

**HOME AND COMMUNITY  
BASED SERVICES (HCBS)  
SETTINGS ASSESSMENT  
(FOR CERTIFIED RESIDENTIAL  
HOMES)  
-GUIDANCE AND  
INSTRUCTIONS-**



# Guidance and Instructions for OPWDD's HCBS Settings Assessment

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## **PURPOSE:**

The purpose of this document is to provide guidance and general instructions for all stakeholders (including providers and surveyors) on the implementation of the Home and Community-Based Services (HCBS) Settings Assessment that is a major component of OPWDD's preliminary HCBS Settings Transition Plan.

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 March 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 compile baseline data to determine the degree to which the HCBS Settings requirements are met and the areas in which systemic improvements are needed.

The CMS final HCBS Settings regulations prohibit waiver services to be provided in settings that have the qualities of an institution, and seek to ensure that:

- People are supported in HCBS settings that are **integrated in** and facilitate **full access** to the broader community;
- People have a **choice** of where they live and who provides services to them; and,
- Peoples' **rights** are not arbitrarily restricted.

## **ASSESSMENT STRUCTURE:**

The HCBS Settings Assessment Tool for certified residential settings has been divided into two 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: Person-Centered Review:** Complete Part 1 for a **sample** of visits to IRA's and CR's scheduled during this review period (November 2014 through September 2015), **for each person in the sample**. Surveyors will receive instructions on the size of the person sample and how to select the person sample during surveyor training. Surveyors will also be provided with the site sample in which the person sample will apply during surveyor training.

**Part II: Site-Based Review:** For **ALL** recertification visits of IRA's and CR's scheduled during this review period (November 2014 through September 2015) complete Part II (Site-Based Review) **only once per site specific operating certificate scheduled for a recertification/protocol visit**.

**PLEASE NOTE:** *This assessment is not designed to result in issuing Statements of Deficiency (SODs), but if during the assessment process 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 in accordance with normal operating procedures/practices.*

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## TOOL GUIDELINES

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### Part I: 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 are 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.

Part I of the HCBS Settings Assessment, Person Centered Review, includes domain areas and standards that fall into three broad assessment categories:

- A. Services and Supports Planning Process:** includes sections 1 through 3 and related standards: Habilitation Planning; Housing Protections and Due Process; and Rights.
- B. Community Access and Support:** includes sections 4 through 5: Full access to the broader community to the same degree as others; and Relationships.
- C. Setting Characteristics and Personal Experience:** includes sections 6 through 12; Restrictions, Interventions, and Rights Modifications; Privacy; Choice of Living Arrangement/Roommate; Freedom to Decorate/Change Personal Environment; Person's Schedule; Access to Food; and Accessibility of the Setting.

The overall intent of the Person Centered Review is to determine whether the standards are met from the person's perspective based on the person's experiences in the home as well as the person's needs and preferences. The person's support needs and priorities and preferences for meaningful activities are emphasized in this part of the Assessment because these factors will directly contribute to a determination of whether the specific HCBS setting is compliant with the HCBS Settings regulations.

Many of the standards in the Person Centered Assessment are emphasizing a high degree of person centeredness that is necessary in order to meet a particular standard in this Tool. These interpretations are based upon CMS regulations and responses to public comments published in the Federal Register/Vol. 79, No. 11/Thursday, January 16, 2014. These interpretations are also based upon CMS Exploratory Questions and CMS Guidance materials and OPWDD's HCBS Settings ADM.

While Domain A primarily reviews for the service and support planning process, Domains B and C contain elements to determine if the person's preferences and priorities expressed during the planning process are being supported and effectively implemented by residential staff.

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## **Interviewing the Person:**

At all times, the preferred person to interview is the person in the sample 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. ***The survey team should make an effort to conduct this interview without provider staff present and in a setting where the person is most comfortable so that the person does not feel or perceive pressure from staff when answering.***

***If an interview with the person is not possible, the survey team must document the reason why. However, the survey team should still observe the person and attempt to communicate and converse with the person, even if a surrogate/proxy/representative is also present.***

It is recognized that some individuals are unable to directly provide this information to you. Because of this, 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 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.

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

## **Guidance/Directions for Assessment 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 a particular question.

## **Rights Modification Guidance and Yes/No Determinations:**

### **Context:**

In some cases, the needs of a person may dictate that he or she cannot safely access the HCBS Settings rights or that certain modifications to these rights may be needed or required. Careful consideration is required for modifying an individual's rights and must be an integral part of an ongoing person-centered planning process.

The OPWDD Strengths and Risks Inventory Tool is a helpful guide to use in the person-centered planning process, when exploring the person's informed choices and positive safeguarding approaches. This person-centered planning process also includes the involvement of a circle of family and friends who the person and their advocates trust and choose, and may include input from other sources in the community.

The rights modification process should insure a person's right to live safely with the supports they choose and should foster independence and responsibility. Rights should not be modified outside of the person-centered planning process or without the informed consent of the person or authorized surrogate. The only exception to this is if there is an emergency situation in which the person places themselves or others around them in immediate jeopardy (i.e., there is an immediate, serious, and credible threat) in accordance with 633.16(2). In this case, the provider/staff will take immediate and appropriate action necessary to address the crisis

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situation. Once the immediate crisis is over, the provider/staff is expected to reassess the person's preferences and needs using a person-centered planning process, and to update the person's habilitation/service plan accordingly.<sup>1</sup>

Any modification of the HCBS Settings standards/rights must be supported by a specific assessed need or legal requirement, and justified in the person-centered service plan (or a required attachment, e.g., Behavior Support Plan, IPOP, and/or Habilitation Plan) as follows:

1. Identification of the specific and individualized assessed need or legal requirement;
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;
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; and,
8. Inclusion of an assurance that interventions and supports will cause no harm to the individual.

At times, the assurance of health requires clinically determined safeguards and supports to be put in place for an Individual to minimize real risk of illness and/or death. Such safeguards may modify a person's rights. Under these circumstances, documentation of positive interventions and supports (#2, above) and of less intrusive methods tried (#3, above) may be in the form of a description of the current, inadequate level of support (prior to the implementation of the new modification) and how, if left in place, it would directly contribute to the illness and/or death of the Individual. Criteria for acceptable modifications for #1, and #4-8, will still need to be documented when implementing restrictions to persons' rights in HCBS residential settings.

There may be times when an approved rights modification for one person impacts the lives of other people living in the home. In such a circumstance, providers must make every effort to avoid limiting the rights of others in the home, and if all else fails, mitigate the impact of the modification on others. Providers should facilitate conversations and seek input from the people a rights modification may impact. If it is determined that an individual's rights are modified due to the needs of another peer living in the home, then this must be discussed with the individual(s) impacted by the rights modification or their authorized surrogate, and documented in the site specific Plan of Protective Oversight required by 686.16(a).

During the person-centered planning process, the impact of the modification and the efforts or means used by the provider to reduce or lessen the impact on the person who does not require the rights modification should be discussed and documented in each affected person's Plan (i.e., ISP or Habilitation Plan). The person's plan must be signed indicating their consent, or that of their authorized surrogate, to the modifications in the home. The site specific Plan of Protective Oversight shall describe the rights modifications in the home and be reviewed and approved by the Agency Human Rights Committee or other Specially Constituted Committee charged with reviewing and approving rights modifications.

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<sup>1</sup> Federal Register /Vol. 79, No. 11 /Thursday, January 16, 2014 /Rules and Regulations , 2961, first column

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## **Rights Modification and Part I Assessment Determinations for "YES" or "NO":**

- When reviewing the standards in Part II, if there is a rights modification in place for the person that meets the standards outlined above, the determination for the standard would be a "Yes" and the surveyor would select "rights modification" under information source along with any other applicable information source choices. The surveyor should then include additional information in the "Rationale" section **for why/how the rights modification meets the required elements.**
- A rights modification that does not include the required elements outlined above would result in a "No" being selected. "Rights modification" would still be selected under information source along with any other applicable information choices. The surveyor should then include additional information in the "Rationale" section **for why/how the rights modification does not meet the required elements.**

## **Services and Supports Planning Process:**

**General Information:** Sections 1-3, Habilitation Planning; Housing Protections and Due Process; and Rights primarily address the services and supports planning process. In accordance with the CMS regulations (42 CFR 441.301 (c) 1-3)), the "Person-Centered Service Plan" must reflect the services and supports that are important for the individual to meet the needs identified through a functional assessment, as well as what is important to the individual with regard to preferences for the delivery of supports and services. In OPWDD's system, the Habilitation Plan is a required component of the Person-centered Service Plan (i.e. Individualized Service Plan (ISP)) for the provision of waiver habilitation services. Therefore the Habilitation Plan and the process for Habilitation planning must also be person-centered and person directed in accordance with the CMS regulations.

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, the Habilitation Plan, and establish the starting point and foundation for meeting the HCBS Settings Standards in certified residential settings. ADM #2012-01 will be revised 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/person-directed, 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. <sup>2</sup>

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<sup>2</sup> ADM #2012-01 "Habilitation Plan Requirements", page 5, 3 c. direct quote.

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- Accordingly, the Habilitation Plan (or alternative documentation that becomes part of the habilitation/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 (Sam needs direct individualized support by one staff person (i.e., one-to-one support) while playing checkers at the senior center to ensure appropriate social interaction with other checker players).
- Whenever possible, supports are provided in a way that maximizes use of natural and peer supports in the community, not just paid staff and providers.<sup>3</sup>
- The Habilitation Plan is updated in accordance with ADM #2012-01, when the individual's circumstances or needs change, or at the request of the individual. Residential providers should ensure that individuals are aware of their right to request a Habilitation Plan change. Residential providers are expected to take timely action to honor these requests.

It is important to recognize that the person-centered planning process is not the end goal. The person-centered planning process should be designed to result in outcomes ensuring the person has more choice and control in his/her life. The provider has an obligation to ensure that the choices being offered are not from a "profoundly limited menu"<sup>4</sup>. Some questions to consider when thinking about progress and results from the person-centered planning process with the person includes:

- Is the person enjoying a healthier and more satisfying life on their own terms?
- Does the person have a clearly defined role in directing their planning process?
- Does the person have more choice and control?
- Is his/her participation in the community genuine and meaningful as he/she defines it?
- Are the person's relationships authentic (i.e., real, meaningful)?<sup>5</sup>

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

## A.) SERVICES and SUPPORTS PLANNING PROCESS

### Section 1-1:

#### 1-1 HABILITATION PLANNING:

**Standard 1: The Habilitation Planning Process is person-centered and reflects the priorities, goals, outcomes, desired community activities, and informed choices of the person.**

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<sup>3</sup> Adapted from, "Keeping the Promise: Self-Advocates Defining the Meaning of Community Living", March 2011, page 17

<sup>4</sup> Ibid, page 2

<sup>5</sup> Ibid

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**1 a. The person's Habilitation Plan was developed and is updated using a person-centered planning process and reflects the person's informed choices. (Yes or No)**

***Having a conversation with the person is critical to answering whether or not their habilitation plan reflects what is meaningful and important to him/her.***

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.

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 reviewed, determine whether the planning involved a comprehensive process that includes discussions with not only the 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 ensures that the person has as much control and informed choice as possible in his/her life.

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 his /her priorities and what is **most meaningful** to each person in his/her life.

## ***What is Informed Choice?***

An Informed decision or choice can be defined as having three components:

- knowledge,
- non-coercion, and
- the ability to accept responsibility for one's choice.

People have the right to make choices in their lives, whether they are simple everyday 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>6</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 in the system.

Provider/staff expectations for facilitating informed choice include having and documenting meaningful discussions with the person about the pros and cons of choices, defining tolerable risk vs. non-negotiable risk (e.g., risk of death), 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

<sup>6</sup> The Right to Choose, A Training Curriculum, Instructors Manual, by Barry Warren, Ph.D. 1993

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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;
- Opportunities for *creative alternatives* and a *flexible* approach that can meet the person's needs and expectations, within available resources.<sup>7</sup>

The agency and site staff don't necessarily have to agree with the person's choices but there is an obligation to educate the person on the impact that those choices have. The education content should be consistent and credible. Staff should act on those choices, as long as they don't pose an immediate, serious, and credible threat to the health and safety of the person or others.

It is important for the residence to demonstrate and document that thoughtful discussion and meaningful conversation has 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.

## **Interview with the Person/Considerations for the Person: When interviewing the person and/or the proxy probe the following:**

- His/her interests and priorities, and whether he/she has the support needed to pursue those interests and priorities.
- Does the person know about their plan, including specific activities and outcomes addressed in the plan? Ask people if they know how/why these activities and desired outcomes are in their plan. Did he/she agree to them/choose them?
- Ask how long they have been working on specific outcomes identified in their plan to determine if they are a current reflection for the person.
- Ask the person whether he/she made choices during the planning process.

## **Select "YES" if there is evidence of all 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 ISP planning process. However, if the ISP is not person-centered (and the Habilitation Plan is) and there is evidence that the Habilitation provider/staff has attempted to address the ISP issues with the MSC, this attempt can be recognized for this indicator.
- 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/proxy that knows the person well (i.e., it is not an outdated plan).
- There is at least one clear goal/activity identified in the Habilitation Plan that will help move the person towards what is **most meaningful** to him/her.
- The person was offered informed choice of services/supports and who provides them and/or there is a clear indication of informed choice evident in the Habilitation Planning

<sup>7</sup> CQL Guidance on Person-centered Planning, Page 13

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process. CMS expects that all services and support options will be articulated and discussed with the person.<sup>8</sup>

**Select "NO" if any of the following are identified:**

- The person did not participate in plan development unless this was their **clear** decision/choice to not participate.
- The person's perspective, 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, or goals. E.g., the person reports interests and desires that are important to them which are largely unrepresented in their plan.
- The person 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.

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

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:

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 skills, but should also include identification and planning for community integration based on individualized interests and priorities in leisure and recreation, associational/cultural desires (e.g. church membership, social activities and social groups, clubs of shared interests), shopping and purchasing desired for 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 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 or alternative documentation reflects community related interests and priorities that are important to the person, including desired frequency and supports needed for the person to engage in these activities (e.g., Sam would like to attend the senior center in Albany at least once per week on Saturday mornings to participate in playing checkers. Sam needs direct individualized support by one staff person (one-to-one support) while at the senior center to ensure appropriate social interaction with other players); **And/or:**
- The habilitation plan/documentation reflects related activities that will enhance the

<sup>8</sup> 79 Federal Regulation at 2,989

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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). ***This information should specifically relate to a meaningful documented community integration goal/desired activity of the person that he/she is progressing with through these related activities (i.e., if the person wants to obtain/sustain employment but they need to learn to navigate public transportation to meet employment scheduling needs).***

**Select "NO" if any of the following:**

- Meaningful 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 in the pursuit of meaningful/productive community integration/community-related activities as the person defines it.
- Community-related activities are reflected but they are not individualized to the person, reflecting what is meaningful/of interest to him/her, i.e., the community activities reflect what everyone in the house does together, the house activity schedule, and/or community activities were chosen by staff for the person; etc.

***1 c. The person's Plan (Habilitation Plan or alternative documentation) reflects risk factors and the positive safeguarding measures in place to minimize them, including individualized back-up plans and strategies when needed (that contribute to the person's ability to engage in meaningful activities). (Yes or No)***

***Question a, above, focuses on whether the person is supported to make informed choices in the planning process for activities that are meaningful and of interest to the person in achieving the life that he/she wants. This question focuses on whether there are positive safeguarding measures and back-up plans in place to support the person's choices for meaningful activities/goals. Guidance from question a and b, above, and d, below, are also helpful in making a determination.***

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 too each person.***

Person-centered planning should result in the individual expressing their right to make informed choices about his/her life and how to live it even if these choices come with risk or risk is perceived for 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 he/she has the freedom to live their life in the way that he/she chooses.

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

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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. By discussing specific safeguards and strategies to mitigate those risks, including back up plans, a person- in conjunction with his/her circle of support- can make informed decisions regarding what risks are tolerable.

