

Administrative Memorandum – 2014-# For DISCUSSION, DRAFT 8, 7/25/14 (Note:

this is updated from Draft 7, dated 11/25/2013, that was submitted to CMS in November 2013.)

To:

From:

Subject: Program Standards Applicable to Residential Settings in which Home and Community Based Services (HCBS) Waiver participants reside for the Provision of Home and Community Based Services (HCBS) and Medicaid Service Coordination (MSC)

Effective Date: The effective date for compliance purposes is TBD subject to the approval of OPWDD's Transition Plan by CMS. This Memorandum, along with the CMS regulations and guidance, is the basis for the administration of OPWDD's HCBS Settings Assessment Tool in certified residential settings. TBD (quality reviews to commence six months after provider training on the issued ADM, see draft BIP work plan/status report for 11/2013)

PURPOSE:

As part of OPWDD's commitment to support individuals in the most integrated settings appropriate to individual needs and preferences, this Administrative Memorandum communicates and clarifies OPWDD's intent to adoption of the quality principles and standards that conform to both OPWDD regulations and the federal rules proposed by the Center for Medicare and Medicaid Services (CMS) in Home and Community Based Settings regulations (441.301), effective March 17, 2014, as part of a New York State and/or the OPWDD specific transition plan approved by CMS. the Notice of Proposed Rule Making (NPRM), May 2012, regarding the requirements for settings in which Home and Community Based services (HCBS) funded under the waiver are provided (Part 441.530 or 441.656). OPWDD intends to promulgate State regulations on this topic based upon CMS's final rulemaking on this matter in the future. In the meantime, this Administrative Memorandum is designed to promote and communicate the latest OPWDD guidance based upon the CMS regulations, CMS responses in the preamble to the regulations, and CMS published guidance. It is also designed and to implement enhanced awareness and as the basis for OPWDD's administration of an HCBS Settings Assessment Tool to assess certified residential settings for the purpose of compiling baseline data upon which to further develop OPWDD's plan for full compliance with these requirements. The assessment of OPWDD's certified residential settings will also help OPWDD to identify more objectively system challenges and timelines needed to achieve full system compliance. quality reviews of these standards across the developmental disability service system with intent for continuous quality improvement.

Many of these standards are already included in, or ~~similar to~~~~are based on~~, existing OPWDD regulations at 14 NYCRR Subpart 635-10 and section 633.4 ~~as well as~~~~and~~ previous OPWDD guidance. The ~~final proposed~~ CMS regulations provide ~~formal further~~ support for ~~current OPWDD regulations and policy as well as formalizing some of~~ what OPWDD has ~~previously~~ considered “best practices”. ~~In particular, the CMS regulations make clear that the required qualities of HCBS settings are based upon the nature and experiences of individuals. CMS seeks to ensure that HCBS is provided in settings that are truly non-institutional in character and are fully integrated in the broader community.~~

The guidance and quality standards outlined in this Administrative Memorandum are considered program standards.¹

APPLICABILITY:

This ~~Administrative~~ Memorandum ~~generally~~ applies to all ~~voluntary and state-operated~~ OPWDD ~~certified residential settings including providers delivering HCBS funded waiver services and/or Service Coordination including MSC and Plan of Care Support Services (PCSS), and OPWDD certified settings in which HCBS funded services are provided including~~ Individualized Residential Alternatives (IRAs), ~~Community Residences (CRs)~~ and Family Care Homes. ~~In addition, these standards apply to any other residential setting that an HCBS waiver participant resides regardless of whether the person receives HCBS in that residence.² HCBS funded services include but are not limited to: Day Habilitation — Residential Habilitation, Prevocational Services, Community Habilitation, and Supported Employment Services.³~~

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

² CMS-2249-F/2296-F, page 84

³ This memorandum ~~does not~~ apply to:

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

Specifically, except for Respite services, HCBS services funded through the waiver ~~cannot~~ be provided in the following institutional settings (HHS NPRM May 2012, pg 26401, 3rd column) ~~441.301~~:

- ~~• Nursing Facilities;~~
- ~~• An institution for mental diseases/Psychiatric Centers;~~
- ~~• Intermediate Care Facilities (ICFs); and~~
- ~~• Hospitals certified for the provision of long-term care services;~~
- ~~• Any other locations that have qualities of an institutional setting as determined by the Secretary of CMS including settings that have the effect of isolating people from the broader community of people not receiving HCBS. CMS has established a heightened scrutiny process for these types of settings.~~

This Memorandum describes the quality principles and standards that must be present in the setting in which HCBS services are funded, based upon the needs of the individual as indicated in their person-centered service plan. OPWDD deems essential in assessing whether waiver services and supports provided to each individual are person-centered, community based, and delivered in the most integrated setting appropriate to each individual's needs and preferences.

