

Office for People with Developmental Disabilities
Home and Community-Based Settings Waiver Transition Plan

As a component of the renewal of OPWDD's HCBS Waiver, and in accordance with 42 CFR 441.310 c(6), the following outlines background information as well as the specific actions New York State OPWDD will take to assure full compliance with 42 CFR 441.301 c (4)-(5), "Home and Community-Based Settings" that became effective on March 17, 2014. OPWDD is also working with the New York State Department of Health and other New York State agencies on the State's overall Transition Plan.

The following information applies specifically to OPWDD's 1915 (c) Comprehensive HCBS Waiver. This information was posted to OPWDD's website on May 2, 2014 with a thirty day public comment period through June 3, 2014 (<http://www.opwdd.ny.gov/transformation-agreement/announcement-public-comment>). In addition, OPWDD's Commissioner held a number of public information sessions on the Waiver Renewal and the HCBS Settings Transition Plan.

Overview and Background on OPWDD's HCBS Settings Transition Plan

Recognizing that there are specific nuances in the additional CMS guidance issued on March 20, 2014 that may not have been fully integrated/considered in existing OPWDD regulations, certification standards and survey protocols, including the new CMS exploratory questions that target the nature and experience of individuals in HCBS settings, OPWDD plans to conduct a thorough review of all providers and a sample of the settings that they operate through on-site surveys and direct interviews of a sample of individuals served in these settings.

These efforts were coordinated with the development of New York State's Olmstead Plan developed through the Olmstead Development and Implementation Cabinet created by Governor Cuomo's Executive Order number 84. The Report and Recommendations of the Olmstead Cabinet published in October 2013 incorporated the work of OPWDD's transformation stakeholder teams as well as the HCBS Settings stakeholder work group. The Olmstead report is available on OPWDD's website via the following link: <http://www.governor.ny.gov/assets/documents/olmstead-cabinet-report101013.pdf>

In January 2014, CMS adopted the HCBS settings rule. This rule was effective March 17, 2014 and allows for a transition plan of up to five years for full compliance. As a result, OPWDD is updating its November 2013 work plan submission to reflect the following Transition Plan specifically for the OPWDD HCBS waiver which builds upon the comprehensive stakeholder dialogue that began last spring 2013.

Summary of OPWDD Transition Plan Activities and Anticipated Timeline

Timeline with Transition Plan Activity*

Began Feb. 2014 and ongoing: Convene information sessions with various OPWDD stakeholder groups on the final HCBS Settings regulations for public education purposes.

March 2014 - May 2014: Conduct preliminary assessment of the types of HCBS residential settings that OPWDD can assume complies with CMS HCBS settings requirements and guidance based upon a cross-walk of OPWDD's existing certification standards and regulatory requirements vs. CMS

regulations and guidance and the Division of Quality Improvement's certification data.

April - August 2014: Evaluate OPWDD's program policies, standards, and requirements to identify any needed changes for full alignment with HCBS settings requirements and identify target dates for necessary revisions. Also evaluate OPWDD's DISCO design for alignment with HCBS settings requirements.

May - August 2014: Revise November 2013 Draft HCBS Settings ADM to reflect final regulations and obtain public input on changes. Finalize ADM and formally issue it to OPWDD providers.

May-August 2014: Develop an OPWDD on-site survey assessment tool to compile baseline information on HCBS settings compliance and an information management solution to collect necessary performance data.

October 2014 - September 2015: Implement OPWDD's on-site HCBS Settings Assessment (note: this period aligns with DQI's annual survey cycle).

October 2015 - February 2016: Analyze the results of OPWDD's on-site HCBS Settings Assessment to identify specific issues and challenges that will need to be addressed through the five year transition period.

February 2016 - April 2016: Develop and submit to CMS any necessary revisions to the OPWDD and/or NYS Transition Plan based upon the OPWDD HCBS Settings Assessment.

October 1, 2016: Formalize the full incorporation of all HCBS settings requirements into OPWDD's certification requirements and processes including survey tools, protocols, processes, and accountability initiatives for October 1, 2016 implementation. This includes adverse actions for non-compliance for any components of the CMS HCBS settings requirements that weren't already required by OPWDD prior to the CMS regulations being finalized.

*The OPWDD Transition Plan Activity outlined above does not include non-residential settings as OPWDD is awaiting CMS guidance on the implications of the CMS final regulations on day settings. Once CMS issues guidance on day settings, we will reevaluate our transition plan and incorporate day settings wherever possible into the structure and activities of this Transition Plan.