The person should not be prevented or limited from opportunities that are important to him/her because there has not been enough discussion and strategizing related to alternative ways to make the person's dreams and priorities a reality.

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.***

**More information on planning and managing risk can be found on OPWDD's website at: [http://www.opwdd.ny.gov/opwdd\\_services\\_supports/person\\_centered\\_planning/risks-and-safeguards](http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning/risks-and-safeguards)**

## **Probes:**

- Are there strategies for making sure that the person and his/her circle of support made informed choices based on meaningful discussions and based upon what is important to the individual?
- 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?
- Does the person's habilitation plan or alternative documentation specify necessary, individualized safeguards that are needed in order for the person to engage in community opportunities, when needed?
- Do the person's safeguards support rather than impede the important valued outcomes that are outlined in their habilitation/service plan?
- Does the habilitation plan/alternative documentation include back-up plans and strategies, in the event that circumstances or events might change? E.g., if a staff person calls out sick for 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 or focusing only on functional risks)?

## **Some Interview Questions/Considerations with/for 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 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

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show up to pick you up from a community event, or you got lost?

**Select "YES" if:**

- A Strengths and Risk Inventory (or other clear documentation/evidence that demonstrates meaningful discussion of the person's choices and positive approaches to safeguarding) is present/documented in the person's plan 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 alternative documentation. **And/or:**
- 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/strategies 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 being 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.

***The key to a "YES" is that the strategies and back up plans relate to the activities/goals of the person that are meaningful to him/her and not just functionally based safeguards.***

**Select "NO" if any of the following:**

- The person reports dissatisfaction and feels limited in his/her ability to try new things of interest to him/her 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.
- Safeguards reflect only functional areas of concern (e.g., choking; bathing; etc.).
- Action has not been taken to identify risks and/or strategies to help the person to engage in activities that are meaningful and important to the person.

***1 d. The person's Habilitation Plan is written in plain person-centered language and is understandable to him/her; it is written in his/her preferred language, which includes Braille, if necessary. (Yes or No)***

CMS expects the planning process to be understandable and accessible to the person and 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

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person. For persons with limited English proficiency, language services must be available at no cost.<sup>9</sup>

The habilitation plan, IPOP, and other corresponding documentation should be written using People-First Language. People-First Language emphasizes the person, not the disability. By placing the person first, the disability is no longer the primary, defining characteristic of an individual, but one of several aspects of the whole person. People-First Language is an objective way of acknowledging, communicating, and reporting on disabilities. It eliminates generalizations and stereotypes, by focusing on the person rather than the disability. For example, she *has* autism vs. she's autistic or he *uses* a wheelchair vs. he's wheelchair bound.

Look at the habilitation plan and determine if it has been written clearly, using people-first, 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/proxy if necessary) has an understanding of their Habilitation Plan.***

- The person knows that they have a habilitation plan and what is in it.
- The plan is written using People-First Language.
- The person knows where a copy of their plan is if they want to see it and/or the person have received a copy of their Habilitation Plan.
- 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 for a "YES" is that the staff makes every effort to make the person's plan accessible and understandable to the person.***

***Otherwise, Select "NO":***

***1 e. The person has been made aware of and knows that he/she can request a Plan change, and how to do so, and any related Plan changes are made within a reasonable timeframe. (Yes or No)***

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<sup>9</sup> 42 CFR 435.905b

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**Select "YES" if:**

There is evidence that the person has been made aware that they can request a plan change at any time and/or the person knows how to request a plan change and expresses that they would do this if they needed or wanted to.

**Otherwise, Select "NO".**

**1 f. The person reports that the planning process is reflective of his/her choices and priorities for meaningful goals/activities. (Yes or No)**

This question requires an interview with the person and/or the person's family member/advocate/proxy that knows them best, and if necessary, staff. **The key focus to this question is whether the person reports/believes that the plan and the process are reflective of his/her priorities for meaningful goals and community activities; i.e., the planning process helps the person to achieve what is important to him/her.**

**Interview considerations with the person:**

- Overall, does the planning process help you have the life you want – i.e., activities choice, goals, and/or relationships?
- Have you asked for a meeting to discuss a change? If so, how did that go?
- Are you aware that you can ask for a change in your plan when you want to?
- Are you able to choose and participate in the activities that are important to you?
- Are you able to see the people that are important to you—your friends, family, etc. at times you choose?
- Are there any goals that you want to work on that haven't been addressed?
- Are you supported to make your own day-to-day choices when you want to as well as big decisions?

**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?
- Does the person report they are adequately supported in their home?
- 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 the planning process and choice of supports and services in the setting and community provided by the residence. Ensure that this is reflective of what is

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most important to the person in terms of their activities, priorities, and goals to have the life that he/she desires. **And/or:**

- The person reports that the planning process and resulting supports/services provided is reflective of his/her priorities for meaningful life activities.

**Otherwise, Select "NO".**

## Section 1-2:

### **1-2 HOUSING PROTECTION AND DUE PROCESS:**

**Standard 2: The person has a legally enforceable agreement that addresses eviction processes and appeals comparable to the jurisdiction's tenant landlord protections, 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 jurisdictions of landlord-tenant law.<sup>10</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 an occupancy agreement or another comparable written agreement with the agency, in the person's file. This agreement should address the circumstances under which the person could be required to relocate that the due process/appeals provides to them.

***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 and sleeping or living units, in addition to any eviction or discharge process that is outlined.

**2 a. The person has a lease or other written occupancy agreement that provides eviction protections and due process/appeals and specifies the circumstances when he/she could be required to relocate. (Yes or No)<sup>11</sup>**

**Select "YES" if:**

- There is evidence of a written occupancy agreement that specifies due process and appeals regarding the person's residential setting and circumstances, under which he/she could be required to relocate. This can be a written residential/occupancy agreement that outlines 633.12 Notice of Rights and specifies the circumstances upon which the person would be required to relocate and the due process/appeals provided in these circumstances. This document can be combined with a Notice of Rights as long as the

<sup>10</sup> 2960 Federal Register / Vol. 79, No. 11 / Thursday, January 16, 2014 / Rules and Regulations

<sup>11</sup> Adapted from CMS Exploratory Questions for Residential Settings, Page 6

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occupancy agreement section specifies protections/appeals from eviction and circumstances upon which the person could be required to relocate. **AND:**

- There is evidence that the person and/or their proxy/advocate was informed of these rights (e.g., signatures on the document; the person has a copy; the person/proxy can explain what their due process/appeals rights are should they be asked to relocate).

**Select "NO" if:**

- There is no evidence of a written occupancy agreement that includes due process/appeals and specifies circumstances where the person could be required to relocate and the due process/appeals available. **OR:**
- There is an occupancy agreement but no evidence of the person having been informed of these rights.

**2 b. There is evidence that the person and/or their representative knows/understands their right to due process/appeals and when he/she could be required to relocate. (Yes or No)<sup>12</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**

- 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 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.

***Otherwise, select "NO".***

### Section 1-3:

#### **1-3 RIGHTS:**

**Standard 3: The person is aware of his/her rights, how to address his/her needs, concerns, and preferences, 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 he/she can understand, e.g., if the person cannot read, is there evidence that his/her rights were explained to

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<sup>12</sup> Adapted from CMS Exploratory Questions for Residential Settings, page 6

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him/her and the representative?

- 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/Considerations 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 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 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.

### **3 a. The person is provided with information about his/her rights in plain language and/or in a way that is accessible to him/her. (Yes or No)**

**See Guidance for Habilitation Planning under "d" for plain language that is understandable to the person; written in his/her preferred language, which includes Braille if necessary.**

#### **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 in a way that is accessible to the person.

**Otherwise, select "NO".**

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### **3 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. The contact/process is appropriate given the living arrangement.

**Otherwise, select "NO".**

### **3 c. The person is comfortable discussing their concerns with residential staff and/or provider staff. (Yes or No)**

**Select "YES" if a majority of the following:**

- The person reports being comfortable in expressing him/herself with staff;
- The staff seem responsive to the person;
- Staff intervene when the person needs further assistance, and/or empowers the individual to understand the impact of decisions;
- Staff's response towards the person is individualized and reflective of the person's preferences.

**Otherwise, select "NO".**

### **3 d. The person reports that staff recognizes and respects his/her rights. (Yes or No)**

**Select "YES" if:**

- Through interview with the person, he/she reports that his/her rights are recognized and respected by staff. **AND:**
- Upon interview, the person does not provide any information when questioned that indicates a lack of respect for the person and their rights.  
**Also consider whether:**
- Staff can explain what people's rights are and how they work to respect them.
- There is evidence that staff provides opportunities for the person to be a self-advocate,

**Select "NO" if any of the following:**

- The person and/or his/her proxy report information that indicates that any staff member in the home has a lack of respect for the person's rights.
- There is any indication from interview with the person and/or his/her proxy, family members, other staff reports, and/or observation or documentation review, that the person has been coerced in any way (e.g., the person doesn't want to sit at the table and have dinner during meal time but staff "coerces" the person to sit down and eat with everyone else even though it is clear that the person doesn't want to at the current time).
- There is any evidence (e.g., incident reports, Plan documentation, etc.) that the person's rights have been breached within the last year.

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### **3 e. The person controls his/her personal resources and decides how to spend his/her personal discretionary funds. (Same as #57 of the Universal Protocol--the person's Personal Allowance is spent on items/activities of their choosing). (Yes or No)**

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

Also consider the following in the determination process:

#### **Interview/Considerations 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? If so, can you make decisions and access it yourself as well?
- Do you receive a paycheck? What do you do with your paycheck? Do you keep it or go to the bank with it? Are you asked to hand it over to staff? If so, 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?

#### **Select "YES" if a majority of the following are present:**

- The person is supported to spend their personal allowance on activities/personal interests that are meaningful to him/her;
- The person reports that they have access to their personal allowance funds when needed to engage in activities and make purchases of their choice; and,
- Residential staff helps the person to budget and make informed choices about purchases.

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

- There is evidence through documentation and/or interview that the person does not receive sufficient support to exercise their right to spend their personal allowance funds on activities/items of interest to him/her, **OR:**
- There are unnecessary/unreasonable barriers/restrictions on the person being able to spend their personal allowance funds, without an appropriate rights modification that clearly documents all the necessary elements.

### **3 f. The person is supported to express him/herself through personal style choices/ decision making about dress and grooming preferences. (Yes or No)**

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

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***This question is best answered via observation of the setting and staff, as well as interview with the person.***

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 their hair long, or wear a beard, or be clean-shaven 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 these 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 choices about what makes you feel comfortable?
- Do you like the clothes that you wear? Do they fit well?
- Do you have clothes in your favorite color?
- Who decides when you shower/bathe? Do you like a 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? Do you get your hair cut/styled as often as you prefer?

***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:***

- The person is wearing clothing that fits appropriately and expresses their own personal fashion choices and style, and/or the person can point to particular aspects of clothing or personal grooming and explain why they like them, and/or the person reports that staff helped them to find specific items that matched their preferences when shopping or getting dressed; **AND:**
- The person's grooming habits are healthy and satisfactory (to the individual) – not causing impact to their social acceptance. The person or their representative reports that personal grooming (hair style, makeup, etc.) habits are chosen by them, individually.

***Answer "NO" if any of the following:***

- The person is wearing clothes that don't fit (not by choice).
- The person expresses that they would like a choice of what they wear and they do not have any choices.
- The person's grooming needs are not addressed and it is negatively impacting his/her social acceptance.
- Everyone in the home has the same haircut, style of dress, etc., and not by choice.

## **B.) COMMUNITY ACCESS and SUPPORT**

**Community Access and Support:**

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While Sections #1-3 of Part I of the Person Centered Assessment Tool focus on the person-centered planning process, the following sections of the Assessment Tool focus on the effective implementation of the plan and the day-to-day supports and services provided to the person by residential staff.

## Section 1-4:

### **1 - 4 FULL ACCESS TO THE BROADER COMMUNITY TO THE SAME DEGREE AS OTHERS:**

#### **Standard 4: The home where the individual resides 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>14</sup>

The following information is helpful in guiding what is meant by "**full access**" to the community "to the same degree of access" as others. **Critical factors include ensuring that service and support delivery practices do not isolate people with disabilities from people who do not have disabilities, and ensuring that service and support practices are not institutional in nature.**

#### **Full Access to the Community to the Same Degree as Others (extracted From the HCBS Settings ADM):**

HCBS settings must seek to optimize and not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

In practice, when considering whether people share in the hallmarks of community living to the "same degree of access as individuals without disabilities", it is helpful to consider and compare/contrast how you live your own life and the day to day choices and compromises that you make in your home, workplace, and community and the negotiations necessary to develop and pursue your own interests and important relationships. The rights and responsibilities that we all experience every day such as having consideration for other people that we live with, having a job/going to work/fulfilling work commitment/volunteer commitment, respecting our coworkers, making choices within our income/budget, etc. are also useful to consider as we support people to navigate community life and consider the benefits and consequences of their actions. The expectations for people with disabilities should be the same as for any other person living in the community. All people have the responsibility to consider the thoughts and needs of others while exercising their own rights, priorities, and preferences.

In addition, when considering "**same degree of access**" to life in the community for the people we support, we need to ensure that people with disabilities are not segregated or isolated from people without disabilities and ensure that support and service delivery practices are not "institutional" in nature. There are a number of critical factors to consider when making this determination:

<sup>14</sup> **3030 Federal Register** / Vol. 79, No. 11 / Thursday, January 16, 2014 / Rules and Regulations, last column

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- The purpose of the activity; are people interested in the activity, will they see people they know or with whom they have common interests?
- The number of people from the residence participating together and whether people were offered a choice on whether or not to participate;
- The larger environment in which the activity is occurring (e.g., a larger group may be more appropriate participating in an activity where other large groups congregate such as a community concert as long as individuals are interested and staff support is sufficient to help the group participate positively);
- The intent and anticipated outcomes for people participating in the activity; and
- Peoples' feelings about the activity and how supports are delivered during it; are staff supports available to help individuals fully participate in the activity?; are individuals mandated to stay together e.g., everyone in the group goes to the rest room together with paid staff or stands together on the food line?

For example, a "group trip" in an agency bus or van can be isolating/segregating and appear institutional (even if unintentional) if people are congregated together and mandated to stay together with only each other and paid staff when at/engaging in the activity; and while at the activity, there are displays of "supervision", power or control exerted by staff over residents drawing unwanted attention to the group. This can make residents feel isolated and different from the larger community of people around them. It also exhibits institutional service delivery characteristics to the greater community. These characteristics would not be considered "full access to the community" to the "same degree of access" as people who do not receive HCBS.

There is recognition that not all people have had sufficient opportunity to discover the activities that are of the greatest interest to them and that during some activities individuals may not be engaged or may actively resist the activity. This is often a normal course of learning and both staff and natural supports should facilitate learning opportunities and "listen" to the person to best understand their ongoing interests. Learning and "listening" requires noting any verbal, vocal, gestural and behavioral communications exhibited by the person and putting them in context with the person's life experiences. This learning is best achieved in a small group or individually as support givers will need to be flexible during the activity to accommodate the person's response to the environment and event.

There is an expectation that providers/staff will adhere to the services and activities identified in the person's Plan and honor the rights and HCBS Settings requirements. However, if individuals place themselves or others around them in danger (i.e., **there is an immediate, serious, and credible threat to the health and safety** and/or circumstances of immediate jeopardy to the person or others as a result of exercising these rights while following the Plan), it is expected that the provider/staff will take appropriate action necessary to address the situation. Once the immediate crisis is over, the provider/staff is expected to reassess the person's preferences and needs using a person-centered planning process and to update the person's habilitation/service plan accordingly<sup>15</sup>. This process should include consideration and support for the person's informed choices; reflection of risk factors and positive safeguarding measures in place to minimize them including individualized back-up plans and strategies when needed.