Person Centered Planning Process Regulations and Rules published by CMS on March 17, 2014 will be described in a different OPWDD guidance document and are not a part of this Memorandum. As person centered planning is foundational to the spirit, intent, and substance of the HCBS regulations, it is expected that agencies will use true person centered planning processes and practices to ensure that the HCBS Settings Regulations are met.

QUALITY PROGRAM STANDARDS:

The following are quality program standards and characteristics that must be present in HCBS residential settings, for the delivery of HCBS funded services and Service Coordination. These standards address the person centered habilitation planning process; delivery of person centered HCBS funded supports and services in integrated settings; promoting and support of ing informed choice and rights; and standards applicable to the nature and experience of each person's living situation.

It is expected that these standards shall be ~~are~~ promoted and facilitated by all providers and staff in OPWDD's service system, however, at this time, this Memorandum is specifically applicable to the residential settings where HCBS waiver participants reside. OPWDD intends to revise this ADM and/or develop additional guidelines once CMS has issued their guidance on applying the HCBS Settings Regulations to non-residential settings. Service Coordinators, OPWDD certified facilities/sites, OPWDD funded HCBS providers/programs, and staff delivering HCBS funded services/supports to individuals in the HCBS waiver.

A. Guidance on the Habilitation ~~Person-Centered~~ Planning Process and Delivery of Person Centered HCBS Services and Supports ~~Waiver Services~~ in Accordance with These ~~Standards~~ Standards⁴

Practice guidance on person centered planning and service delivery can be found on OPWDD's website under the "Person Centered Planning" link at: http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning.

This practice guidance on person centered planning and person-driven service delivery is the responsibility of all providers and staff that support the individual not just the author of the person's plan(s). OPWDD expects that these principles and practices are embraced by all providers and staff that work with people with

⁴ In accordance with ADM #2012-01, "Habilitation Plan Requirements", "Habilitation services are designed to assist participants in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community-based settings. Habilitation Plans describe what staff (this term includes family care providers) will do to help the person reach his/her valued outcome(s) that have been identified in the Individualized Service Plan (ISP). Habilitation services involve staff teaching a skill, providing supports and exploring new experiences. The regulations that govern habilitation services are 14 NYCRR Parts 624, 633, 635, 671, and 686.

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~~developmental disabilities. Services and supports should be designed to result in greater choice, autonomy and independence and emphasize the outcomes that matter most to each person.~~

According to ADM #2012-01, the Habilitation Plan describes the assistance that staff provides to help the person reach his/her goals and valued outcomes as identified in the overarching Individualized Service Plan (ISP). The following standards reinforce ADM #2012-01 and establish the starting point and foundation for meeting the HCBS Settings Standards in residential settings. ADM #2012-01 will be revised in the future to include explicit reference to the HCBS Settings Regulations and the following if not already explicitly included.

- Habilitation Plans are a required attachment to the Person Centered Plan (i.e., ISP) and must be coordinated with the ISP. As such the Habilitation Plan is encompassed in the person's service plan.
- Habilitation Plans are person centered, individualized, and include activities and interactions that are meaningful to the person.
- Habilitation supports and services are focused on the development of skills that are needed in order to facilitate greater degrees of choice, independence, autonomy and full participation in community life.
- Exploration of new experiences is an acceptable component of the Habilitation Plan. Learning about the community and forming relationships often require a person to try new experiences to determine life directions. This trial and error process eventually enables the person to make informed choices and, consequently, to identify new valued outcomes that then become part of the ISP and the Habilitation Plan.⁵
- Accordingly, the Habilitation Plan (or alternative documentation that becomes part of the service plan) should reflect the personally meaningful community inclusion/integration activities, the timing and desired frequency/duration of these activities (e.g., sam would like to go the senior citizen center to play checkers once per week on Saturday mornings), and the supports needed for the person to fully participate.