The following information is more detail on Transition Plan Activities that Have Been Completed to Date and/or are in Process: Preliminary Assessment Process for Types of Residential Settings and Compliance with HCBS Settings Requirements:

OPWDD has conducted analysis of the HCBS Setting requirements outlined in the Notice of Proposed Rulemaking (NPRM) from May 2012 and the final HCBS regulations effective March 17, 2014 and has cross walked the proposed and final regulations with OPWDD's existing regulations, certification standards, and survey processes/protocols.

Through this analysis, there appears to be substantial alignment between OPWDD regulations and the HCBS final regulations including in intent, principles, and the major key elements (e.g., person centered planning requirements in 14 NYCRR Part 635.99 and OPWDD Administrative Memorandum # 2010-04 on the ISP; and Part 635.10.2 and 686.16; individual rights including privacy and freedom from abuse

and unnecessary use of medications/restrictions etc., community inclusion, and control of personal resource in 14 NYCRR Parts 633.4 (b), 633.12. In addition, OPWDD's existing survey tools for OPWDD's twenty-four hour certified residential settings (i.e., supervised individualized residential alternatives (IRAs) and supervised Community Residences (CRs) incorporate a review of these regulatory principles and requirements. OPWDD's analysis of the final CMS regulations vs. OPWDD regulations and requirements is available upon request.

Types of Residential Settings and Compliance:

As indicated above, based upon a cross walk of the OPWDD regulations vs. the HCBS final regulations, all OPWDD residential settings would comply with the requirements (see Appendix C-5 for more information). However, we recognize that CMS's intent with the final rules is to equate "compliance" with the experience and outcomes of individuals receiving services. Therefore, OPWDD has taken this initial analysis a step further by analyzing OPWDD's Division of Quality Improvement (DQI) Statements of Deficiency (SODs) for the past two years (from 4/1/12-3/31/13 and 4/1/13-3/31/14) for OPWDD's twenty-four (24) hour certified residential settings (IRAs and CRs) to determine the percentage of these settings that have experienced serious and/or systemic challenges in past DQI surveys in the areas (i.e., tag numbers) that most closely align with the components of the final HCBS regulations (e.g., individual rights). Based on this analysis of the SODs, between 7% (2012-13 SFY SODs) and 9% (2013-14 SFY SODs) of the 24 hour OPWDD certified IRAs and CRs would require transition to fully comply with the HCBS setting requirements. Of these SODs, only approximately 3% represent repeat deficiencies which would likely decrease overall the number of settings requiring transition as OPWDD requires POCA implementation to be systemic in accordance with OPWDD requirements.

OPWDD Comprehensive On-Site Residential Assessment:

Recognizing that there are specific nuances in the additional CMS guidance issued on March 20, 2014 that may not have been fully integrated/considered in existing OPWDD regulations, certification standards and survey protocols, including the new CMS exploratory questions that target the nature and experience of individuals in HCBS settings, OPWDD plans to conduct a thorough review of all providers and the settings that they operate through on-site surveys and direct interviews of a representative sample of individuals served by each provider across all waiver programs.

It is anticipated that this assessment will include certified IRAs and CRs and will begin 10/1/2014 through 9/30/2015. As OPWDD is awaiting the guidance from CMS on implications of the final rules for day settings and CMS is granting states additional time for transition planning relative to day settings, at this time OPWDD is unable to include an assessment of day settings for compliance in this initial transition plan. However, when OPWDD issues the day settings guidance, OPWDD will review its transition plan and incorporate day settings wherever the timing is possible after developing applicable assessment tools.

For the residential settings, OPWDD will develop its assessment tool using the information contained in the CMS HCBS Tool Kit and Exploratory Questions as well as the stakeholder input provided to OPWDD while crafting its draft HCBS ADM. In addition, OPWDD will incorporate a review of the person centered planning and process requirements in the final regulations and service delivery outcome related principles from the Council on Quality and Leadership (CQL) work and the Agency

Quality Performance stakeholder work group where alignment is possible in the assessment tool.

In line with OPWDD's quality initiatives, DQI will assess the degree to which all provider agencies are embracing these principles to the fullest extent possible and from a continuous quality improvement perspective. Many of our provider agencies are already engaged with the Council on Quality and Leadership (CQL) and/or other similar person centered planning approaches in order to integrate the concepts and philosophy of personal outcome measures within the fabric of the organizational culture and within the day to day service delivery interactions.

The results from the HCBS settings assessment will be used as baseline information from which to determine system compliance, particular challenges that may need to be addressed, the time frame needed for full compliance across the developmental disability service system, and continuous quality improvement efforts needed.