### **Rural Settings:**

A very rural setting 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 analysis lies in the phrase "to the same degree of access that non-disabled people have to their local community".

<sup>15</sup> Federal Register /Vol. 79, No. 11 /Thursday, January 16, 2014 /Rules and Regulations , 2961, first column

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It is important that individuals who reside in very rural settings also understand that they have a choice of where they live and can ask to move to a more urban setting if they feel isolated from the greater community.

## **Spontaneous Activities:**

In evaluation of this area, there is recognition that spontaneous requests at certain times of the day may require planning to achieve. It is expected that providers and staff may need to consider not only paid staff but also use of natural supports such as family members and non-paid members of circles of support as individuals increasingly exercise greater control over their schedules and activities. Spontaneity in choice of activities should be encouraged and supported whenever possible, no different than non-disabled individuals who live with others and enjoy the freedom to pursue an interest on the spur of the moment, as well as the possible disappointment when lack of planning sometimes impacts being able to make necessary arrangements to participate (e.g., a person wants to go to the craft fair but it is only open another 2 hours).

### **4 a. The person is encouraged and supported to have full access to the community based on his/her interests/preferences/priorities 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 (based on the person's Habilitation Plan and/or alternative documentation) that reflects the community-based activities that the person wants, including desired frequency and supports needed (see 1b).***

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>16</sup>

***Staff should 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.***

Information about the person's choices for meaningful community inclusion/integration activities, desired frequency and duration of these activities, and the supports needed to participate should be documented in the person's Habilitation Plan or alternative documentation that becomes part of the Habilitation/Service Plan. This documentation becomes the basis for assessing whether the person's priorities for community activities are being supported by the residence. See the guidance for standard 1 b. ("The Person's Hab Plan (or alternative documentation) incorporates the meaningful and individualized community-based activities that the person wants, including desired frequency, and the supports needed") for further information on this documentation.

In general "To the same degree as others" does not mean that all individuals in the home are **always** transported to an activity together via the agency bus regardless of individual preferences; and the group trip in the agency bus is the **only** way that people in the home

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<sup>16</sup> Adapted from The Council on Quality and Leadership Quality Measures 2005 Personal Outcome Measures Measuring Personal Quality of Life, page 96

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access the community.

However, it is recognized that in some instances, groups do enjoy engaging in the same activities. In general, meeting the requirement of "same degree as others" for group activities could occur if (a) it can be documented that group community activities were chosen individually by the person among options; (b) the group trip is not the only activity that the person ever engages in to access the broader community; and, (c) individuals are **encouraged and supported to interact with others who do not have disabilities rather** than stay as an entire group that is insulated/isolated from the public at large.

### **An example that balances full access to the broader community with individual preferences:**

An agency transports individuals in the agency bus to the County Fair with drop off and pick up times. Staff and other natural supports are provided/available for individuals to pursue their own interests/activities while at the fair in an individualized way, not always together as an entire group.

### **Interview with the person/considerations for 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 (i.e. shopping, banking, church, school)? Do you get to do these things? If so, how often?
- What kinds of recreation or fun things do you like to do in the community (i.e. movies, sporting events, special events)? Do you get to do these things? If so, how often?
- 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? If not, why not?
- Is there anything that you would like to do in the community that you don't get to do?
- What support 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 and/or proxy 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.

For individuals who have difficulty communicating their desires directly, it is important that surveyors look for indications that staff are attempting to uncover the person's likes and dislikes and that they "listen" to the person, including the non-verbal cues.

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

- The person has **access to information** (flyers, newspapers, internet, and/or word of mouth) to learn of activities occurring outside of the setting which he/she may be interested in and choose to participate. **Or**, staff supports the person to learn about opportunities that the person may be interested in.
- The person is **connected** to experiences and events according to their individualized

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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, sibling, serving on a committee, being in a club, etc.
- The person is supported to have **access to information** to learn about **social role options/other activities** in the community in which he/she may be interested.
- 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, i.e., supporting the person through the discovery process for new experiences.
- 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 and/or supported through a discovery process in the community (these examples should be no later than 2-3 weeks old) to the same degree as others who are not disabled and should not be a group trip unless a-c in the above paragraph (and repeated below) is evident.

"Group Trips": (a) it can be documented that group community activities were chosen individually by the person among options; (b) the group trip is not the only activity that the person ever engages in to access the broader community; and, (c) individuals are **encouraged and supported to interact with others who do not have disabilities rather** than stay as an entire group that is insulated/isolated from the public at large.

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, a demonstration that there are routine efforts and future plans also apparent.

### **The answer to this question would be "NO" if ANY of the following:**

- There are barriers or obstructions that serve to **isolate** the person from full access to the community, and the agency/facility/staff is not doing anything about these barriers/obstacles in a timely manner.
- 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. E.g., the person reports that he/she asked to engage in an activity during typical hours for the activity and he/she reports frequent refusal of these requests due to lack of staffing and/or was refused more than once in the last 3 weeks.
- If nothing is done to help the person access the broader community/discover 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". E.g., the person reports that the only community activities that he/she engages in were group activities involving only other residents of the house and paid staff.

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- 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, regardless of meaningful choice, the answer is "No".
- If all individuals attend the same types of activities with little choice of options or evidence of individualized interests.
- Documentation and interviews suggest that individuals **only** frequent the community through the same limited set of activities, with little variance or options being offered and usually in larger groups (4 or more).

### **4 b. The person regularly participates in unscheduled and scheduled community activities in the same manner as individuals not receiving HCBS. (Yes or No)<sup>17</sup>**

This question verifies whether or not the person accesses the community in the frequency and manner that he/she wants, just like any other adult and in accordance with the person's Habilitation Plan and/or alternative documentation (see 1b). It determines if the person is accessing the community **as much as** he/she desires to do so and 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 he/she chooses?
- 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/unscheduled community experiences possible, i.e., if the person wishes to engage in an activity that wasn't previously scheduled; does staff make every effort to attempt to facilitate the person's activity through natural and/or paid supports and other mechanisms?

**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;

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<sup>17</sup> CMS exploratory question number 2 first bullet

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- Recreational activities in the community such as boating, amusement parks, fairs, club meetings, concerts, movies, plays, etc.;
- Competitive integrated employment and/or integrated volunteer work (integrated employment or volunteer work does not include when only individuals with disabilities 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 1a and 1b). 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"**: This means that individuals participate in activities that include having contact and interactions with others in the community who are not receiving HCBS and **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>18</sup>

### **Interview/considerations with the person:**

- What kinds of things do you do in the community?
- How often do you do these things?
- When was the last time you \_\_\_\_\_ (e.g., shopped, got your hair done, ate out, etc.)?
- What kinds of things would you like to do in the community?
- How often would you like to get out in the community?
- Who decides where and with whom you go?
- Is there anything you would like to do in the community that you do not do now?
- What supports do you need to participate fully in the community? Do you receive those supports?

### **Interview with staff or others:**

- How do you support people to regularly participate in scheduled/unscheduled community activities?
- What opportunities does the individual have to participate in the community?
- Are there any barriers to the individual fully accessing the community as they choose?
- How do you handle impromptu requests for participation in community activities?
- Are there operational barriers that impact your ability to assist and support people to access the community? If so, what is being done to help improve this?

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

- There is evidence that the person accesses the community regularly\* for both scheduled and unscheduled activities that are important to him/her, in the same manner as

<sup>18</sup> Ibid, page 97

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individuals who do not receive HCBS. Note: "the same manner" does not mean always as a "group trip" on the agency bus. **OR:**

The person is supported by the residence to engage in competitive employment and/or meaningful volunteer opportunities that are of interest to the individual. Supported means helping the person to maintain these opportunities through supports. **AND:**

- The person is empowered and supported to make impromptu requests to engage in community activities in the same manner as people who do not receive HCBS (e.g., the person would like to go for an unplanned walk in the neighborhood; the person wants to go out for ice cream; etc.). In these cases, residential staff is expected to make every attempt, including calling on natural supports, etc., to honor the person's choice for unscheduled activities.
  - ❖ **"Regularly" is defined by the person based on their preferences** and documentation in their plan (see 1a and 1b). However, if there is no evidence of community activity apparent in the last 2 weeks, the survey team should dig deeper into what is happening with and for the person with regard to community engagement opportunities.

As described in the HCBS Settings ADM, spontaneity in choice of activities should be encouraged and supported whenever possible. This is no different than non-disabled people who live with others and enjoy the freedom to pursue an interest on the spur of the moment as well as the possible disappointment when lack of planning sometimes impacts being able to make necessary arrangements to participate or not to participate (e.g., a person wants to go to the craft fair but it is only open another 2 hours). Providers and staff may need to consider not only paid staff but also use of natural supports such as family members and non-paid members of circles of support as individuals increasingly exercise greater control over their schedules and activities.

### **Select "NO" if ANY of the following:**

- The individual reports that he/she is not supported, empowered, or enabled to participate in desired activities despite repeated requests to staff.
- The individual reports that all activities are scheduled by staff without input from individuals and/or family members/advocates regarding individual interests and preferences.
- Staff report barriers, such as lack of transportation or lack of staffing, that hinder opportunities for participation in scheduled and unscheduled events.

### **4 c. The person is satisfied with his/her level of access to the broader community as well as the support provided to pursue activities that are meaningful to him/her for the period of time desired. (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 and maintain 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, if needed?

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- 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 is not adequately supported financially by the agency to accompany the person (and the agency is not doing anything else to help the person meet this goal), attending an event might not be feasible for the person and therefore the person's opportunities are limited). It is expected that the agency will utilize creative options to overcome potential barriers.
- Does the setting have enough **access to viable transportation options**? If agency vehicles are limited, are there public transportation options?
- Does the agency have a means for identifying and understanding the individual's preferences for community engagement and satisfaction with the frequency of engagement?
- 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?
- Does the provider 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 a majority of the following:**

- 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 at meeting the person's desired level of community access/activities are being implemented and the person is satisfied.

**Select "NO" if any of the following:**

- 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 rollers skating but there is not enough staff to take him/her; and/or the agency/residence is not proactively taking steps to resolve the issue. If the agency is taking steps to resolve the issue, sufficient evidence must be provided; otherwise the answer is "No".
- Service plan activities aimed at meeting the person's desired level of access are not being implemented and the person is dissatisfied or negatively impacted.

## Section 1-5:

### 1 - 5 RELATIONSHIPS:

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**Standard 5: Residential staff facilitates and supports the person to pursue and maintain relationships that are important and meaningful to him/her.**

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 or visiting others 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. The person should also be aware that they may visit with others in the community. 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.

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>19</sup>

Some individuals may not express or may not be capable of expressing interest in visitation by family, friends, workmates, and others. 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 stopped 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 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 or will not express their desire or interest, staff should be observant of their reaction to family members and other people. If they and others in their circle agree that the person may benefit from visits with people the individual seems to enjoy, they should provide the supports to facilitate such visits, including visits in the residence.

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>20</sup> rather than having blanket house rules restricting when and how a person can receive visitors.

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<sup>19</sup> 79 Fed. Reg. at 2,966.

<sup>20</sup> CMS preamble to federal regulations page 75 (2249 F/2296-F)

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## **Interview with the person/considerations for 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?
- Is there 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 these 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 those that are 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 networking opportunities, Skype, e-mail, etc.;
- Assistive communication devices;
- 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 those they want to spend their time with and be around.

### **5 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.
- For example, the person is encouraged and supported to invite his/her friends, family, relatives, and significant others, etc., to their home during times they select, if he/she chooses to.

**Otherwise, Select "NO".**

### **5 b. The person regularly interacts with people who are important to him/her (who are not paid to spend time with him/her) and he/she is satisfied with the type and frequency of interactions. (Yes or No)**

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For purposes of this question **regularly** should be defined **by the person**, in accordance with their wishes and desires and reflected in the person's Habilitation Plan/other documentation that becomes part of the plan (see Section 1: Habilitation Planning, Question 1b. for further guidance).

**Select "YES" if:**

- Through interview and documentation there is evidence that the person regularly interacts with people who are important to him or her, **AND:**
- The person expresses satisfaction with the number and type of important relationships that he/she has and how often he/she interacts with them (including people who are not paid to spend time with him/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), **And/or:**
- The person expresses dissatisfaction with his/her lack of friendship. For example, the person may be dissatisfied that he/she does not have enough friends, **And/or:**
- 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.

**5 c. The person is able and supported to have visitors of his/her choosing at any time.  
(Yes or No)**

**Select "YES" if there is a majority of the following:**

- *There is evidence that people visit the person in his/her home.*
- *The person reports that he/she can have visitors whenever he/she chooses.*
- *The person receives encouragement and support from residential staff to have visitors (e.g., assistance in scheduling visits).*

**Rights Modification:** *If there is an appropriate rights modification documented that restricts the right of the person to have a certain visitor or visitors in general, to be a "Yes" for this question, the rights modification must have been considered as part of the Habilitation/ISP planning process; and if related to a assessed behavioral need, documented in a Behavior Support Plan in accordance with all of the requirements of 633.16. If the modification is for any reason it must:*

- *Identify the specific individualized assessed need;*
- *Document the positive interventions and supports used prior to the modification;*
- *Document the less intrusive methods of meeting the need that had been tried but did not work;*
- *Include a clear description of the condition that is directly proportional to the assessed need;*
- *Include regular collection and review of data to measure the ongoing effectiveness of the modification;*
- *Include established time limits for periodic review to determine if the modification is still necessary or can be terminated;*

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- Include the informed consent of the individual;
- Include an assurance that the interventions/supports will cause no harm to the individual.

**Select "NO" if any of the following:**

- There are blanket rules/visiting hours restricting the person from having visitors of their choosing at any time.
- The person does not receive any support or assistance to have visitors.
- The person reports wanting people to visit and having been denied the opportunity.
- There are rights restrictions in place that do not include the required elements.

## C.) SETTING CHARACTERISTICS AND PERSONAL EXPERIENCE:

### **1-6 Restrictions, Interventions, and Rights Modifications:**

**General Guidance and Information:**

When assessing this standard, consider all routine aspects of a person's life, access, and opportunities. (While some guidance regarding rights leads one to think of behavioral interventions, assessing appropriateness of restrictions and rights modifications also applies to all the qualities of home and community-based settings attributed in these federal requirements and identified throughout this assessment) (e.g. access in the home and community, individualized scheduling, personal monies, privacy, etc.).

For purposes of this assessment, **a person's rights include:**

- Civil rights as a US citizen;
- Rights guaranteed under NYCRR Part 633.4;
- Rights as spelled out in CMS' HCBS settings regulations.

*Consider rights that apply to provider-owned or controlled Residential Settings, as stated in the HCBS Settings regulations issued by CMS.*

For purposes of this assessment, **restrictions and rights modifications include alterations:**

- To any personal rights identified above;
- Including rights limitations, restrictions, and intrusive interventions as defined in NYCRR Part 633.16;
- Which may or may not require an individualized behavior support plan.

**CMS Regulations identify standards related to any modification or restriction of rights in HCBS settings as follows.** 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. Identifies a specific and individualized assessed need;
2. Documents the positive interventions and supports used prior to any modifications to the person-centered service plan;

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3. Documents less intrusive methods of meeting the need that have been tried but did not work;
4. Includes a clear description of the condition that is directly proportionate to the specific assessed need;
5. Includes a regular collection and review of data to measure the ongoing effectiveness of the modification;
6. Includes established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
7. Includes the informed consent of the individual;
8. Includes an assurance that interventions and supports will cause no harm to the individual.

If a person has a restriction/limitation in place because of a **behavioral concern**, he/she should already have a behavior support plan in place that addresses the elements above. If the person requires any limitations to rights expected in HCBS settings due to identified behaviors, the BSP would also be the appropriate place to provide the required documentation.

In the event that any of the person's rights are limited or modified 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 information regarding limitation/restriction may fit appropriately into an individualized Plan of Protective oversight (IPOP), habilitation plan, or safeguard section of the ISP.