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B. HCBS Waiver Service Provision Is Required in Integrated Settings that Support Full Access to the Greater Community to the Same Degree of Access as Individuals Not Receiving HCBS:

~~HCBS waiver services, and supports, and settings must be designed to facilitate full access to the greater community including opportunities to engage in community life; seek employment and work in competitive integrated settings; engage in meaningful activities; explore meaningful relationships and social roles; reside in the home of choice; and share in other hallmarks of community living in accordance with individualized needs and preferences goals, and to the same degree of access as in the same manner as individuals without disabilities. Waiver services and supports provided to each individual must be person centered, community based, and delivered in the most integrated setting appropriate to each individual's needs and preferences and not be institutional in nature.⁶ HCBS settings must optimize and not regiment individual initiative,~~

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⁵ ADM #2012-01 "Habilitation Plan Requirements", page 5, 3 c. direct quote.

⁶ HHS NPRM May 2012 pg. 26401-2nd column

autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

Facilitate Informed Choice ~~is Facilitated and~~ **Protect Rights ~~Are Protected~~**

HCBS ~~service delivery and all residential settings and in which HCBS funded staff delivering services and supports are provided~~ shall promote and address the ~~following~~ following:

- Encourage and support individuals ~~Individuals are encouraged~~ to freely choose their daily activities and control their own schedules (e.g., when to eat, when to sleep, what to watch on t.v., etc.).
- Facilitate and optimize ~~it~~ informed choice regarding services and supports and who provides them ~~emem is facilitated and optimized.~~
- Enable ~~it~~ individuals to freely choose with whom to interact.
- Ensure that ~~it~~ individuals have the right to control of and access to sufficient personal funds for daily activities regardless of the day or available staff. Arrangements for larger purchases may be made within a reasonable timeframe as established by regulation 633.15.
- Treat ~~it~~ individuals ~~are treated~~ with dignity and respect.
- Support ~~it~~ individuals ~~to are allowed and supported to~~ have “dignity of risk”.
- Protect ~~it~~ individuals ~~are protected~~ from unnecessary restraint and coercion.
- Ensure that individual independence and freedom is not abridged for convenience of staff and/or by well-meaning but unnecessarily restrictive methods of providing services and supports.
- Inform and provide ~~it~~ individuals ~~are informed of and provided~~ with a mechanism ~~to~~ file anonymous complaints.
- Ensure individualized physical accessibility in the person’s residence. ~~Certified settings in which individuals receive services are physically accessible to the person.~~
- Encourage, respect and support people’s cultural backgrounds.
- Use plain language to communicate effectively with the person and facilitate any necessary adaptive devices/equipment based on the person’s assessed needs.

Additional Standards in OPWDD Certified Living Spaces:

In addition to the qualities outlined above, certified residential settings and staff delivering supports and services shall address and promote the following ~~All OPWDD-certified residential settings in which HCBS funded services and supports are provided shall promote the following~~ in accordance with individual preferences and the strengths, needs, capabilities, and goals of each person in their plan:

- **Protection from Eviction**
 - Ensure that individuals have a written occupancy agreement that addresses eviction processes and appeals comparable to tenancy rights provided under NYS law.

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- **Access to Food, Meal(s), and Storage of Food Access**⁷

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

- **Access to Areas of the Home:**⁸

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

- **Right to have Visitors and Freedom of Association**⁹:

~~Individual freedom to associate with whomever someone wants should be supported and not be controlled. Individuals should be given the ability to choose and direct with whom he/she interacts and when individual freedom of association, initiative, and autonomy regarding with whom to interact and when to interact is optimized and not regimented.~~

~~Individuals may have visitors of their choice at any reasonable time without facility approval and individuals have the right to privacy with their visitor(s). Visitation should be done in a way that respects the preferences of other individuals in the setting.~~

~~This also means that~~ individuals may have have access to the internet and telephone at any time and may choose to have private telephone numbers in their rooms and/or private cell phones for use at any time at their own expense.

The residence facility may require visitors to sign in and/or notify the facility administrator that they are in the facility or other such policies/procedures to ensure the safety and welfare of residents and staff as long as such policies and procedures do not unnecessarily restrict visitors for the convenience of staff and/or regiment freedom of association.

- **Choice of Roommates**¹⁰:

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⁷ HHS NPRM May 2012, pg. 26401 3rd column

⁸ ~~ibid~~

⁹ ~~ibid~~

- Individuals ~~shall be~~ provided with opportunities to work with the facility to achieve the closest optimal roommate situation. Individuals ~~who that~~ have issues with their roommates ~~and do not want to live with them anymore~~ ~~are encouraged and supported to work things out with their roommates and/or to~~ ~~shall~~ receive ~~timely support and~~ assistance from the ~~setting facility~~ staff/~~facility~~/provider in coming up with alternatives.
- The ~~setting shall facility~~ ~~has~~ a mechanism to assess roommate satisfaction/dissatisfaction and provides individuals with a confidential opportunity to discuss issues or concerns regarding their roommates. The ~~setting shall facility~~ also provides education to individuals on self advocacy and supports ~~people them~~ in resolving these issues and/or in moving to another room or residence if the person chooses to do so.