OPWDD will have information available to more accurately determine the compliance transition timeframe needed and will submit a revised compliance plan by the second quarter of 2016 that will incorporate the results of the year long on-site DQI assessment process taking place between October 1, 2014 and September 30, 2015. OPWDD will report on the progress of this assessment for the March 2015 372 Report.

Quality Improvement Activity Related to HCBS Settings Final Regulations:

OPWDD Transformation initiatives that relate most directly to implementing HCBS setting regulations and that will continue to be integral to OPWDD's continuous quality improvement strategy related to HCBS settings. Further information on these initiatives can be found on OPWDD's website under "Ongoing Transformation" via the following link: http://www.opwdd.ny.gov/opwdd_about/commissioners_page/commissioners_message/OPWDDs_Ongoing_Transformation. The following are key components of this quality improvement activity:

Increase competitive employment opportunities/options:

- Increase competitive employment opportunities and options: See NYS Draft Plan to Increase Competitive Employment Opportunities for People with Developmental Disabilities (<http://www.opwdd.ny.gov/node/4791>);

Increase Self-Direction Options:

- Increase Self-Direction Opportunities and Options: See NYS Self-Direction Policy and Work Plan (<http://www.opwdd.ny.gov/transformation-agreement/quarterly-report/OPWDDSelf-DirectionPolicy>);

Enhance Person Centered Planning and Quality Outcomes:

- Enhance Person Centered Planning, Service Delivery and Outcomes: OPWDD is promoting the

adoption of the Council on Quality and Leadership Personal Outcome Measures across the intellectual/developmental disability service system. CQL POMs align with the principles outlined in the HCBS regulations and are based upon the unique perspective of each individual. OPWDD has also updated its Person Centered Planning Curriculum to focus on the following:

- a) consistent practices and clear expectations defined for outcome focus and planning expectations;
- b) reinforcement of person centered outcome expectations from the plan of support;
- c) reinforce opportunities for self-direction in support models and principles of self-determination;
- d) incorporation of the 21 POM domain areas for consideration in the planning process;
- e) incorporation of pertinent portions of the recommended safeguard areas for consideration from the OPWDD stakeholder group known as the Person Centered Quality Committee.

• **Enhance Provider Performance Expectations:** OPWDD is continuing to enforce provider accountability to ensure a focus on what is most meaningful to each individual in planning and service delivery. OPWDD is operating a stakeholder group that will make recommendations that will lead to clear system wide expectations for agency quality practices that can be measured consistently across various quality domains that are most connected to quality of life and personal outcomes. Recommendations will emphasize practices that promote agency culture and process that strive for delivery of high quality supports in person centered ways. Once the workgroup completes its recommendations, OPWDD anticipates the integration of the enhanced quality expectations and criteria into its DQI protocols for a comprehensive redesign that also takes into account the final HCBS regulatory principles.

Develop Guidance and Tool box for Providers:

OPWDD will revise its Administrative Memorandum on HCBS Settings submitted to CMS in November 2013 to incorporate the final regulations and CMS guidance information to assist providers across the State with complying with the regulations and quality improvement approaches. This guidance and toolbox will build upon OPWDD's transformation initiatives including those identified above. The revised ADM based upon the final rules will be shared again publically for further input and this input will include OPWDD's draft Video Camera and Recording Devices Use Policy.

Performance Measures:

OPWDD will include key performance indicators in planned, future Waiver amendments to review operations of this waiver as well as the overall system for adherence to these requirements. These measures will include the following:

- Number/percent of individuals sampled who were provided information in order to make an informed choice on whether to self-direct some or all of their services.

In addition, OPWDD will utilize the National Core Indicators that align with HCBS settings regulations to review systemic progress against the national average of all NCI states including the

following:

- Choice or input into where living if not in the family home
- Choice or input into roommate if not in the family home
- Can be alone with friends or visitors
- Proportion of people who reported that they choose or help to decide daily schedule
- Proportion of people who reported that they choose how to spend free time
- Proportion of people who reported that they can date if they want to

Integration of HCBS Settings Regulations in Managed Care Requirements:

The standards and principles for person centered planning and HCBS settings outlined in the final rulemaking will also be integrated into managed care contract requirements for provision of care coordination and HCBS waiver services for all HCBS waiver participants. DISCOs will be expected to include key performance indicators in their Quality Improvement Plan data and OPWDD will also be using key NCI indicators to benchmark and compare DISCOs in actionable areas.