*Note: If the IPOP is selected by the provider as the document source for required information, ensure that the information is documented in a manner or location that does not confuse staff's ability to identify **current** strategies to be implemented.*

**NOTE:** The only exception to meeting the rights modifications requirements #1-8, above, is if there is an emergency situation where the person places themselves or others around them in serious jeopardy (i.e., there is an immediate, serious, and credible threat). In this case, the provider/staff will take immediate and appropriate action necessary to address the crisis situation, regardless of documentation present. Once the immediate crisis is over, the provider/staff is expected to reassess the person's preferences and needs using the a person-centered planning process, determine strategies to address health and safety threats determined to be recurring/likely to recur, and update the person's habilitation/service plan accordingly<sup>[1]</sup>.

Interview, observation, and documentation review should provide information necessary to identify whether the person has any restrictions or modifications to their rights, and verify whether the requirements identified below have been addressed.

It is expected that the survey staff is familiar with rights limitation in relation to 633.4. Examples of rights modifications/limitations related to HCBS Settings requirements may include:

- Denial of access to routine areas of the home, e.g. kitchen, laundry room, linen and

<sup>[1]</sup> Federal Register /Vol. 79, No. 11 /Thursday, January 16, 2014 /Rules and Regulations , 2961, first column

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supply cupboards, etc.;

- No access or denial of access to food at any time;
- Having rules as to when the person can receive visitors and/or whether provided privacy during visits;
- Not having freedom to control one's own schedule;
- Denial of phone access or privacy during use.

## Section 1-6:

### 1-6 Restrictions, Interventions, and Rights Modifications:

**STANDARD 6:** The person is free from unnecessary restrictions and rights modifications and coercion.

**6 a.** *When interventions that restrict and/or modify rights are used, the person's written plan includes a description of positive and less intrusive approaches that have been tried but have not been successful. (Yes, No or Not Applicable)*

The description **of the positive approaches and less intrusive strategies that have been tried unsuccessfully** prior to inclusion of the restrictions/modifications should be documented as follows:

- If rights modifications and/or restrictive interventions are part of behavior intervention strategies, the description should be documented in the person's behavior support plan (BSP) as required by Part 633.16(e)(3)(ii)(b). **The expectation for documentation is the same as described in the Behavior Services-Routine Review (BS-RR) Protocol #17.** *"This should include a description of all positive, less intrusive and/or other restrictive or intrusive approaches that have been tried but have not been successful prior to the inclusion of the current restrictive/intrusive intervention(s) and/or limitation on a person's rights. An explanation of why the less intrusive alternatives are insufficient to maintain or ensure the health or safety or personal rights of the Individual (or others) should be included."*
- A rights modification or restriction may be in place for the health and safety of a person, but not necessitate a BSP. In this case, the identification of positive and less intrusive approaches attempted and inadequate should be documented in person's service plan, such as the ISP, Habilitation Plan, or IPOP. For clinically determined restrictions required for the assurance of serious health concerns, documentation of positive interventions/supports and of less intrusive methods tried may be in the form of a description of the prior inadequate level of support and how, if left in place, it would directly contribute to the mortality of the Individual.

**Select "YES" if:**

- The person's BSP (when required) or another component of their service plan documents the description of positive and less intrusive approaches that were tried but were not successful, prior to inclusion of the current restrictions or intrusive interventions.

**Select "NO" if:** *If "NO", cite Part 633.16 in accordance with the recertification review protocol and procedures.*

- The person's service plan or BSP does not include the required information.
- There is no evidence that positive and less intrusive measures have been implemented and tested.

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Select **Not Applicable only** if there are no rights modifications or restrictions of any kind including those applicable to Part 633 and the new HCBS Regulations.

**6 b. When interventions that restrict and/or modify rights are used, the person's written plan includes a description of the person's individualized assessed need and/or behavior that justifies the inclusion of the restriction, intrusion and/or rights modification. (Yes, No or Not Applicable)**

The description **of the individualized assessed need(s) and/or behavior(s) that justifies the implementation of any/each** restriction/modification should be documented as follows:

- If rights modifications and/or restrictive interventions are part of a behavior intervention strategies, the description should be documented in the person's behavior support plan (BSP) as required by Part 633.16(e)(3)(ii)(a). **The expectation for documentation is the same as described in the BS-RR Protocol #16.** The BSP should provide an individualized description of each assessed need or behavior so that the necessity for each restriction, intrusion, modification, to which they are linked, is clear.
- A rights modification or restriction in place for the health and safety of a person may not necessitate a BSP. In this case the identification and description of each individualized need and linkage/justification to the restriction/modification/intrusion should be documented in person's service plan, such as the ISP, Habilitation Plan, or IPOP.

The limitation/restriction/modification should be in proportion to the identified need. If the linkage between the behavior/need and the restriction/intrusion/modification is not clearly made in documentation, and/or the necessity for the type of strategy used is not evident, interview the person, family, and agency staff as needed to assess the thought process behind the decision to implement the strategies.

**Select "YES" if:**

- The person's BSP (when required) or another component of their service plan includes the individualized description of each behavior or need requiring/justifying each restrictions or intrusive interventions; and
- The use of the restrictive strategies in relation to the behavior/need appears justified.

**Select "NO" if:** *If NO, cite Part 633.16 in accordance with the recertification review protocol and procedures.*

- The person's service plan or BSP does not include the required information; and/or
- The use of the restrictive strategies in relation to the behavior/need does not appear justified and/or proportionate.

Select **Not Applicable only** if there are no rights modifications or restrictions of any kind including those applicable to Part 633 and the new HCBS Regulations.

**6 c. The person is subjected to restrictive or intrusive interventions, restraints, or rights modifications only with their informed consent or that of an authorized surrogate. (Yes, No, or Not Applicable)**

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**OPWDD provides a clear definition of Informed consent in NYCRR Part 633.16 and CMS provides an explanation in §483.440(f)(3)(ii) guidelines; elements of which are used in the description below:** Informed Consent means the effective knowing consent by a person (or his/her authorized surrogate/family member/advocate) with sufficient capacity to evaluate the decision and with the ability to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary to informed consent include:

- A fair explanation to the person or surrogate of the procedures to be followed, and their purposes; and
- The person is aware of the conditions being agreed to and the potential disallowances, risks, benefits, appropriate alternatives, and consequences.
- The person is aware that they may withdraw consent at any time without prejudice.

***Consent, when given by a surrogate, should only be given if in the person's best interest and takes into consideration, to the extent possible, the person's opinions, beliefs and wishes.***

- Information must be presented in a manner that permits a knowledgeable evaluation and decision to be made. It must be presented in simple terms, in whatever language and manner the party giving informed consent understands most easily and clearly.
- Informed consent should be specific to each limitation, if more than one, and separate. ("Blanket" consents are not allowed).
- Consent shall be in writing, except in the case of unplanned/emergency use for the health and a safety of the person or others. Verbal consent may be obtained; however, it should be authenticated in writing (within 45 days).

### ***Evidence of Written Informed Consent:***

Written informed consent documentation should indicate that necessary information provided to make the decision and that the person was able to exercise true freedom of choice. It should be indicated as follows:

- Review documentation for inclusion written informed consent. If restrictions/limitations are strategies included in a BSP, the consent should be provided as a dated signature consenting to the plan. **See 633.16(e) (4) (ii), BS-RR #23 and 633.16(g) (3) #24.**
- Limitations/restrictions not associated with a BSP should be documented in other components of the service plan. Written informed consent may be provided in the manner and format chosen by the agency. Examples include but are not limited to: attestation that dated signature of document includes understanding and acceptance of restrictions/limitations identified in the ISP, IPOP or Habilitation Plan; use of a separate document designed for communication of restrictions and provision of written informed consent, etc. Note: Signature of the ISP will not be considered evidence of written informed consent if the specific limitations/restrictions are identified in a supporting document (e.g. IPOP, Habilitation Plan) but not in the ISP document.

During your interview with the person/surrogate ask the person to describe the process and whether they were provided information necessary to make an informed decision.

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## Select "YES" if:

- Written informed consent is evidenced through signature of consenting party for all limitations, restrictions, modifications. This may be through consent to the person's BSP (when required) or another component of their service plan that identifies the limitations;

## OR:

- Verbal consent is documented for a restriction implemented fewer than 45 days; and
- There is no indication that the process used to obtain consent was insufficient per 633.16 and 483 guidance noted above.

**Select "NO" if:** *If "NO", cite Part 633.16 in accordance with the recertification review protocol and procedures.*

- Required written informed consent is not present.
- Written informed consent is incomplete.
- Consent is evident for some but not all limitations, restrictions, modifications.
- There is evidence that the process used to obtain consent was insufficient per 633.16 and 483 guidance noted above.

Select **Not Applicable only** if there are no rights modifications or restrictions of any kind including those applicable to Part 633 and the new HCBS Regulations.

## **6 d. For any intrusion, restriction, limitation or rights modification, there is evidence that the modification is periodically reviewed for effectiveness and necessity. (Yes, No, or Not Applicable)**

Any modification to a person's rights should not be in place longer than necessary for her/his health, safety, and well-being. It is therefore expected that the conditions, needs and/or behaviors influencing their implementation and the effectiveness of the strategies used to address them be revisited regularly.

This standard addresses multiple expectations of CMS related to the review of limitations, which also align with Part 633.16 requirements for documentation and review (e.g., **BS-RR #s 19, 20, 21**). The elements to assess for this standard include:

1. Data is collected regarding the restrictions and modifications and the person's needs/behaviors for which they are in place.
  - For BSPs: The person's plan must describe what must be documented for each limitation in place, the format, and the frequency of the documentation.
  - Similarly, for restrictions not requiring a BSP, the document that describes the needs and behaviors and necessity of the restriction/limitation must describe the information that must be documented, the format and frequency.
2. Data is reviewed to determine the effectiveness of the restrictions and modifications. Whether through a BSP or another part of the person's service plan, the designated professional must complete a review of the data/documentation required and make a recommendation regarding the effectiveness of the intervention, and whether to reduce, eliminate, revise or continue the restriction/limitation/modification. The review and recommendations must be documented.
  - Note: A person's BSP must also include a plan to fade/minimize restriction inclusive of

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reasonable criteria and approaches to lessening restrictions. A review of effectiveness per data collected for the BSP must take the fading plan into account.

3. A time limit is established to regularly review whether the restriction/modification is still necessary or may be terminated. This time period should be documented as part of the plan:
  - o For BSPs: This must occur at least semi-annually in accordance with 633.16(e) (3) (ii) (g).
  - o For other plans inclusive of restrictions/limitations/ modifications/intrusions, this must occur at least semi-annually as part of the review of the Individualized Service Plan.

Review documentation to verify that the three elements required for this standard and identified above are implemented. If the time period for the first review period has not elapsed, verify that data is being collected, a time period for review is designated, and a mechanism/plan for review of data/documentation is determined/planned.

**Select "YES" if:**

- Activities 1, 2, and 3 above are all being implemented as described in the person's plan;  
**AND:**
- Decisions regarding the continuation of a limitation, restriction, intrusion appear appropriate based on the documentation provided.

**Select "NO" if:** *If "NO", cite Part 633.16 in accordance with the recertification review protocol and procedures.*

- Any of the three components above (data collection, data review, or time period for review) is absent either in planning or implementation; and/or
- The implementation of any component is inconsistent, incomplete or untimely; and/or
- Decisions regarding the continuation of a limitation, restriction, intrusion are not justified based on the documentation provided.

Select **Not Applicable only** if there are no rights modifications or restrictions of any kind including those applicable to Part 633 and the new HCBS Regulations.

### **6 e. The person is not subjected to coercion (including subtle coercion). (Yes or No)**

In evaluating this standard, it is important to keep in mind that the relationship between residents and staff of a group home is almost always an unequal power relationship, in which staff may have the ability to impose unpleasantness or exert control over resident choices/preferences and through support and service delivery practices. As such, it is important for the reviewer to assume that a resident may face pressure to please staff and/or modify his/her behavior and/or not express true preferences in order to get along with staff and in the setting. As mentioned in the guidance above on interviewing individuals, it is best to talk to the person outside of the presence of provider staff, and in an area in which the person is most comfortable talking to the surveyors.

This standard is best assessed following completion of all person and site-based assessment activities, as it requires consideration of the person's service planning, activities, and daily life in total, and the person's perception of it. Interview is required as **a key factor in how the person perceives how, why and what is happening in their life in relation to what they want and prefer.** Interview family/advocate if appropriate. Staff members who know the person well

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may also be able to assist. Your observations will assist in deciding whether to interview staff and whom to interview.

Choice making requires that a person can choose without **coercion** and feels free to express their opinion to others. For purposes of this assessment, **coercion** is defined as **persuading someone to do something by bribery, force (verbal or physical) or threats**. It may take the form of providing something the person desires if he/she submits to the coercion (e.g., if you go with the group, I will buy you ice cream) or the form of denial, such as rejection, removal of benefits, desired objects or activities, or prevention from access to something desired.

If not adequately supported, some individuals, especially those with a history in congregate settings, may have a propensity to please and therefore be easily coerced to agree to activities, routines, and conditions that are not their preference. This may also include unwarranted restrictions and limitations. Be sensitive to the person's/family's perception of their social position and their ability to have and make choices. Coercion may be subtle.

During the interview, engage in conversations that will help to elicit input regarding the individual's day-to-day activities and how they have come to be, their level of decision making regarding activities, schedules, use of money, etc. Determine if the person (or family if they require their support) perceives that they are free to voice their opinion and have it acknowledged and supported. Do people feel forced to do something without choice in the matter? If not provided a choice in the matter, do they understand why that is/was the case? When written informed consent is required, does the person (or family/advocate) describe an experience congruent with making an informed choice or did they feel they were obligated to consent?

If documentation of the person's desires does not coincide with what is occurring on a day-to-day basis, try to determine why there is a discrepancy. Through discussion with individuals/family/staff assess approaches used during service planning.

During observation, note how staff engages with the individual, the vocal tone and content used, whether there is a propensity or tendency to guide, urge, or demand individuals toward a particular decision, and whether true choices are offered and the individual's input considered and accepted regarding activities, scheduling, etc. Note whether the individual is threatened with a consequence if they do not comply with a request.

It is recognized that there may be clinical reasons to guide an individual toward a desired/directed choice. When this is clinically justified based on the individual's needs and well-being, it must be documented as described in the other standards below in this section.

Some specific examples of "coercion" include: bribing someone to do a group activity because it will be easier for staffing, or leading someone to use their personal funds in a specific manner that either benefits the provider/staff or is not a way the individual would prefer/typically spend money. It could also be coercion if individuals are guided in how they respond during ISP meetings, assessments, or investigations if the response could help/hurt the agency/staff.

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

- The person (family/advocate) reports comfort with their ability to express choices, opinions, and make decisions regarding their routines, access in the home and in the

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community, personal finances, etc.

- The person is observed to have the opportunity to express choices, opinions, and make decisions regarding their routines, access in the home and in the community, etc., free from coercion.
- There is no clear evidence of coercion.

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

- Review of activities provides clear evidence that the person (family/advocate) is compelled/required to do things against their will and without justification (i.e., no imminent risk to health and safety).
- Review of activities reveals that the person (family/advocate) perceives coercion to do things or agree to things against their will. They have no understanding regarding why this is expected/required of them.
- The person experiences or is observed to experience warnings of unrelated denial or offers of unrelated rewards used to compel them to agree to something.

### **6 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). (Yes, No or Not Applicable)**

Currently, PROMOTE and SCIP-R are the only OPWDD-approved training courses inclusive of positive behavioral strategies and approved physical intervention techniques.

Verify that the staff that will be required/responsible to support the individual 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 that the 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 have been adequately trained in BSPs that they are responsible to implement.

**Note:** While it is OPWDD's expectation that all service provider's 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:**

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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, are implementing both 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.