- **Right to Personal Space and Privacy¹¹:**

- **Privacy:** Individuals ~~shall~~ have the ability to lock their rooms for personal privacy and to control access from unwanted external entry. The locking mechanisms will allow for the entry of support or help in an emergency. ~~Appropriate staff members may have a key with the agreement of the individual.~~

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

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

- **Video cameras and recording devices: See Attachment B for OPWDD's Video Camera and Recording Use Device Policy.**

C. Modifications of these Conditions

~~In some cases, the needs of a person may dictate that he or she cannot safely access these rights or may need certain modifications to these rights. Any modifications of the conditions outlined in this ADM must be supported by a specific assessed need and justified in the person centered service plan (or a required attachment, e.g., Behavior Support Plan, IPOP, Habilitation Plan), as follows:~~

- ~~1. Identification of the specific and individualized assessed need.~~
- ~~2. Documentation of the positive interventions and supports used prior to any modifications~~
- ~~3. Documentation of the less intrusive methods meeting the need that have been tried but did not work~~
- ~~4. A clear description of the condition that is directly proportional to the specific assessed need~~

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¹⁰ ~~ibid~~

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5. Inclusion of regular collection and review of data to measure the ongoing effectiveness of the modification
6. Inclusion of established time limits for periodic reviews to determine if the modification is still necessary or can be terminated
7. Inclusion of the informed consent of the individual
8. Inclusion of an assurance that interventions and supports will cause no harm to the individual

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Practice guidance on person centered planning and service delivery can be found on OPWDD's website under the "Person Centered Planning" link at:

http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning.

REQUIRED IMPLEMENTATION ACTIONS EXPECTED OF HCBS-WAIVER RESIDENTIAL PROVIDERS AND STAFF AND MSC VENDORS/SERVICE COORDINATORS:

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

1. **Governance:** The Board of Directors of each organization shall have has appropriate oversight of the organization's commitment to these standards and the organization's continuous quality improvement plans and strategies involving these principles.
2. All organizational policies and procedures, training materials, and other applicable documents should be consistent with these standards and ensure that the organization implements policies, procedures, and practices that clearly define its commitment to the promotion and protection of individual rights.
3. Organizational self-assessment practices that review the demonstration of degree to which the organization is embracing and exhibiting these quality standards in day to day operations and the strategies to be undertaken for continuous quality improvement. ~~as a result of the self assessment should be undertaken.~~
4. Agency training, orientation, and other applicable and ongoing communication, training, and learning mechanisms should be reflective of these expectations. This includes teaching and encouraging respect for each person individual supported as a unique individual with unique preferences, interests, rights, dignity, and self-determined and goals. Providers should teach listening, learning and responding in ways that honor individuals and increase individual control; teach how to honor about individual rights, dignity, and self-determination and how to support individuals to exercise coontrol and choice in their own lives.
5. There should be active communication with stakeholders including staff and individuals served on these principles and soliciation of ing feedback from individuals served and their advocates on how to do better through satisfaction surveys, focus groups, residence meetings, and other applicable forums should be undertaken.
6. Practices should be undertaken that make clear that the needs and preferences of people served supported determine the types of supports provided. Providers need to -pPromote practices that enhance individual decision making e.g., over schedules, activities, and staff hiring, training,

supervising, evaluating, and firing, and in other areas where individual input and autonomy can be promoted and facilitated.

REVIEW BY THE OPWDD DIVISION OF QUALITY IMPROVEMENT

The Division of Quality Improvement will be assessing OPWDD certified residential settings (IRAs and CRs) beginning October 1, 2014 through September 30, 2015. ~~revising applicable survey protocols to integrate the above quality program standards, guidance, characteristics and expectations. Applicable protocols will cover: Person-Centered Planning and service delivery expectations; reviews of certified sites that provide home and community-based waiver services; and Medicaid Service Coordination. DQI will review these quality program standards through person-centered reviews of individual services and supports and site-based service delivery as well as organizationally through the systems the provider has implemented to promote and facilitate these standards.~~

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