



Office for People With Developmental Disabilities

ANDREW M. CUOMO
Governor

KERRY A. DELANEY
Acting Commissioner

HCBS Settings Stakeholder Advisory Committee

Meeting Minutes for Wednesday, February 4, 2015

In Attendance: Maryellen Moeser, Charles Archer, Ellen Arocho, Roger Bearden, Kate Bishop, Liz Booth, Phil Catchpole, Ronnie Cohn, Helene DeSanto, Maria Dibble, Janet Felker, Chester Finn, Kris Garcia, Ann Hardiman, Steve Holmes, Michele Juda, Mark Keegan, John Kemmer, Kate Marlay, Megan O'Connor, Candace Opalka, Frank Pennucci, Clint Perrin, Ann Marie Peterson, Jill Pettinger, Peter Pierri, Lori Saltsman, Tanya Seaburg, Anne Swartwout, Maria Torgalski, Barbara VanVechten, Lisa Velesko, Lori Lemkuhl, Gwen Mackey, Alicia Matulewicz

CONFIDENTIAL Meeting Materials Provided:

- Powerpoint Presentation
- DRAFT Dayhab Subgroup Charge
- DRAFT “Heightened Scrutiny” Subgroup Charge
- Public Input Notice for OPWDD’s HCBS Settings Transition Plan
- Revised HCBS Settings Transition Plan

WELCOME AND INTRODUCTIONS: Maryellen Moeser, OPWDD Regional Director, Bureau of Continuous Quality Improvement (CQI), Division of Quality Improvement (DQI)

SUMMARY OF MEETING:

Status Update:

- This committee was previously known as the Regulatory Reform Committee, and last met on 8/28/14. Several members have been added to this **HCBS Settings Stakeholder Advisory Committee** since the last Regulatory Reform meeting in August.
- CMS issued long-awaited guidance for Non-Residential Settings in December 2014. As a result, OPWDD is now revising its Preliminary Transition Plan to include non-residential settings and will also be gathering public input on the Revised Transition Plan.
- We will be breaking into two smaller subgroups in this committee to address specific aspects of the CMS Guidance regarding Non-Residential Settings. Those subgroups will report back to this larger steering committee for discussion and review of major decision points and action steps.
 - One Subgroup will be on “**Heightened Scrutiny**” and will be chaired Maryellen Moeser.
 - The other subgroup will address **Day Services** and is being chaired by Ceylane Meyers-Ruff.

- CMS is requiring all states to be in compliance with these requirements by March 2019. That means we only have four years left! OPWDD is requiring providers to fully comply with these requirements by no later than **October 2018 as that will be the start of DQI's ongoing monitoring for compliance with the HCBS Settings requirements**. DQI must begin reviewing compliance in October 2018 because OPWDD needs to demonstrate to CMS that our system is in compliance with these standards **before** March 2019. The previous provider compliance date for residential settings was stated as October 2016, however, public input that has been previously received has clearly indicated that more time is needed for provider compliance so the deadline was changed to October 2018. NYS will need to show CMS that the system is in substantial compliance with these regulations by March 2019, or else risk loss of Federal Financial Participation (FFP).

Summary of HCBS Settings Related Activities to Date:

- **March-June 2014:** Preliminary Transition Plan was developed and public input process was implemented
- **June-August 2014:** Extensive stakeholder input was gathered via the Regulatory Reform/HCBS Settings Steering Committee related to HCBS Settings Residential Assessment Activities
- **October 2014:** Administrative Memorandum #2014-04 titled "OPWDD HCBS Settings Preliminary Transition Plan Implementation" was issued and DQI surveyors and OPWDD providers were trained on HCBS Settings requirements
- **November 2014:** HCBS Settings Residential Assessment Tool and Guidance were issued and implemented by DQI surveyors for IRAs/CRs.

Revised Transition Plan Timeline:

- **Early February 2015:** Reconvene this stakeholder workgroup and complete draft revisions to the transition plan
- **Mid-February 2015:** Public input process will be implemented for at least 30 days.
- **By April 1, 2015:** Compile summary of public input and OPWDD responses. Incorporate into the revised Transition Plan
- Waiver Application will be submitted to CMS targeted for **4/1/15**

Transition Plan Action Items:

