. Reg. at 2,968.

<sup>29</sup> Just Like Home, Advocates Guide to State Transitions

## WORKING DRAFT AS OF 8/17/14

- The home is isolated from the broader community deliberately through its location to keep it separate from the broader community.

c) *The setting/home is not labeled or identified in a way that sets it apart from the surrounding residences. (Yes or No)*

d) *The setting staff facilitates access to transportation that supports people's choice of activities and schedules.*

Access to the community is a foundational element of a community setting, and may depend upon the availability of transportation. Based on CMS guidance on settings that isolate, it should not be enough that individuals are "free to leave."<sup>30</sup>

The provider has an obligation to ensure that access to the community is real and not just theoretical. The obligation of the provider may vary to a certain extent with the setting's location and the practical availability of public transportation.<sup>31</sup> For example, if public transportation is not readily available and accessible, the provider has a greater obligation to help people make arrangements to get to community activities.

Another aspect of a residential setting that contributes to it having institutional and isolating qualities is lack of transportation to activities that individuals want to attend. **Interview individuals and staff** at the residence regarding activities occurring outside the home, activities desired outside the home, available transportation, limitations or barriers due to transportation issues. Review documentation (activity logs, daily notes, transportation logs) available to determine the type and frequency of community activities and events that individuals participate in and whether this corresponds to what they report occurs or they want, and what is in the plan. This question looks at whether transport is facilitated sufficiently so that individuals have opportunities for physical integration and access to their local community and neighborhood.

- Are activities or events typically done with the entire residence or with large groups of individuals with disabilities?
- Are activities individualized in any way or does everyone participate in the same activities together with little personalization?
- Is the facility well staffed enough to allow for transportation (providing or supporting, e.g. assisting to use the subway) to activities for individuals?

<sup>30</sup> CMS, Exploratory Questions to Assist States in Assessment of Residential Settings, at 4-5.

<sup>31</sup> Just Like Home, Advocates Guide to State Transitions, page 14

## WORKING DRAFT AS OF 8/17/14

- e) *The setting has mechanisms in place to facilitate information, education, and experiential learning about employment and community engagement opportunities. (Yes or No)*<sup>32</sup>

Facilitating community integration and access requires that the residential setting and staff create meaningful opportunities to learn about and try new things.

### SETTING ENVIRONMENT:

#### 3. Policies/Procedures and Practices:

Standard: Setting policies/procedures and practices promote rights and integration.

- a) *There are no blanket policies/procedures or practices that limit individual rights, choice, or autonomy, including but not limited to: the right to choose one's own schedule, to come and go from the setting at any time (e.g., no curfew), the right to have visitors at any time; the right to have access to food 24 hrs/day, etc. (Yes or No)*

This review is different than the review of the person's experience. The review here is of facility rules/policies.

Request and review the house rules/policies and procedures of the residence (e.g. ask if there are house rules) to look out for any blanket restrictions on any of the HCBS Settings rights or other individual rights (e.g. Part 633.4).

Example:

- Can individuals come and go from the setting at any time or are there rules about when they are "allowed" to?

Blanket policies and procedures should not unnecessarily restrict the ability of individuals to come and go whenever they choose to. For example, there should not be a curfew or other requirement for a scheduled return to the setting that is applied to all residents of the setting regardless of the capabilities of the residents. There should not be blanket expectations put upon individuals in the house without appropriate justification and documentation.

- b) *The setting is an environment that supports individual comfort, independence, and preferences. (Yes or No)*

Based on your observations, review of documentation and interviews with individuals and staff, this looks at the overall impression of the site.

- Does the site support the unique needs and interests of individuals?

<sup>32</sup> CMS Exploratory Question

## WORKING DRAFT AS OF 8/17/14

- Is there evidence that the setting supports ways to enhance the independence of individuals? (look for home modifications, use of technology, and other innovative ways that the site is able to enhance the ability of residents to have more independence)
- Are living spaces such as bedrooms and living rooms comfortable and lived in?
- Is the site personalized based on the interests of the individuals in the setting?