## **Section 1-7:**

### **1-7 PRIVACY:**

**Standard 7: The person has privacy in the home where they reside.**

***7 a. Staff knocks and receives permission before entering the person's room/living space. (Yes or No)***

***7 b. The person has privacy in his/her sleeping and/or living unit; including the right to lock his/her bedroom or unit door if he/she chooses. (Yes or No)***

***7 c. The person has privacy in the bathroom and can close and lock the bathroom door; assistance is provided in private when needed by the person. (Yes or No)***

***7 d. 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)***

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 individual have the

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key to his/her bedroom with only appropriate staff also having access to a key?

- Does the bathroom provide privacy for the person? Can the door be closed and locked?
- Is the individual 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?
- Does the person know what personal information is collected about them, who has access to it, and where it is stored? Does the person have access to their information?
- Is personal medical information posted in areas visible to everyone?
- Does the individual provide consent regarding who has access to personal information about him/her?
- 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>21</sup>)?
- Is the individual supported, assisted, and reminded to facilitate their own privacy?
- Are the individual, their peers, and housemates supported, reminded, and 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 FaceTime 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 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 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

<sup>21</sup> Example provided by Ralph Lollar during CMS-NYS call 7/25/14

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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 direct support professionals 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 evidence to indicate why in their service plan and documentation?

## Section 1-8:

### 1-8. CHOICE OF LIVING ARRANGEMENT/ROOMMATE:

**Standard 8:** The person 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 the 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. However, the individual must also be able to choose from generic residential settings (i.e. apartments, condos, own rental houses) outside of standard provider owned/operated settings.

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- 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 live?
- Do you know about the different home/living options possible? Were options outside of group homes discussed (i.e., your own apartment or renting a house with roommates)?
- 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 are supported by staff?
- If you could make a change about where you live or who you live with, what would it be?

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

**8 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".**

**8 b. If the person is not satisfied with their roommate, there is evidence that the staff and/or agency 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

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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 in a timely manner 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. This would include regular 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".**

## Section 1-9:

### **1-9 FREEDOM TO DECORATE/CHANGE PERSONAL ENVIRONMENT:**

**Standard 9: The person has the freedom to furnish and decorate their sleeping or living unit within the lease or other agreement.**

***These questions 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, 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.

***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?

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- 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?

**9 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)**

**Select "YES" if:**

Based on review of the person's person-centered service plan or habilitation plan and interview with the person, his/her bedroom reflects hobbies, interests, collections, family/friends, and memorable events, etc.

**Otherwise select "NO".**

**9 b. The person is encouraged and supported to make changes to furnishings or decorations in their personal living space when he/she chooses to. (Yes or No)**

**Select "YES" if the majority of the following:**

- The person reports that staff assist him/her to change decorations and/or purchase new decorations to reflect his/her tastes.
- The person is satisfied with the decorations in his/her personal space and does not report a desire for changes.
- Staff have an understanding of the person's tastes and it is evident that staff encourages the person to decorate as he/she so chooses.

**Otherwise select "NO".**

## Section 1-10:

### 1-10 SCHEDULE:

**Standard 10: The setting optimizes the person's autonomy and independence in making life choices including the freedom and support to control his/her own schedule.**

Providers/staff are expected to encourage and support individuals to freely choose and control their own schedules and activities (e.g., when to eat, when to sleep, what to watch on TV, preferred community integration activities, etc.) in the same manner as people without disabilities. The provider/staff must ensure sufficient support is available based upon peoples' priorities in their **Plans** for scheduling and activity preferences.<sup>22</sup>

<sup>22</sup> With regard to freedom and control of schedules and activities, CMS states that a person's ability to receive services identified in the person-centered service plan should not be infringed upon by any provider for any reason. Further, CMS states that preventing an individual from receiving any service identified in the person-centered service plan is a direct violation of the person-centered plan requirements and the home and community based setting requirements specified in this regulation. Additionally, any setting not adhering to the regulatory requirements will not be considered home and community-based. The supports necessary to achieve an individual's goals must be reflected in the person-centered service plan as required under § 441.725(b) (5). **2966 Federal Register** / Vol. 79, No. 11 / Thursday, January 16, 2014

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Spontaneity in choice of activities should be encouraged and supported whenever possible. This is no different than individuals without disabilities, who live with others and enjoy the freedom to pursue an interest on the spur of the moment, as well as the possible disappointment when lack of planning sometimes impacts being able to make necessary arrangements to participate. Providers and staff may need to rely not only on paid staff, but also on natural supports such as family members and non-paid members of circles of support for individuals as they increasingly exercise greater control over their schedules and activities.

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>23</sup>

See guidance under Section 1 Habilitation Planning and Section 4 Full Access to the Broader Community for further guidance.

***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 is being actively supported to make decisions regarding activities and schedule.

***Considerations regarding control of one's schedule:*** This question determines if the person's setting and schedule in the home 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.

***10 a. The person is made 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)***

**Select "YES" if:**

- There is evidence that the person is aware of and/or has been informed that he/she has

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<sup>23</sup> 79 Fed. Reg. at 2,978.

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

informed choice of their schedule of activities.

**Otherwise, Select "NO".**

**10 b. The person is encouraged and supported to make their own scheduling choices according to their preferences and needs. (Yes or No)**

**Select "YES" if a majority of the following:**

- The person reports that he/she has informed choice regarding his/her schedule.
- The person's schedule of activities is individualized and person-centered.
- The person's priorities for activities are being supported through their schedule.

**Answer "NO" if any of the following:**

- The person's activity schedule is regimented with little choice or decision-making evident.
- 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.
- The person is coerced to engage in certain activities when they choose not to, explicitly/verbally or through other cues.
- 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.

**10 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)**

**Select "YES" if:**

- It is apparent that individuals can schedule activities in the home according to their scheduling desires.

**Select "NO" if:**

- There are blanket rules in place governing when residents can watch TV, listen to the radio, etc.

**10 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)**

**Select "YES" if:**

The person report that he/she is satisfied with his/her schedule of activities and knows how to request a change.

**Otherwise select "NO".**

**Section 1-11:**

**1-11 ACCESS TO FOOD:**

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## **Standard 11: The person has access to food at any time.**

People must have 24 hour a day access to food unless there is an appropriate rights modification in place. This requirement can be met in a variety of ways, including by giving individuals control in selecting the foods that they eat, storing food in their rooms, eating in their rooms, and deciding when to eat. Minimal options, such as the choice of a snack bar or crackers, will not meet the requirements. An individual should not be presented with narrow options decided by someone else, without input from the individual.<sup>24</sup>

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, and eat in their room and to decide when to eat are all ways in which the access to food requirement can be met".<sup>25</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>26</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>27</sup>

These questions should be answered using observation and interview. Remember, any modification or restriction to a person's food choices or choice of 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 based on the guidance above under Rights Modifications and Yes/No determinations.

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. The expectation is that reasonable approaches are taken to support the people who are impacted by the restriction that is in place to maintain the level of control that is appropriate for them, through mitigating activities that are person-centered.

### **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 so choose?
- Is food and snacks accessible and available at any time?
- Are cabinets, refrigerators, and the pantry unlocked, and is the person is able to access

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<sup>24</sup> Advocates Guide to Consumer Rights in Medicaid HCBS, page 8

<sup>25</sup> 79 Federal Register 2965-2966

<sup>26</sup> 79 Fed. Reg. at 2,965-66.

<sup>27</sup> CMS preamble page 73

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the food?

- If the person prefers to eat alone, is that honored?
- Is the dining area dignified? Does the person use a bib, as opposed to a clothing protector as part of the person's adaptive equipment?
- Are Styrofoam plates and plastic utensils used?
- Does the person have assigned seating with no choice in where to sit?<sup>28</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 so choose?

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

#### **Select "YES" if a majority of the following:**

- The person reports being able to eat their meals when they choose, if they do not wish to have their meal at the scheduled time.
- During observation of meal times, individuals are not coerced to come to the table.
- During interviews with staff and others and/or documentation review, it is evident that there is flexibility provided for meals to accommodate individual schedules and preferences.

#### **Select "NO" if any of the following:**

- During observation, people appear to be coerced to eat during the routine mealtime.
- A person requests to have their meal in their room or at another time and staff does not honor the request.
- There is not any documentation/written evidence that indicate that there is no choice/flexibility to alter one's mealtime schedule.

### ***11 b. The person has access to food 24-7 and is supported to purchase and store his/her own food/snack choices and keep this food available for his/her use at any time. (Yes or No)***

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

- The person has access to food 24-7, either through storing the food in their room and/or getting food from the refrigerator, pantry, and/or asking for food at any time or there is an appropriate rights modification in place through the person-centered planning process that includes all the required elements.
- The residence/staff makes clear that access to food 24-7 is the person's right unless there is an appropriate rights modification.
- The residence/staff supports the person to budget, purchase, and store food that they choose so that it is available to the person at any time, unless there is an appropriate rights

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<sup>28</sup> CMS exploratory questions

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modification in place.

Note: if the rights modification includes all of the required elements and has been appropriately considered through the PCP process, the answer can be Yes.

**Select "NO" if any of the following:**

- The person does not have access to food 24-7.
- The person is not supported to purchase/store food.
- There are blanket rules/policies or operational practices in place that are obstacles/barriers to this right.

Note: if the person has a rights modification but it does not contain the required elements, the answer to this question would be No.

## Section 1-12:

### **1-12. ACCESSIBILITY OF THE SETTING:**

**Standard 12: The home (and its amenities) is physically accessible to the person and meets his/her needs.**

***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 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>29</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?

<sup>29</sup> Adapted from CQL Personal Outcome Measure Guidance 2005, pages 69-71.

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- 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, etc.)
- Are there things that you are prevented from doing in your home due to rules, practices, regulations or staff behavior?

**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 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 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?

**12 a. The person has a key to the front door of the residence and he/she can come and go from the home whenever he/she chooses. (Yes or No)**

**Select "YES" if:**

- The person has a key to the front door of the residence and they are allowed to come and go whenever he/she chooses, **OR:**
- There is an appropriate rights modification in place that includes all required elements.

**Otherwise, select "NO".**

**12 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 when he/she chooses. (Yes or No)**

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**Select "YES" if a majority of the following is true:**

- The person reports that he/she has full access to his/her home and can access common areas when he/she so chooses.
- There are no barriers/obstacles to the person being able to access common areas of the home when he/she so chooses. (e.g., no locked doors, obstructions, etc.) If there are such barriers due to a rights modification in place for someone else, the person's Rights to full access are accommodated through another appropriate method.
- There are no blanket rules limiting access to typical areas of the home.
- The person is supported to use typical spaces and common areas of the home based on his/her desired schedule.

**Otherwise Select "NO".**

### **12 c. The setting reflects the person's needs and preferences including the presence of any necessary physical modifications if applicable. (Yes or No)**

Modifications should improve the access and safety of the home for the person and should allow the person to live in their home with a greater level of comfort, accessibility, and safety. People should be trained in proper use of their modifications and technology, and in many instances, staff should also be trained in how to use the modification/technology and how to assist the person, if needed, in appropriate use.

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

- Is there anywhere in your house that you are not able to safely access or that cannot accommodate your needs, i.e., not wheelchair accessible, no grab bars if needed, etc.?
- Are you comfortably able to use all of the amenities of your home that you would like to use? This includes the kitchen, washer/dryer, phone, microwave, television, etc.
- If you don't know how to use these appliances, are you being taught how to use them by staff?
- Are you able to get around your house okay? Are you able to open the doors, turn on lights, etc?
- Is there anything that would make it easier for you to get around in your house or in the community or to use the amenities in your home?
- If you have technology that you use, are you able to use it or do you need help with it? Is this help offered in your home?
- If there are any modifications that have been made to your home, are they maintained and kept in good repair?

**Observation:** During your visit at the home, after interviewing the person, observe the residence and determine if it appears to meet the person's needs for movement, independence, and comfort in the home.

#### **Consider the following probes:**

- Does the person have all the necessary adaptive equipment/environmental modifications that are needed to foster independence?
- Are there things or activities that the person has difficulty doing or cannot do because of lack of modifications or adaptations?
- If there are any modifications or technology used, is it maintained? If the person can't use the modification or technology independently, is staff trained and available to assist with use?

**Select YES if:**

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- The person reports that he/she is able to access all common living areas of the home, and that the home meets his/her needs and preferences. **AND:**
- The person has all needed adaptive equipment and environmental modifications necessary to facilitate access within the home and in the community.

**Select NO if any of the following is true:**

- The person is not able to safely access areas of the home.
- The person lacks necessary training, modifications, or adaptive equipment needed to facilitate access to the home and/or local community.
- The person reports that the home does not reflect his/her needs and preferences and/or the person is dissatisfied with the support received to access facilities in his/her home.

# Guidance and Instructions for OPWDD's HCBS Settings Assessment

## PART II: SITE REVIEW

### RESIDENTIAL NEIGHBORHOOD CHARACTERISTICS

#### General Information

##### **BACKGROUND:**

##### **SETTINGS THAT ARE NOT OR ARE "PRESUMED" NOT TO BE HCBS SETTINGS:**

##### **Per CMS HCBS Settings regulations:**

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, and/or
  - (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 [as described in 441.301(c)(5)(v) above] have institutional qualities** because these settings tend to isolate and segregate persons with disabilities, **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. In settings with such a risk of isolation, HCBS funding will be allowed only if the state can show that the setting does not have institutional qualities and instead has HCBS qualities.)<sup>30</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.

##### **DEFINITIONS per CMS:**

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

**Public Institution:** "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

<sup>30</sup> Just Like Home, An Advocates Guide to State Transitions

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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>31</sup>

## **Section II-1:**

**Standard 1:** The setting is not on or adjacent to an institution. (HEIGHTENED SCRUTINY)

**1 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. This also includes public institutions that provide health care, nursing, psychiatric, addiction services, or protection/justice services.

**Otherwise, Select "NO".**

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

**Select "YES" if:**

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

**Otherwise Select "NO".**

**1 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".**

## **Section II-2:**

**Standard II-2:** The home is NOT isolated from the community and does not have the effect of isolating individuals from the community.

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<sup>31</sup> CMS Commentary 2249-F/2296-F, page 96-97

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This set of expectations 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 include:**

- Settings where there are multiple residential sites on the same piece of property, operationally related 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.
- If 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, regardless of its location.
- The residential site appears to look clinical and institutional both inside and out.
- CMS has identified certain settings that generally could lead to isolation including: **farmsteads, gated/secured communities, and residential schools.**
- In the release of the regulations, CMS noted that "size can play an 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>32</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>33</sup>

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

The key element of concern where there are multiple settings co-located and/or clustered and operationally related is whether these settings have the effect of isolating/segregating people with disabilities from people without disabilities and/or they have institutional qualities or are institutional in nature, practice, or operations.

If the residence/home is set up and operated in such a way that individuals do not have experiences outside the residence/home, then the setting/residence is isolating individuals.<sup>34</sup>

### **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., **OR:**
- If there are multiple settings co-located within a neighborhood or a floor of a high-rise, but:
  - Other homes or apartments for individuals without disabilities are nearby and/or

<sup>32</sup> 79 Fed. Reg. at 2,968.

<sup>33</sup> Just Like Home, Advocates Guide to State Transitions

<sup>34</sup> Advocates Guide for State Transitions Under the New Medicaid HCBS Rules, page 9

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- The provider/staff facilitate, promote, and support individuals to interact with non-disabled neighbors and take advantage of common areas/amenities such as a pool or fitness center in a neighborhood or high rise, so that individuals are not isolated from the broader community of people without disabilities.

**Select "NO" if any of the following:**

- The home is located in a gated/secured community housing only individuals with disabilities or only individuals with disabilities and their families.
- The home is located on a farmstead.
- The home is a residential school.
- The home is co-located with other group homes on the same block, next door to each other, etc., and operated by the same provider, and such arrangements serve to isolate/segregate people from the broader community, i.e., residents have limited, if any, interaction with the broader community of people who are not disabled (not including paid staff).