Legislative Authority: HCBS 1915c Waiver is being written into NYS statute. To date, every other HCBS 1915c Waiver in NYS has written their waiver regulations into statute except OPWDD. We have encountered legal issues with the State Education Department (SED) regarding the Nurse Practice Act (NPA) and providing nursing services in non-certified settings. Putting OPWDD's waiver into statute gives OPWDD needed statutory authority to carry out the NPA in non-certified settings. Currently we certify sites by issuing "Operating Certificates" and authorize waiver services through a Provider Agreement. The legislation would authorize issuance of an operating certificate for waiver programs as well. This will ultimately increase OPWDD's ability to provide services in more integrated settings community settings and will strengthen OPWDD overall going forward. The legislation also clarifies that OPWDD has the statutory authority to oversee nursing-related services in non-certified settings as well as the authority to engage in the corporate practice of nursing. The language of the statute preserves the current authority of the Justice Center but does not expand the Justice Center's authority to include non-certified settings via an

oversight provision clause. DQI's approach to certification and surveys is not expected to change as a result of this legislation, as this change is more administrative in nature. As OPWDD continues to assist individuals with developmental disabilities in moving from larger institutional settings to smaller home like settings that are integrated in the community, the enactment of this legislation and negotiation of an MOU with SED will facilitate the transition to HCBS-Compliant settings. See Mental Hygiene Article VII Memos and Legislation: http://publications.budget.ny.gov/eBudget1516/1516_budgetLegislation.html

Revision and Promulgation of New OPWDD Regulations: OPWDD does not intend to issue stand-alone HCBS Setting regulations. Instead, current services will be examined for the HCBS concepts that need to be incorporated based on the type and nature of the service being delivered. Development of OPWDD regulations for full alignment with HCBS requirements is expected within one year of final waiver approval including both new and revised regulations.

Person-Centered Planning Requirements: OPWDD is currently working on aligning our existing regulations with the new PCP requirements issued by CMS. PCP regulations will be effective in October 2015. OPWDD has good alignment with PCP requirements in programs but more is needed in written regulations behind those concepts. There is already an internal PCP workgroup that is working on numerous aspects of the HCBS Person-Centered Planning requirements. Anne Swartwout will be sharing some of that workgroup's materials with this stakeholder group for further dialogue.

Review of Day Services Transition Subgroup Charge: see attachment

- This subgroup will be a part of the existing OPWDD group on Day Services that is chaired by Ceylane Meyers-Ruff. The subgroup will provide written programmatic recommendations related to OPWDD's Day Habilitation and Prevocational Services Program model(s) (both community-based and site-based)
- There was discussion by several committee members that we need to do more than just find ways to make our existing day service system work with these new requirements, and need to look at the true intent of the regulations and the real experience of the individual. People want more flexibility, but our system is pressured to send people to day habilitation daily. We have to be open to finding ways to evolve our system while also meeting CMS requirements. We have the opportunity to create the system of the future. One member pointed out that we also have to keep in mind how different NY's system is compared to other states, and how much larger it is.
- Several members discussed how there are many different types of innovative day services out there already. OPWDD should figure out what services and programs are working well right now. Proximity and travel are major considerations also. Close proximity of opportunities is needed for people.
- ***Please send to Maryellen Moeser any further recommendations for this Day Services Transition Subgroup Charge via e-mail at Maryellen.moeser@opwdd.ny.gov by February 20, 2015.***

Review of "Heightened Scrutiny" (HS) Subgroup Charge:

- This subgroup will be providing written recommendations related to criteria triggering the HS process, as well as guidance to the field on tools and methods for determining whether a setting can meet HCBS requirements.

- There was committee discussion on the potential process to develop a survey for these settings, including a DQI inventory/assessment so that an independent entity assesses whether a site triggers the HS process and if it does trigger it, whether the state believes the setting can meet HCBS. Another decision point will be whether OPWDD should develop its own criteria or work off of the CMS requirements (such as the Exploratory Questions for Non-Residential Settings)?
- There was also committee discussion on the challenges that larger residences face in complying with HCBS requirements.
- It is also very important for this subgroup to look at the individual's experience in the setting and not just facility-based characteristics.

Wrap-Up:

- Public Input notice will be posted the week of February 10, 2015
- ***Please submit the names of any Heightened Scrutiny Subgroup members to Maryellen Moeser by February 20, 2015.*** Members that you select should be people that are able to produce deliverables and take on pieces of the subgroup's work.
- This steering committee will be vetting the materials produced by both subgroups
- There will be multiple opportunities for public input including via e-mail, mailing address, or by telephone until March 18, 2015. There will also be webinar sessions on February 23 and 24, 2015. Maryellen Moeser and Alicia Matulewicz will be reviewing and summarizing the public input that is received for OPWDD leadership response
- Next meeting is expected to be scheduled for March/April after the public input process is concluded. It is expected that this stakeholder committee will be meeting monthly, with regular updates from the subgroups.