*'c) Individuals have full access to the setting including appliances, laundry room, pantry, use of kitchen, etc. (Yes or No)*

**This question should be answered using interviews with staff and observation.**

Individuals should be able to have full and independent access to all areas of the residence. This may require adaptations to support and assist individuals in having more independent use of their environment:

Examples of adaptations may include things like:

- Ramps
- Grab bars
- Wheelchair accessibility
- Use of technology and computers

**Questions:**

- Are people limited in accessing the residence because of environmental barriers that limit their ability to move freely?
- Do house rules and practices limit or interfere with what people are able to do at the residence?
- Equipment is adapted if needed due to individuals' physical characteristics. Staff help educate and train people to use equipment such as stoves, microwaves, and washer/dryer.
- Is access prevented because of the layout of the residence or blanket rules regarding access to certain areas?
- Ask individuals and staff if there are any modifications that are needed to the residence to increase the ability of people to access their environment.

*d) The setting has a mechanism to determine peoples' satisfaction with the supports/services received at the setting in general and there is evidence that this information is acted upon to make positive improvements.*

After reviewing individual files, interviewing individuals, and speaking with staff, determine if there are **mechanisms in place** at the residence to verify if people are happy and satisfied with the services and supports that they receive.

- How do staff at the residence ensure that individuals have their needs met and are satisfied with the services and supports that they are receiving?

## WORKING DRAFT AS OF 8/17/14

- What mechanisms are in place to solicit feedback from people?
- Is feedback acted upon, and requests are followed through on?
- Do individuals receive enough support from staff to express their feelings about the services and supports that they receive?
- Are there systems and mechanisms in place to address instances when individuals are not satisfied?
- Are there ways for individuals to make anonymous complaints?
- Can individuals explain how they let staff know about something that they are unhappy with or want to change?

Examples of ways to solicit feedback:

- A residential self-advocacy committee
- House meetings and forums with residents
- An anonymous suggestion box
- Individual person-centered planning meetings

***e) The setting implements a mechanism to assess roommate/living arrangement choice and satisfaction and takes timely action if a person is dissatisfied.***

This question looks at whether the setting has ways to determine whether people are happy with their current living situations, and whether any dissatisfaction is addressed timely. Through interview of the person, staff, and review of appropriate site documentation, determine whether the site has systems in place that promotes and facilitates satisfaction with roommates. Upon interview of individuals and staff, documentation review, and observation, is there evidence to indicate that the staff is aware of whether individuals residing in the home are happy with their living arrangement?

It is important that the residential staff/provider determine whether people are satisfied with their current living situation. It may be necessary to verify through documentation review that the agency has taken steps to evaluate satisfaction and address any dissatisfaction that has been reported to you.

- Is there documentation to support that the facility determined whether individuals are happy with their current roommate?
- Does the agency implement and monitor actions to address dissatisfaction with roommates?
- ?
- Are there mechanisms for conflict resolution between roommates?
- Are there systems in place to collect input and feedback about satisfaction with living arrangements?
- If a person is unsatisfied with his/her current living arrangement, is there any indication that the agency is looking for an alternative setting or option that can meet the person's needs more?
- Do the agency and/or site/setting have adequate/appropriate mechanisms in place to assist individuals who are experiencing difficulty with their roommate?
- Do the agency and/or site/setting have evidence indicating that they inform

## WORKING DRAFT AS OF 8/17/14

individuals of their right to request a roommate change if they desire to?

CMS has clarified that a residence is **NOT** required to make sure that every individual receiving HCBS has their own bedroom when receiving residential services. However, the rule does require that individuals be provided **options** of residential settings, including an option of a **private** room. Sometimes options are limited but the agency should be making a concerted effort to find creative solutions to honor individual preferences. The residence should respond accordingly.