**2 b. The home is located in the community among private residences, retail businesses, banks, etc., to the same degree as other homes in the community. (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, **OR:**
- 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 other community members (and there are transportation options available or provided through the residence for residents when the so choose).
- The residence/staff facilitate and promote opportunities regularly for people who live in the home to interact with the broader community.

**Select "NO" if any of the following is true:**

- The home is isolated from the broader community deliberately, through its location, to keep it separate from the broader community, thereby having the effect of isolating individuals from the broader community.
- There is little or no interaction with the broader community for people who live in the home.
- The residence does not facilitate transportation and opportunities for people to interact with the broader community according to choices and preferences.

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

The key consideration with this item is whether the residence/setting appears to be institutional.

**Select "YES" if:**

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- The home/residence appears home like and blends with other residences in the neighborhood. **And/or:**
- The provider/residential staff make successful efforts to help ensure that the residence does not appear institutional, e.g., there is an attempt to park vans/buses away from the front of the residence; car parking is similar to other residences; the yard and grounds are set up for the enjoyment of the residents like other homes in the neighborhood.

**Select "NO" if any of the following is true:**

- There are signs identifying the agency and/or that it is home for people with disabilities.
- The provider/residence makes no efforts to make the exterior of the home blend into the neighborhood/community.
- There are buses or agency labeled vehicles conspicuously present in the front of the home that give an institutional impression or appearance with no effort being made by the provider to blend with the neighborhood.

### **2 d. There is sufficient transportation capacity to support peoples' choice of activities and schedules and/or staff facilitates the use of public transportation to support peoples' choice of activities and schedules. (Yes or No)**

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>35</sup> Lack of transportation to activities contributes to a residence having isolating qualities.

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>36</sup> For example, if public transportation is not readily available and accessible, the provider has a greater obligation to help people make arrangements for transportation to community activities.

**Interview individuals and staff** at the residence regarding activities occurring outside the home, activities desired outside the home, available transportation, and/or limitations or barriers due to transportation issues. Review documentation (activity logs, daily notes, and transportation logs) available to determine the type and frequency of community activities and events in which individuals participate. Note whether this corresponds to what individuals report occurs or what they desire, 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.

**Probes:**

- Does the setting have access to public transportation and are individuals supported to access and use it, and provided training if needed?
- Where public transportation is limited, does the residence have a vehicle/vehicles available with sufficient frequency to support individualized needs for transportation?
- Where public transportation is limited, does the residence provide or arrange for other transportation sources (assist with natural supports, partnering with other individuals and

<sup>35</sup> CMS, Exploratory Questions to Assist States in Assessment of Residential Settings, at 4-5.

<sup>36</sup> Just Like Home, Advocates Guide to State Transitions, page 14

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sites, etc.)

- Does the residence have accessible transportation modes available if individuals need such adaptations?
- Is the use of taxis facilitated as appropriate?
- Are activities or events typically done with the entire residence or with large groups of individuals with disabilities due to transportation issues?
- Are activities individualized in any way or does everyone participate in the same activities together, with little personalization, because transportation issues do not allow for individualization?
- Is the facility staffed sufficiently to provide transportation supports to activities for individuals? (Providing transport or supporting, e.g., assisting to use the subway, bus, taxi, etc.)

### **Select YES if:**

- Individuals' activities do not appear to be hampered by lack of transportation based on discussion and documentation review. **And/or:**
- Individuals' access to transportation is facilitated by the residence/residential staff, whether provided directly by the residence or through assistance to access public transportation or other arranged transportation methods.

### **Select NO if any of the following is true:**

- Individuals' activities are hampered by lack of transportation based on discussion and documentation review.
- Transportation is not provided by the residence nor do individuals receive support to access other transportation sources

## **2 e. The home's staffing schedules and operations, (and their use of natural/peer supports), is sufficient to support peoples' choice/participation in meaningful community activities according to the preferences/priorities in their Plans. (Yes or No)**

This requires a judgment/decision based on the overall findings of your site visit regarding how the house is managed and how the staff functions to ensure that meaningful community activities are prioritized for individuals. ***This question focuses on whether community activities are limited for individuals due to staffing issues or due to failure by the residence/staff to resolve/support the person to resolve other barriers to their participation. (Barriers other than transportation, as transportation is addressed in the previous standard.)***

Based on your findings through interview, observation and documentation reviewed during the survey, determine whether staff display professional commitment to actively supporting individuals' interests and choices. Consider the following:

- Based on your discussion with staff in the home, how do staff work together to ensure priorities for meaningful community activities can be met?
- Are people participating in preferred community activities and does staff accommodate the priorities of individuals?
- Are efforts made to use natural supports and use resources creatively to ensure that those priorities can be met?
- There should be clear evidence that staff proactively make concerted efforts to provide support to make this happen for individuals.
- While it is important that staff work together to facilitate individuals' preferred activities, it is important that they are supported by the home's management to facilitate staffing changes, scheduling adjustments and other accommodations so that the community activity may occur.

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## **Select "YES" if the majority of the following is true:**

- Staff works together on an ongoing and routine basis to ensure that priorities for meaningful activities are met.
- Staff demonstrates an overall willingness, flexibility, and good attitude re: supporting individuals in the community.
- Staff upon interview demonstrates understanding and thoughtfulness regarding the priorities identified for individuals in their person-centered plans.
- Staff can cite examples of when opportunities for individualized activities have been facilitated/have taken place.
- There is concerted effort to collaborate with natural supports and community resources.
- There are active endeavors to overcome staff related barriers to community activities.

## **Select "NO" if any of the following is true:**

- Staff can provide few clear answers or examples of how the site and staff ensure that ***meaningful*** community activities occur on a routine basis.
- There is lack of evidence that varied and individualized community activities have been taking place in the recent past, and staff cites numerous excuses and obstacles as to why.
- Based on your review in part 1 of individual in the sample, there is a lack of evidence that staff are aware of the priorities identified in peoples' person-centered plans.
- Activities are reported to only occur in groups because of staffing issues rather than the interests of individuals.

## **HOME ENVIRONMENT:**

### **Section II-3:**

#### **Standard II-3: Policies/procedures and practices promote HCBS rights and are not institutional in nature.**

***3a. There are no blanket house rules (or policies/procedures) or practices that limit individual rights, independence, choices, 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 is a review of facility/house rules/policies. This review is different than the review of the person's experience as implemented in Part 1

Request and review the house rules/policies and procedures of the residence (e.g., ask if there are house rules). Look for any blanket restrictions on any of the HCBS Settings rights or other individual rights (e.g. Part 633.4). In some cases, the agency has policies/procedures for house rules or resident responsibilities that will need to be reviewed as well.

#### **Examples of house "rules" or limiting policies:**

- Set times when the kitchen or laundry can be accessed.
- Phone use times
- Bed times/Lights out times
- Rules regarding when and how individuals may leave the home

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- Rules when and how individuals can access their home (e.g. are not allowed keys, cannot come home unless staff is home).
- Visitation Rules
- House curfews or scheduled time that people have to return to the residence.

Blanket policies and procedures and/or house rules should not unnecessarily restrict the ability of individuals to come and go whenever they so choose. Individuals should also be able to complete routine activities at the times they prefer. 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.

**Select YES if:**

- There are no **blanket** house rules, policies/procedures, or expectations that restrict individuals' abilities to determine their own "schedule" for activities in and out of the home;

**AND:**

- Observations demonstrate and individuals and staff report that individuals are free to determine their activities and activity times, i.e. they provide no information that there may be blanket rules restricting individuals (although unwritten).

**Select NO if any of the following is true:**

- There are house rules/ policies/procedures or expectations that restrict individuals. (This does not include house rules that are expectations of mutual respect and polite behavior among housemates.)
- While not written explicitly, there is evidence through observation or interview, that there are blanket house rules that result in restricting individuals without justification.

**3b. The home is an environment that supports individual comfort and preferences and is not institutional in appearance or operation. (Yes or No)**

This assesses the overall impression of the site based on your observations, review of documentation and discussions with individuals and staff.

**Probes:**

- Does the site reflect the unique interests and needs of the individuals living there?
- Is the home decorated and furnished in a home-like vs. institutional manner?
- Are communal living spaces, such as living rooms, comfortably furnished, per the interests and needs of the residents?
- Are personal living spaces such as bedrooms personalized and appointed to meet their needs?
- There are sufficient accommodations and seating for leisure, dining, and other routine activities when individuals are home.
- If therapeutic equipment is required by individuals in the home, has the home made reasonable effort to minimize their conspicuous placement in the home? (i.e. minimize appearance of an institution or nursing home)
- Does the location and display of equipment and documentation related to operations of the home (staff desktop computers, file cabinets, binders, medication storage) result in an institutional or non-homelike appearance?

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- Are features incongruent with a typical home, lending to an institutional appearance?
- Are there door alarms that sound off every time that they are opened? If so, is there appropriate clinical justification for the door alarms? Are the alarms imposing and distracting to the residents?

**Select YES, if all of the following is true:**

- The setting is "home-like" in appearance and features.
- The home is not institutional in appearance and features.
- People appear comfortable in their home.

**Select NO, if any of the following is true:**

- The home is institutional or office-like in appearance.
- The home is not personalized in accordance with the people living there.
- The home/physical environment does not meet the needs of the people living there.

### 3 c. **People have full access to the typical facilities in a home. (Yes or No)**

***This should be answered using conversations and observation.***

- Individuals should have full and independent access to all areas and routine living spaces of the residence without restrictions or barriers.
- Individuals have access to and are supported to access the kitchen, laundry and use of the appliances and facilities in the home.
- The site should be physically accessible for its residents.
- If needed, the home provides environmental supports and adaptations to assist individuals to use and access their home environment.  
Examples of adaptations may include things like: Grab bars, wheel chair accessibility, ramps, modified equipment, and features that support people's use of their home.

***Probes:***

- Are people accessing the residence or are they limited because of environmental barriers? Is access to rooms prevented by locks, gates, or other obstruction? Is access prevented because of the layout of the residence?
- Are cupboards, closets locked preventing access to needed supplies or materials?
- Do house rules and practices limit or interfere with what people are able to do at the residence and access to certain areas?
- Does staff help educate and train people to use equipment such as stoves, microwaves, and washer/dryer?
- Equipment is adapted, if needed, due to individuals' physical characteristics.
- There is evidence that the setting supports ways to enhance the independence of individuals according to their needs and abilities? (Home modifications, use of technology, and other innovative ways that the site is able to enhance the ability of residents to have more independence).
- Ask individuals and staff if any modifications to the residence are needed to increase the ability of people to access their environment.

**Select YES if ALL of the following is true:**

- Individuals have full access to and use of their home and its features and appliances.
- The home is arranged and designed to facilitate independence.
- Individuals are observed to function as independently as possible within their home environment and/or supported toward independence and/or as needed.
- If barriers are in place due the needs of one or a few, the residents who can have free

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access are accommodated in effective ways (e.g. provided a key, physical barrier is specific only to the person clinically restricted, etc.)

**Select NO if any of the following is true:**

- Areas of the home are "off limits" to people living there either by physical barriers or rules/policy/procedure.
- Areas of the home are accessible for limited time periods, without justification.
- Individuals are not encouraged or supported to function independently in their home.
- The home is not conducive to individuals' independence, resulting in their dependence on staff. (Applies if it is the home's features or operations that lead to dependence. Does not apply if individuals require staff assistance due to clinical needs that cannot be addressed environmentally.)

**3 d. The home has a mechanism to assess roommate/living arrangement choice and satisfaction and takes timely action if a person is dissatisfied. (Yes or No)**

It is important that the residential staff/provider determine whether people are satisfied with their current living situation. Through discussion with the person and staff, and review of appropriate site documentation assess whether the residence has mechanisms to determine whether people are happy with their current living situation. The facility should consider both satisfaction with the home/setting/location and with in-home arrangements (shared room, roommates, and housemates).

The mechanisms do not have to fit a particular template. It can be a formal agency assessment focused on satisfaction with living arrangements; it may be a component of routinely scheduled service planning activities; or another mechanism. However, there must be evidence that this topic is specifically and thoroughly reviewed/assessed and addressed, and that input is received from parties who can best contribute to the discussion, starting with the individual.

In addition to assessing satisfaction the residence/agency should have mechanisms to address identified dissatisfaction in a timely manner. Determine whether the site implements measures that promote and facilitate satisfaction with living arrangements, roommates, and housemates as needed. If necessary, the site should support individuals to pursue alternate living arrangements.

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.

If dissatisfaction is reported to you, verify that the agency has implemented its systems/taken steps to evaluate the person's satisfaction and address any issues identified.

**Probes:**

- Does the residential facility/agency have systems in place to collect input and feedback about satisfaction with living arrangements?
- Is there documentation to support that the facility determined whether individuals are happy with their current home? With their current housemates and roommate if applicable?

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- Does the residential agency implement and monitor actions to address dissatisfaction with housemates/roommates?
- Do the residential agency and/or site/setting have adequate/appropriate mechanisms in place to assist individuals who are experiencing difficulty with their roommate? Are there mechanisms for conflict resolution between housemates/roommates?
- If a person is unhappy with his/her current living arrangement, is there any indication that the agency is looking for an alternative setting or option that better meets the person's needs/preference?
- Does the agency and/or residence inform individuals of their right to request a change in home or roommate?
- Does staff know whether individuals residing in the home are happy with their living arrangement?

**Select "YES" if:**

- The Residential Agency and/or residence have mechanisms in place to assess satisfaction with living situation; **AND:**
- If dissatisfaction is discovered, the residence/agency facilitates actions to address resolve situations in the home and/or assists in seeking alternative.

**Select "NO" if any of the following is true:**

- Satisfaction with living arrangements is not routinely evaluated by the residence/residential agency; AND/OR
- Action is not taken to address dissatisfaction, or
- While action is initially taken, the mechanism does not ensure continued monitoring and supports until longer term resolutions can be provided.

### **3 e. The home has a mechanism to offer and provide keys to people's bedrooms/front doors if desired. (Yes or No)**

Individuals should be able to have a key to their home similar to all people who have a place of residence to access the home as needed and without reliance on others. Additionally, individuals should be able to keep their personal living space/their bedroom private and secure according to their preference. These are key factors contributing to peoples' autonomy regarding use of their home that should be afforded everyone.

Accordingly, the residence/residential agency should have mechanisms that:

- Inform residents that they may have:
  - A key to the home
  - A bedroom door capable for locking for privacy and a key to independently access their bedroom.
- Ensure the individuals are provided these features per their requests and if necessary needed training and or supports to use the features.

Through discussion, observation and documentation review, you will need to determine how the home is operated regarding this standard.

The standard approach of the residence should be that all individuals are offered/informed of the above, without making the assumption for the person. Some individuals may need

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support from advocates/family in decision-making.

If upon request, individuals are not permitted to have a key to their home and/or are not permitted to lock their bedroom door/have a key to their bedroom, it must only be due to clearly evaluated and documented justification. Informed consent must be present for either of these rights modifications and must be based upon a specific individualized assessed need.

**Select YES if ALL of the following is true:**

- There is evidence that individuals are routinely provided the opportunity to have a key to their home, and received it as requested. **AND:**
- Individuals are routinely offered the ability to lock their bedroom and have a key to access their room.
- Individuals are supported to use/learn these features to increase their autonomy.
- If individuals are not provided key/bedroom lock it is only because they have made decision they are not interested or there is clear justification for the rights restriction.

**Select NO if any of the following is true:**

- It is evident individuals are not offered the opportunity to possess keys to their home, the ability to lock their bedroom and a key to the bedroom.
- It is evident individuals are not provided keys to their home, the ability to lock their bedroom and a key to the bedroom even when requested.
- Individuals are denied same without justification for the rights limitation.