**Select "YES" if:** The Agency and/or setting have mechanisms in place to assess satisfaction with living situation and supports received there.

- f) **The site has a mechanism for ensuring that individuals have keys to their home and can lock their bedroom door for privacy if desired with only appropriate staff having keys. (Yes or No)**

The individual should have a say in which staff members have a key, and agree on the staff member or members who have a key.<sup>33</sup>

Individuals who do not have keys to their home or cannot lock their bedroom door must have given informed consent for this rights modification which must be based upon a specific individualized assessed need.

- g) ***There is evidence that the schedules of individuals in the setting vary based on individual preferences and needs. (Yes or No)***

This question looks at whether the setting overall has mechanisms in place to honor and respond to individual needs and preferences for choice of schedule and activity rather than typical residential setting operations consisting of everyone doing the same things at the same time (this includes activities of daily living as well as recreational and leisure activities).

Determine through discussions with staff, individuals, and others; observation; and record review, whether everyone in the home does the same thing together regardless of personal interests and choices.

- Does everyone participate in the same regimented meal times, activities, bed times and waking times, leisure activities, television time, etc that may indicate that residents either do not know they have a choice or have not been given a choice?
- Is staffing insufficient to accommodate, optimize, and support individual choice?
- Is the facility operated for the convenience of staff or with the end result of

<sup>33</sup> 79 Fed. Reg. at 2,964.

## WORKING DRAFT AS OF 8/17/14

efficiency instead of optimizing the choice, autonomy, and satisfaction of residents?

The intent of this question is to gauge whether individuals residing in the home are treated as unique individuals through optimizing opportunities for residents to make choices about their day to day schedules in the same way that individuals who do not receive HCBS can do. This looks at whether the setting supports the ability of individuals to choose their own schedule of activities. Schedules should be individualized, rather than having a "house schedule" where everyone follows the same schedule inside the residence and when accessing community activities and events.

**Some probes to consider:**

- If a person is not feeling well, he/she can choose whether to stay home from work or day program on that day?
- Is there one schedule posted at the residence for everyone to follow? Such as, group outing at 4pm, dinner at 5, showers at 6, meds at 7 without any indication of choice or the right of the person to refuse?
- Do individuals and/or staff report having to follow the same schedule all the time?

**Select "YES" if:**

- The setting overall is making a concerted effort to honor individualized schedules
- Schedules are created based on preferences and needs of the people who reside there
- Staff and/or individuals report a wide variety of activities that vary from person to person.
- Staff is responsive to schedule changes and requests from individuals.

**Select "NO" if:**

- It appears that most activities occur in large groups
- Individuals report dissatisfaction with the schedule that they follow and this has been unaddressed by the residential staff.
- Schedules of individuals appear identical or very similar to one another
- Staff report that the entire house follows the same routine daily with little variance of day to day activities
- There are regimented schedules posted that do not offer and optimize informed choice of free time, meal time, etc.
- Staffing schedules are so rigid as to not allow for optimizing supports for individuals to have access to leisure activities of their choice during times when the person would like to engage in them. For example, are individuals supported on the weekends to make different choices of what they would like to do for leisure activities?
- Individuals are not able to make a choice to stay home from their day program or other scheduled activity if they do not feel well or for reasons that you and I can decide to stay home on a given day (e.g., mental health day).

*h) Individuals are not prohibited from engaging in any legal activities.*

## WORKING DRAFT AS OF 8/17/14

This verifies whether practices, policies and procedures in place at the setting do not prohibit the rights of individuals to participate in activities of their choosing (as long as the activity is legal). The residence and staff do not necessarily have to agree or believe in the choice of the individual but it is important that the choice is still honored. Support for activities of choice also requires that meaningful discussions on risks and safeguards occur as well, and that individuals are making informed choices. This is a general question that is answered upon review of documentation, interview, and overall observation of the residence.