**3 f. There are no "house schedules" that require all residents to follow a particular schedule for waking up, going to bed, eating, leisure activities, community activities, etc. (Yes or No)**

Consider whether the site promotes/enables people to follow an individualized daily routine without having to adhere to general rules and schedules. A "house schedule" may be written, or it may only be evident in the operations and activities of the home. Your previous discovery regarding the presence/absence of house rules may contribute to answering this standard. Evaluate whether the home seems to operate using a set routine that is strictly followed: when everyone eats, bathes, makes lunches, are allowed leisure and community activities, watch TV, go to their rooms, etc. Consider whether staff scheduling contributes to a set routine/schedule, e.g. All people have baths between 7:00-8:00pm because staff levels are reduced at 8, regardless of individuals' preferences for a bath right before they go to bed.

**Select "YES" if ALL of the following is true:**

- Interview with individuals and staff indicate that individuals have the ability to communicate with staff regarding preferences for their daily schedule.
- There is evidence based upon your observation and interviews that there is variation in daily schedules and in routine activities.

**Select "NO" if any of the following is true:**

- There are schedules posted that everyone must follow on a daily basis with no individualization.
- Upon interview with staff and individuals, they report that the same routine daily activities typically occur for all individuals at set times of day? (e.g. Everyone wakes up by 7am daily, goes for a walk at 4pm, eats at 5pm, watches TV from 7pm-8pm, showers at 8pm and bed by 9pm with no individualized variations)
- Community activities are scheduled by staff without input from individuals and all

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- individuals must participate regardless of whether the activity is of interest to them.
- Everyone in the home does the same thing together regardless of personal interests and choices.
  - It appears that most activities occur in large groups.

### **3 g. There is evidence that the schedules of people in the home vary based on individual preferences and needs. (Yes or No)**

While the previous standard looks for the absence/presence of set house schedules and/or operational routines, this standard considers whether the residence **operationally supports** and honors individuals' needs and preferences for activities and when they occur. 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, how individuals are accommodated to live their life and complete activities at times and in a manner that is meaningful and preferred. Gauge whether individuals residing in the home are treated as unique individuals by 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.

For an individual a **schedule** may refer to a written document or non-documented flow of activities occurring in day, week, and month.

While it is natural in most households as well as certified residences to have some routines: e.g. offer routine meals within a certain time frame; the residence should also demonstrate accommodations when individuals either verbally or behaviorally demonstrate that they would prefer not to eat at that set time.

#### **Probes:**

- Are schedules individualized, rather than everyone following the same schedule inside the residence, and when accessing community activities and events.
- Does staff demonstrate willingness to offer choice and accommodate individualized preferences or requests regarding daily activities?
- Is staffing sufficient and flexible to accommodate, optimize, and support individual choice?
- Is the facility operated for the convenience of staff, or with the end result of efficiency instead of optimizing the choice, autonomy, and satisfaction of residents?
- If a person is not feeling well, can he/she choose to stay home from work or day program on that day?
- Does everyone participate in the same regimented meal times, activities, bed times, 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 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 following the same schedule all the time?
- Is there a house curfew or scheduled time that people have to return to the residence?
- 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

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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.

**Select "YES" if the majority of the following is true:**

- The residence overall is making a concerted effort to honor individualized schedules that best meet peoples' needs/requests.
- Schedules of routines and other activities 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.
- 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 so choose.

**Select "NO" if any of the following is true:**

- Most activities occur in groups based on convenience rather than request.
- Individuals report/display 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 or individuals report that the entire house follows the same routine daily, with little variance of day-to-day activities.
- Regimented schedules are posted.
- Individuals are not offered opportunities to make informed choices regarding free time, meal time, etc.
- Staffing schedules are rigid, that supports are not provided so that individuals can engage in routines and leisure activities at a time and manner that benefits 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 supported to develop or access natural supports to assist in their participation in to activities per their preferences.
- 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., vacation day, mental health day).

### **3 h. People are not prohibited from engaging in any legal activities. (Yes or No)**

This verifies that 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 requires that meaningful discussions on risks and safeguards occur, 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.

**Probes:**

- Are the rights of individuals to make choices regarding their activities and associations honored?

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- Are choices arbitrarily restricted or limited because of value judgments or beliefs of staff?
- Did you observe instances in which the choices of individuals were not honored?
- Policies and procedures or rules do not bar peoples' engagement in legal activities.

**Select YES if:**

- Individuals are engaging in legal activities of their choosing.
- If individuals engage in legal activities that present a risk to their well being, it is based on informed decision making that includes discussion of risks, safeguards and alternatives.
- If restrictions to engage in legal activities are enforced, it is only with documented justification and documentation required per CMS requirements.

**Select NO if:**

- Individuals are denied the opportunity to engage in legal activities without justification and required documentation. **OR:**
- The residence or residential agency has policies and procedures or rules that prohibit legal activities.

### **3 i. Peoples' health and other applicable information, such as diet restrictions, are kept private (i.e. not posted publically in the home). (Yes or No)**

The standard addresses both protection of an individual's personal information as well as creating a homelike environment.

**Select "YES" if:**

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

**Select "NO" if any of the following is true:**

- Schedules for peoples' private medical appointments and medical information are posted in the home for anyone to see.
- Peoples' dietary restrictions/modifications are posted for anyone to see.
- Other information considered private or determined to be private individuals is posted/visible/available to others.

### **3j. There is evidence that the home optimizes community/natural resources including public transportation (if applicable) to ensure that individuals have full access to the community according to their preferences. (Yes or No)**

It is expected that the operations of the residence optimize and maximize individuals' participation in chosen community activities by supporting the use of community resources and development of and/or maintenance of natural supports.

**Probes:**

- Do individuals have access to/are they supported to access 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 available to individuals in the home?
- Is there evidence that individuals receive training on the use of public transportation?
- In locations where public transportation is limited, are there other resources provided to

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facilitate individual access to the broader community? This could mean pooling resources with another residence nearby, or utilizing unpaid, natural supports whenever possible.

- Can individuals come and go at will? Are they supported to do so?

**Select "YES" if the majority of the following is true:**

- 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.
- The residence/residential staff are actively supporting individuals' connections to the community.
- The residence/residential staff are actively supporting individuals to use community resources.
- The residence/residential staff are actively supporting individuals to develop or maintain natural supports to assist in their preferred community activities as desired.

**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.

### 3 k. Surveillance cameras are not present anywhere inside the home. (Yes or No)

Through observation and interview, determine whether one or more surveillance cameras are used.

**Select "YES" if:**

- **NO** surveillance cameras are in use.

**Select "NO" if:**

- Surveillance cameras are present inside the residence.

**If NO is selected the surveyor must complete a comprehensive review of documentation regarding why a surveillance camera is present. Include descriptions of the following in the "Rationale" section of the assessment document:**

- Individuals impacted by surveillance camera;
- The documentation reviewed and reasons/justifications stated for presence of the camera(s);
- Provider staff and/or clinicians involved and the decision to use camera surveillance.
- When installed/use implemented;
- Associated time limitations and circumstances related to the use of the camera(s).

**The surveyor should immediately notify the Area Director regarding the presence of the surveillance camera.**

### **Sections II-4: Staff Competencies, Training, and Interactions:**

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**Standard II-4: Staff competencies, training, and interactions promote rights, choice, autonomy, and community engagement.**

**4 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. (Yes or No)**

Determine if staff have been educated and trained on these key HCBS Settings principles for individuals residing at the site:

- Being provided with protections from eviction
- The right to privacy in bedrooms
- Having lockable bedroom doors with only appropriate staff having keys
- Being provided with the right to choose roommates
- Freedom to furnish and decorate their bedrooms
- The freedom and support to control their own schedules and activities
- Having access to food at any time
- The ability to have visitors of their choosing at any time
- Being provided with full access to the greater community to the same degree of access as individuals not receiving Medicaid HCBS
- The right for individuals to choose the setting and have an option for a private unit in a residential setting
- Ensuring the rights of privacy, dignity, and respect, and freedom from coercion and restraint
- Optimizing individual initiative, autonomy, and independence in making life choices supporting individual choice regarding services and supports, and who provides them

- Ask staff if they know about the HCBS Settings requirements, 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.
- Surveyors need to be aware that the "HCBS Settings" terminology may not be familiar to direct support staff. However, through **observation** and interview, if they seem to display and are conscious of the goals of the requirements, this may be met.
- Is it evident, based on your review of individuals in the sample and in your review of the operations of the site, that staff is actively supporting individuals to make informed choices and exercise personal autonomy and control in their daily lives?

**Select YES if:**

- Observations and review of individuals in sample reveal that staff is actively supporting individuals by providing and supporting choices, fostering rights, and encouraging autonomy and independence in their daily life. **AND:**
- Staff is aware of their responsibilities to do the above.

**Select NO if:**

- If you observe or become aware of staff doing anything that is contrary to these key HCBS principles. **OR:**
- There is no evidence that the HCBS principles are supported through the actions of staff.

**4 b. Staff respects the cultural/religious/other backgrounds of its residents and is culturally competent. (Yes or No)**

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There should be evidence that staff make efforts to respect and offer opportunities for individuals to understand their ethnic and cultural backgrounds and offer various cultural, religious, or ethnic experiences. Natural supports for individuals may also have family traditions and favorite food dishes, etc that the site should be aware of. Individuals should have opportunities to participate in the traditions and activities with their peers that are of interest to them and to share personal values and beliefs. If individuals have not previously made decisions related to learning about or expression of cultural backgrounds, there should have been an introduction of the topic to the individual/family, and efforts to assist the person to explore in order to determine interest and whether further future engagement should occur.

**Select "YES" if an majority of the following is true:**

- Individuals have choice and personal expression in their room decorations
- There is evidence that individuals attend religious activities of their choice that are important to them.
- Individuals are able to visit ethnic shops, attend ethnic festivals, and follow international sports
- Menus reflect ethnic diversity reflective of the people living in the residence.
- Staff offer opportunities for unique experiences based on the cultural, religious, and ethnic backgrounds of individuals.
- The sexual preferences and gender identities of individuals are respected
- There is evidence that staff communicates with natural supports and are sensitive to fostering family traditions and values.

**Select "NO" if any of the following is true:**

- Actions are not taken to discover and explore the backgrounds of individuals and support individuals in this discovery if interested.
- Interviews with staff and/or individuals reveal that there are missed opportunities for participation in religious, cultural or ethnic events that are individualized.
- Observation and interview reveals that individual preferences for ethnic foods is ignored or denied by staff
- Holiday decorations are not reflective of all the cultures of residents.

**Examples of circumstances resulting in a "NO" answer:**

- Carlos is originally from the Philippines. He visits his family in NYC on a routine basis. His family sends him back to his residence with his favorite foods which include exotic dishes such as fish eyes. Staff routinely disposes of the food upon receipt, finding the food to be disgusting, and provide him with excuses like the food was not chilled enough on the trip (spoiled) or contains too much sodium for his diet. Carlos complains to staff on a routine basis that he is unable to eat the food that he wants to because "staff won't let him".
- An Orthodox Jewish resident is unable to have separate dishes and refrigerator for kosher foods because no one else in the house follows those religious observances.
- Residents routinely attend the church that staff attend rather than supporting individuals to attend churches based on their own religious preferences.
- A Muslim resident is not allowed the opportunity to participate in the house celebration for Christmas and feels left out of group festivities. Staff does not offer the opportunity and choice to participate.

**4 c. Staff interacts and communicates with residents in a respectful and dignified manner. (Yes or No)**

This is best answered through observation but could also be verified via interview, record review, or even through review of IRMA incidents (e.g. incidents of psychological abuse). Observe staff interaction with individuals, including eye contact, body language, and tone of

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voice. You may observe instances where staff may not have overtly disrespected an individual, but nonetheless still failed to ensure the dignity of the individual as well. In those instances, you would select "NO". Consider the following:

- Does staff converse respectfully with individuals while providing care and assistance, regardless of the individual's ability to vocalize in response?
- Does staff explain to individuals where they are moving them to, or what treatment they are receiving, etc? (e.g.: Staff maneuver wheelchairs with no explanation about where they are taking individuals, or perform personal care without explaining what they are doing) Does staff explain what is to happen prior to taking action?
- Do individuals greet and chat with their staff comfortably?
- Staff use individuals preferred name.
- Staff talks to the person, not about them.
- Staff communicates and interacts at a pace appropriate to the person's ability to intake, process and respond.
- Staff avoids sarcasm and negative comments about individuals.

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

- Staff use respectful terms/names when referring to individuals
- Staff use appropriate tone when interacting
- Staff uses positive guidance with individuals in thoughtful and sensitive ways, rather than focusing on what "not" to do.
- Staff makes eye contact at the person's eye level whenever possible. (If someone is in a wheelchair, do staff tower over and talk down to them when speaking, or do staff try and communicate at the person's eye level?)
- Staff are respectful regarding conversation topics

### **Select "NO" if any of the following is true:**

- You observe staff talking down to people by calling them names like "sweetie" or "hon" as if they are children.
- Staff talk about individuals in front of them as if they are not there
- Staff shouts at individuals on a frequent basis as if they are hard of hearing when they aren't.
- Staff talks about sensitive, confidential, and personal information for individuals in front of others or in public settings.
- Staff eats fast food or other food in front of individuals rather than participate in the meal being served.
- Staff reprimands individuals rather than use teaching moments and positive reinforcement.
- Staff discuss/converse regarding topics that are disrespectful or inappropriate.

**4 d. There is evidence that site and/or provider staff actively promote and support individual input, choice, autonomy, and decision making, including choice of activities for meaningful community inclusion, relationships, freedom of association, religious/spiritual preferences, etc. (Yes or No)**

This is a global question regarding the ability of the site and staff to support choice, autonomy, and decision-making for individuals. Based on your answers to 3A, 3B, and 3C for this section, consider the following:

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

- There is documentation of membership in community groups and organizations
- Sexual preferences and gender identities are respected
- Individuals have their own calendars with interests and personal plans (whether or not they make and schedule their own plans independently)

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- There are mechanisms in place to ensure that individuals provide input and choice into the activities that they would like to participate in.
- Personal decisions related to relationships are respected
- Religious/spiritual preferences are honored

**Select "NO" if any of the following is true:**

- Individuals are denied the ability to participate in community LGBT activities and events that they would like to attend.
- Individuals have few opportunities for input into choices of activities or interests
- Community activities are not personalized or meaningful for individuals. (Does everyone go to just a few, local places like the dollar store with little evidence of having input into individualized outings?)
- There are examples of individuals not being allowed to maintain personal relationships with individuals who are important to them. (Are individuals supported, for example, to have a romantic relationship or does the site limit or prohibit the ability of individuals to associate with people of their choosing?)
- There is little evidence of community memberships or participation in any meaningful or individualized way.
- The staff plan out community activities without involving individuals and individuals lack opportunities for decision-making related to those activities.