Questions:

- Are the rights of individuals to make choices regarding their activities honored?
- Are choices arbitrarily restricted or limited because of value judgments or beliefs of staff?
- Did you observe instances where choices of individuals were not honored?
- Policies and procedures or rules do not bar legal activities.

i) Peoples' health and other applicable information is kept private (i.e., not posted publically in the home). (Yes or No)

**Select Yes if:**

- There is no evidence of private information being accessible to other residents, visitors, etc. in the home upon your observation and walk through.

**Examples Leading to No:**

- Schedules for peoples' private medical appointments are posted in the home for anyone to see.
- Peoples' dietary restrictions/modifications are posted for anyone to see

**NOTE: this guidance needs to be moved to appropriate sections.**

This is a site level question.

The setting optimizes and maximizes choice of unscheduled and scheduled community activities.

Questions:

- Can individuals come and go at will?
- Do individuals gather together as a group by the door to wait, rather than

## WORKING DRAFT AS OF 8/17/14

- being able to come and go as they please inside and outside of the house?
- Are there door alarms on the doors that sound off every time that they are opened? Is there clinical justification for the door alarms if so?
  - Is there a house curfew or scheduled time that people have to return to the residence?
  - Do individuals have access to public transportation?
  - Are there bus stops nearby, or are there taxis available for use in the area?
  - Are there enough accessible vans available to transport people to appointments, shopping, etc?
  - Are public transportation schedules posted in convenient and obvious locations?
  - Is there evidence that individuals receive training on the use of public transportation?
  - In locations where public transportation is limited, there are other resources provided to facilitate individual access to the broader community? This could mean pooling resources with another residence nearby, or utilizing unpaid, natural supports whenever possible.
  - Is there enough staff available to support access to the community on a regular basis?

**Commented [AMM1]:** Refer to CMS exploratory probes for full access question.

### Select "YES" if:

- There are clear indications that the residence makes a concerted effort to ensure individuals are able to access the community on a regular and routine basis.
- Any schedule of activities posted/available makes clear that individuals have a choice to participate. Such schedules should offer multiple options based on the interests and preferences of the residents. For example, the facility has regular meetings with residents to discuss and describe activities that may be of interest and to assess interest.
- Alternative activities are offered and from which individuals may choose based upon the interests of the people that live there.
- The facility has mechanisms to assess interests and preferences of individuals for recreational activities and acts on these preferences.
- Individuals are aware of and can exercise their right to refuse to participate in an activity if they choose to.

### Select "NO" if:

- There does not appear to be an organized, concerted effort made by the residence for individuals to access the community in an individualized way on a regular basis.
- When individuals do access the community, it is typically with the entire residence rather than in smaller groups of peers with similar interests.
- When community activities do take place, individuals are not offered opportunities for interacting with the public at large and instead interact only with other residents with developmental disabilities.
- Individuals are not offered the opportunity to be trained on or utilize public transportation, if it is available in their community
- There is a house schedule that everyone must consistently adhere to rather

## WORKING DRAFT AS OF 8/17/14

than planning individualized activities based on people's interests.

- Individuals and/or staff report that there is typically not enough staff to be able to transport and accompany individuals in the activities that interest them.

j) Surveillance cameras are not present anywhere inside or outside the home. (Yes or No)

### 3. Staff Competencies, Training, and Interactions:

Standard: Staff competencies, training, and interactions promote rights, choice, autonomy, and integration.

a) *Staff receives training in HCBS Settings requirements including individual rights and how to support individuals to exercise control and choice in their own lives.*

Determine if staff have been educated and trained on these key principles:

- Ask staff if they know about the HCBS Settings requirements and what they are and if they have received training and/or information about HCBS Settings requirements.
- Ask staff what training they have received to help people to exercise control and choice in their lives.

b) *Staff receive training in PROMOTE. (Yes or No)*

c) *Staff respects the cultural/religious/other backgrounds of its residents and appears culturally competent and respectful of people supported. (Yes or No)*