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## APPENDIX I

### Final Federal Regulations: (CMS – 2249 F/2296 F)

### Home and Community-Based Waiver 1915 C Requirements

<b>The Person-Centered Planning Process, Plan, and Review</b>	
441.301 (C) (1)	A waiver request under this subpart must include the following:
441.301(C) (1):	Person-Centered Planning Process: the individual will lead the person-centered planning process where possible. The individual's representative should have a participatory role, as needed and as defined by the individual, unless state law confers decision-making authority to the legal representative. All references to the individual include the role of the individual include the role of the individual's representative. In addition to being lead by the individual receiving services and supports, <b>the person-centered planning process:</b>
441.301 (C)(1)(i)	The person-centered planning process: Includes people chosen by the individual
441.301 (C)(1)(ii)	The person-centered planning process: Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions.
441.301 (C)(1) (iii)	The person-centered planning process: Is timely and occurs at times and locations of convenience to the individual
441.301 (C)(1)(iv)	The person-centered planning process: Reflects cultural considerations of the individual and is conducted by providing information in plain English and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with 435.905(b) of the Chapter.
441.301 (C)(1)(v)	The person-centered planning process: Includes strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants.
441.301 (C)(1)(vi)	The person-centered planning process: Providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual must not provide case management or develop the person-centered service plan, except when the state demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS. In these cases, the state must devise conflict of interest protections including separation of entity and provider functions within provider entities, which must be approved by CMS. Individuals must be provided with a clear and accessible alternative dispute resolution process.
441.301 (C)(1)(vii)	The person-centered planning process: Offers informed choices to the individual regarding services and supports they receive and from whom.
441.301 (C)(1)(viii)	The person-centered planning process: includes a method for the individual to request updates to the plan, as needed
441.301 (C)(1)(ix)	The person-centered planning process: Records the alternative home and community based settings that were considered by the individual.
441.301 (C)(2)	The Person-Centered Service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under the state's 1915(c) HCBS waiver, <b>the written plan must:</b>
441.301(C)(2)(i)	The written plan must: reflect that the setting in which the individual resides is chosen by the individual. The state must ensure that the setting chosen by the individual is integrated in, and supports full access of individuals receiving services Medicaid 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.
441.301 (C)(2)(ii)	The written plan must: reflect the individual's strengths and preferences
441.301 (C)(2)(iii)	the written plan must: reflect clinical and support needs as identified through an assessment of functional need
441.301 (C)(2)(iv)	The written plan must: include individually identified goals and desired outcomes
441.301 (C)(2)(v)	The written plan must: reflect the services and supports (paid and unpaid) that will assist the

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	individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports are unpaid supports that are provided voluntarily to the individual in lieu of 1915(c) HCBS waiver services and supports.
441.301 (C)(2)(vi)	The written plan must: reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies.
441.301 (C)(2)(vii)	The written plan must be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient, consistent with 435.905(b) of this chapter.
441.301 (C)(2)(viii)	The written plan must: identify the individual and/or entity responsible for the monitoring of the plan.
441.301 (C)(2)(ix)	The written plan must: be finalized and agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for its implementation.
441.301 (C)(2)(x)	The written plan must be distributed to the individual and other people involved in the plan
441.301 (C)(2)(xi)	The written plan must include those services, the purpose or control of which the individual elects to self-direct.
441.301 (C)(2)(xii)	The written plan must prevent the provision of unnecessary or inappropriate services and services
441.301 (C)(2)(xiii)	The written plan must document that any modification of the additional conditions, under paragraph (c)(4)(vi)(A) through (D) of this section, 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: A. Identify a specific and individualized assessed need. B. Document the positive interventions and supports used prior to any modifications to the person-centered service plan. C. Document less intrusive methods of meeting the need that have been tried but did not work. D. Include a clear description of the condition that is directly proportionate to the specific assessed need. E. Include a regular collection and review of data to measure the ongoing effectiveness of the modification. F. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated. G. Include the informed consent of the individual. H. Include an assurance that interventions and supports will cause no harm to the individual.
441.301 (C)(3)	The person-centered service plan must be <b>reviewed</b> and revised upon reassessment of functional need, as required by 441.365(e), at least every 12 months, when the individual's circumstances or needs change significantly, or at the request of the individual.
<b>Qualities of ALL HCBS settings and The Person-Centered Plan:</b>	
441.301 (C)(4)	Home and Community based settings must have all of the following qualities and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:
441.301 (C)(4)(i)	The setting is integrated in, and facilitates the individual's full access 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.
441.301 (C)(4)(ii)	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.
441.301 (C)(4)(iii)	The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.
441.301 (C)(4)(iv)	The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

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441.301 (C)(4)(v)	The setting facilitates individual choice regarding services and supports, and who provides them
<b>Provider Controlled or Owned Residential Settings</b>	
441.301 (C)(4)(vi)	In a provider-owned or controlled residential setting, in addition to the qualities at 441.301(c)(4)(i) through (v), the following additional conditions must be met. <b>441.301(c)(4)(i) through (v) are the ones listed above</b>
441.301 (C)(4)(vi)(A)	The unit or <b>dwelling</b> is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction process and appeals comparable to those provided under the jurisdiction's landlord tenant law.
441.301 (C)(4) (vi) (B)	Each individual has privacy in their sleeping or living unit:
441.301 (C)(4) (vi) (B) (1)	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
441.301 (C)(4) (vi) (B) (2)	Individuals sharing units have a choice of roommates in that setting.
441.301 (C)(4) (vi) (B) (3)	Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
441.301 (C)(4) (vi) (C)	Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
441.301 (C)(4) (vi) (D)	Individuals are able to have visitors of their choosing at any time.
441.301 (C)(4) (vi) (E)	The setting is physically accessible to the individual.
441.301 (C)(4) (vi)(F)	Any modification of the additional conditions, under 441.301 (C)(4)(vi)(A)-(D), 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. <ol style="list-style-type: none"> <li>1. Identify a specific and individualized assessed need.</li> <li>2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</li> <li>3. Document less intrusive methods of meeting the need that have been tried but did not work.</li> <li>4. Include a clear description of the condition that is directly proportionate to the specific assessed need.</li> <li>5. Include a regular collection and review of data to measure the ongoing effectiveness of the modification.</li> <li>6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</li> <li>7. Include the informed consent of the individual.</li> <li>8. Include an assurance that interventions and supports will cause no harm to the individual.</li> </ol>
<b>Settings that are <u>NOT</u> Home and Community Based</b>	
441.301 (C)(5)	Home and community based settings to not include the following: <ol style="list-style-type: none"> <li>(i) A nursing facility.</li> <li>(ii) An institution for mental diseases.</li> <li>(iii) An intermediate care facility for individuals with intellectual disabilities.</li> <li>(iv) A hospital.</li> <li>(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.</li> </ol>

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## APPENDIX II

### Exploratory Questions to Assist States in Assessment of Residential Settings

This optional tool is provided to assist states in assessing whether the characteristics of Medicaid Home and Community-based Services, as required by regulation, are present. The information is organized to cite anticipated characteristics and to provide suggested questions to determine if indicators of that characteristic are present.

***Characteristics that are expected to be present in all home and community-based settings and associated traits that individuals in those settings might experience.***

1. The setting was selected by the individual.
  - Was the individual given a choice of available options regarding where to live/receive services?
  - Was the individual given opportunities to visit other settings?
  - Does the setting reflect the individual's needs and preferences?
  
2. The individual participates in unscheduled and scheduled community activities in the same manner as individuals not receiving Medicaid HCBS services.
  - Does the individual regularly access the community and is s/he able to describe how s/he accesses the community, who assists in facilitating the activity and where s/he goes?
  - Is the individual aware of or does s/he have access to materials to become aware of activities occurring outside of the setting?
  - Does the individual shop, attend religious services, schedules appointments, have lunch with family and friends, etc., in the community, as the individual chooses?
  - Does the individual come and go at any time?
  - Does the individual talk about activities occurring outside of the setting?
  
3. The individual is employed or active in the community outside of the setting.
  - Does the individual work in an integrated community setting?
  - If the individual would like to work, is there activity that ensures the option is pursued?
  - Does the individual participate regularly in meaningful non-work activities in integrated community settings for the period of time desired by the individual?
  
4. The individual has his/her own bedroom or shares a room with a roommate of choice.
  - Was the individual given a choice of a roommate?
  - Does the individual talk about his/her roommate(s) in a positive manner?
  - Does the individual express a desire to remain in a room with his/her roommate?
  - Do married couples share or not share a room by choice?
  - Does the individual know how s/he can request a roommate change?
  
5. The individual chooses and controls a schedule that meets his/her wishes in accordance with a person-centered plan.
  - How is it made clear that the individual is not required to adhere to a set schedule for waking, bathing, eating, exercising, activities, etc.?
  - Does the individual's schedule vary from others in the same setting?

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- Does the individual have access to such things as a television, radio, and leisure activities that interest him/her and can s/he schedule such activities at his/her convenience?
6. The individual controls his/her personal resources.
- Does the individual have a checking or savings account or other means to control his/her funds?
  - Does the individual have access to his/her funds?
  - How is it made clear that the individual is not required to sign over his/her paychecks to the provider?
7. The individual chooses when and what to eat.
- Does the individual have a meal at the time and place of his/her choosing?
  - Can the individual request an alternative meal if desired?
  - Are snacks accessible and available anytime?
  - Does the dining area afford dignity to the diners and are individuals not required to wear bibs or use disposable cutlery, plates and cups?
8. The individual chooses with whom to eat or to eat alone.
- Is the individual required to sit at an assigned seat in a dining area?
  - Does the individual converses with others during meal times?
  - If the individual desires to eat privately, can s/he do so?
9. Individual choices are incorporated into the services and supports received.
- Do Staff ask the individual about her/his needs and preferences?
  - Are individuals aware of how to make a service request?
  - Does the individual express satisfaction with the services being received?
  - Are requests for services and supports accommodated as opposed to ignored or denied?
  - Is individual choice facilitated in a manner that leaves the individual feeling empowered to make decisions?
10. The individual chooses from whom they receive services and supports.
- Can the individual identify other providers who render the services s/he receives?
  - Does the individual expresses satisfaction with the provider selected or has s/he asked for a meeting to discuss a change?
  - Does the individual know how and to whom to make a request for a new provider?
11. The individual has access to make private telephone calls/text/email at the individual's preference and convenience.
- Does the individual have a private cell phone, computer or other personal communication device or have access to a telephone or other technology device to use for personal communication in private at any time?
  - Is the telephone or other technology device in a location that has space around it to ensure privacy?
  - Do individuals' rooms have a telephone jack, WI-FI or ETHERNET jack?
12. Individuals are free from coercion.
- Is information about filing a complaint posted in an obvious location and in an understandable format?

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- Is the individual comfortable discussing concerns?
  - Does the individual know the person to contact or the process to make an anonymous complaint?
  - Can the individual file an anonymous complaint?
  - Do the individuals in the setting have different haircut/hairstyle and hair color?
13. The individual, or a person chosen by the individual, has an active role in the development and update of the individual's person-centered plan.
- Is/are the individual/chosen representative(s) aware of how to schedule Person-Centered Planning meetings?
  - Can the individual explain the process to develop and update his/her plan?
  - Was the individual present during the last planning meeting?
  - Did/does the planning meeting occur at a time and place convenient for the individual to attend?
14. The setting does not isolate individuals from individuals not receiving Medicaid HCBS in the broader community.
- Do individuals receiving HCBS live/receive services in a different area of the setting separate from individuals not receiving Medicaid HCBS?
  - Is the setting in the community among other private residences, retail businesses?
  - Is the community traffic pattern consistent around the setting (e.g. individuals do not cross the street when passing to avoid the setting)?
  - Do individuals on the street greet/acknowledge individuals receiving services when they encounter them?
  - Are visitors present?
  - Are visitors restricted to specified visiting hours?
  - Are visiting hours posted?
  - Is there evidence that visitors have been present at regular frequencies?
  - Are there restricted visitor's meeting area?
15. State laws, regulations, licensing requirements, or facility protocols or practices do not limit individuals' choices.
- Do State regulations prohibit individuals' access to food at any time?
  - Do State laws require restrictions such as posted visiting hours or schedules?
  - Are individuals prohibited from engaging in legal activities?
16. The setting is an environment that supports individual comfort, independence and preferences.
- Do individuals have full access to typical facilities in a home such as a kitchen with cooking facilities, dining area, laundry, and comfortable seating in the shared areas?
  - Is informal (written and oral) communication conducted in a language that the individual understands?
  - Is assistance provided in private, as appropriate, when needed?
17. The individual has unrestricted access in the setting.
- Are there gates, Velcro strips, locked doors, or other barriers preventing individuals' entrance to or exit from certain areas of the setting?

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- Are individuals receiving Medicaid Home and Community-Based services facilitated in accessing amenities such as a pool or gym used by others on-site?
  - Is the setting physically accessible and there are no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting or if they are present are there environmental adaptations such as a stair lift or elevator to ameliorate the obstruction?
18. The physical environment meets the needs of those individuals who require supports.
- For those individuals who need supports to move about the setting as they choose, are supports provided, such as grab bars, seats in the bathroom, ramps for wheel chairs, viable exits for emergencies, etc.?
  - Are appliances accessible to individuals (e.g. the washer/dryer are front loading for individuals in wheelchairs)?
  - Are tables and chairs at a convenient height and location so that individuals can access and use the furniture comfortably?
19. Individuals have full access to the community.
- Do individuals come and go at will?
  - Are individuals moving about inside and outside the setting as opposed to sitting by the front door?
  - Is there a curfew or other requirement for a scheduled return to the setting?
  - Do individuals in the setting have access to public transportation?
  - Are there bus stops nearby or are taxis available in the area?
  - Is an accessible van available to transport individuals to appointments, shopping, etc.?
  - Are bus and other public transportation schedules and telephone numbers posted in a convenient location?
  - Is training in the use of public transportation is facilitated?
  - Where public transportation is limited, are other resources provided for the individual to access the broader community?
20. The individual's right to dignity and privacy is respected.
- Is health information about individuals kept private?
  - Are schedules of individuals for PT, OT, medications, restricted diet, etc., posted in a general open area for all to view?
  - Are individuals, who need assistance with grooming, groomed as they desire?
  - Are individuals' nails trimmed and clean?
21. Individuals who need assistance to dress are dressed in their own clothes appropriate to the time of day and individual preferences.
- Are individuals wearing bathrobes all day long?
  - Are individuals dressed in clothes that fit, are clean, and are appropriate for the time of day, weather, and preferences?
22. Staff communicates with individuals in a dignified manner.
- Do individuals greet and chat with staff?
  - Do staff converse with individuals in the setting while providing assistance and during the regular course of daily activities?

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- Does staff talk to other staff about an individual(s) as if the individual was not present or within earshot of other persons living in the setting?
- Does staff address individuals in the manner in which the person would like to be addressed as opposed to routinely addressing individuals as 'hon' or 'sweetie'?

***Characteristics that are expected to be present in all provider owned or controlled home and community-based settings and associated traits that individuals in those settings might experience.***

1. Modifications of the setting requirements for an individual are supported by an assessed need and justified in the person-centered plan.
  - Does documentation note if positive interventions and supports were used prior to any plan modifications?
  - Are less intrusive methods of meeting the need that were tried initially documented?
  - Does the plan includes a description of the condition that is directly proportional to the assessed need, data to support ongoing effectiveness of the intervention, time limits for periodic reviews to determine the ongoing necessity of the modification, informed individual consent, and assurance that the intervention will not cause the individual harm?
2. Individuals have privacy in their sleeping space and toileting facility.
  - Is the furniture arranged as individuals prefer and does the arrangement assure privacy and comfort?
  - Can the individual close and lock the bedroom door?
  - Can the individual close and lock the bathroom door?
  - Do staff or other residents always knock and receive permission prior to entering a bedroom or bathroom?
3. The individual has privacy in his/her living space.
  - Are cameras present in the setting?
  - Is the furniture arranged as individuals prefer to assure privacy and comfort?
  - Do staff or other residents always knock and receive permission prior to entering an individual's living space?
  - Does staff only use a key to enter a living area or privacy space under limited circumstances agreed upon with the individual?
4. The individuals have comfortable places for private visits with family and friends.
  - Is the furniture arranged to support small group conversations?
5. Individuals furnish and decorate their sleeping and/or living units in the way that suits them.
  - Is the individuals' personal items, such as pictures, books, and memorabilia are present and arranged as the individual desires?
  - Does the furniture, linens, and other household items reflect the individual's personal choices?
  - Do individuals' living areas reflect their interests and hobbies?
6. There is a legally enforceable agreement for the unit or dwelling where the individual resides.
  - Does the individual have a lease or, for settings in which landlord tenant laws do not apply, a written residency agreement?

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- Does the individual know his/her rights regarding housing and when s/he could be required to relocate?

7. Individuals are protected from eviction and afforded appeal rights in the same manner as all persons in the State who are not receiving Medicaid HCBS.

- Do individuals know their rights regarding housing and when they could be required to relocate?
- Do individuals know how to relocate and request new housing?
- Does the written agreement includes language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant laws?