



Office for People With Developmental Disabilities

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Home and Community-Based Settings Waiver Transition Plan as of February 13, 2015

As a component of the renewal of OPWDD's HCBS Waiver, and in accordance with 42 CFR 441.310 c (6), the following outlines the specific actions New York State OPWDD will take or has taken 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 (DOH) and other New York State agencies on the State's overall Transition Plan scheduled for submittal to CMS in March 2015 (see https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm).

The following information applies specifically to OPWDD's 1915 (c) Comprehensive HCBS Waiver.

Overview and Background on OPWDD's HCBC Settings Transition Plan

The CMS Statewide Transition Plan Toolkit for Alignment with HCBS Settings Final Regulations Requirements dated September 5, 2014, indicates that the state's determination of compliance is the first step in the Statewide Transition Plan development and the next step is developing and describing to CMS the state's actions to come into full compliance including timelines and milestones. The following is information regarding OPWDD's determination of compliance based upon waiver participant's living arrangements:

- OPWDD's HCBS Waiver includes 71,519 participants over half of whom (37,839) reside in their own home or the home of a family member, relative or friend; thus already meeting HCBS settings requirements.
- An additional 9,218 participants reside in a supportive certified apartment program (2,441), a Family Care home (2,293), or a group home comprising 4 or fewer individuals (4,484). These settings are more likely to already meet the HCBS settings requirements.
- 24,462 HCBS waiver participants currently reside in group homes with more than 4 individuals. OPWDD considers these group homes to be in "partial compliance" at this time while we implement our HCBS Settings Assessment process (see Transition Plan for Residential Settings below).
- OPWDD recognizes that revisions to its regulatory framework as well as licensing and certification requirements for ongoing monitoring will be necessary for full compliance

with the HCBS Settings requirements and to enforce these requirements. These remediation activities are described within this Transition Plan.

- OPWDD also recognizes that some programmatic enhancements and clarifications may be necessary for Day Habilitation and Prevocational services/settings to achieve full compliance with the settings requirements. These remediation actions, including work with our stakeholders, are outlined in this Transition Plan.
- OPWDD has already made substantial progress through its “New York State Plan to Increase Competitive Employment Opportunities for People with Developmental Disabilities, (Final Approved Plan-May 1, 2014)”. This Plan was approved by CMS and is incorporated into this Transition Plan by reference. It can be accessed on OPWDD’s website using the following link:

http://www.opwdd.ny.gov/opwdd_services_supports/employment_for_people_with_disabilities/draft-plan-increase-employment-opps

Public Input and Comments:

In early 2013, OPWDD began its efforts to adopt the HCBS Settings requirements prior to the finalization of the CMS HCBS settings regulations as a component of OPWDD’s ongoing Transformation Plan activities. OPWDD had public dialogue and meetings with stakeholders to develop an HCBS Settings action plan culminating in the submittal to CMS of an HCBS Settings Work Plan in November 2013. When CMS finalized the HCBS Settings regulations in January 2014, OPWDD again pulled its stakeholders together to work on updating the November 2013 work plan to incorporate the HCBS Settings Transition Plan requirements in the final regulations.

OPWDD posted its initial Residential Settings Transition Plan for public comment on May 3, 2014 for thirty days through June 3, 2014 (see <http://www.opwdd.ny.gov/transformationagreement/announcement-public-comment>). In addition, OPWDD’s Commissioner and other key Leadership held numerous public information sessions on the Waiver Renewal and the HCBS Settings Transition Plan for all its various stakeholder groups. These efforts were also coordinated with the development of New York State’s Olmstead Plan developed through the Olmstead Development and Implementation Cabinet created by Governor Andrew 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 at the following link: <http://www.governor.ny.gov/assets/documents/olmsteadcabinet-report101013.pdf>

The following is a description of OPWDD’s initial public comment period (May 2nd-June 3rd 2014) and a summary of public comments required to be included in the HCBS Settings Transition Plan:

On May 3, 2014, OPWDD posted for public comment a description of the comprehensive Home and Community Based Services (HCBS) waiver renewal application which highlighted key changes to the application that will take effect October 1, 2014. The posting also described OPWDD's HCBS Settings Transition Plan as required by CMS's recently adopted rules that contain standards for home and community based settings and that require the State to submit a transition plan at the time of an HCBS waiver renewal. This transition plan is required to set forth the actions the State will take to bring the waiver into compliance with the regulatory standards. The OPWDD notice of public comment was distributed broadly and available on OPWDD's website for 30 days prior to OPWDD's submittal of the waiver application and transition plan to CMS on July 1. During the official comment period, OPWDD received five transmissions related to the HCBS Settings Transition Plan through 27 pages that outlined respondent concerns, issues and advice to OPWDD. The following organizes public comments by the topic areas raised by our respondents and OPWDD's initial responses to these concerns received during the initial comment period.

Stakeholder Involvement

Several respondents advised that OPWDD should bring stakeholders into the process as early as possible and that recognizing that there are short time frames, OPWDD should utilize the Regulatory Reform Stakeholder subgroup that met last year to give OPWDD advice on the Administrative Memorandum (ADM) submitted to CMS and to assist in planning and development of the OPWDD Transition Plan. It was also advised that OPWDD should assess work group composition to ensure that it is comprehensive and representative of all stakeholder groups.

A respondent advised that it is critical that providers are part of the States development of data element identification for necessary performance data and that the field knows what is being used in the development of any report cards; the process must involve provider representatives that understand the functions being monitored.

OPWDD agrees regarding transparency and full stakeholder involvement in transition planning and is reconvening the Regulatory Reform Stakeholder subgroup to provide additional advice and input relative to integrating the final CMS regulations into OPWDD's Draft ADM and to provide advice to OPWDD on its preliminary Transition Plan. OPWDD plans to reconvene this work group in mid July 2014 and will reassess the group to ensure full representation of all stakeholder groups.

OPWDD also plans to post meeting summaries and materials to a new OPWDD HCBS Settings Transition Plan and Toolkit Webpage for full transparency and to invite ongoing

stakeholder input and feedback which can also be submitted through the e-mail address quality@opwdd.ny.gov.

General Considerations

Several respondents feel that definitions of community integration and community settings may require transitions for individuals receiving services and that OPWDD must be open to allowing those in programs/services /settings that might not be deemed to be in compliance to be allowed to continue in their current program/setting if that is the person's choice. Presentation of options is all that should be required and that individual choice must be respected and honored. It was noted by one respondent that while OPWDD has written requirements in place that address many of the topics of the final CMS regulations, these existing requirements are often not effectively enforced and that more "boots on the ground" are needed as well as modifications to staffing patterns and monitoring procedures.

It was noted that with respect to housing options, OPWDD has relied primarily on the preferences of residential subcontractors to determine availability of various housing options and that as a result, supportive apartments and other less restrictive housing, while readily available in some parts of the state are extremely scarce in others. This respondent advises OPWDD to remedy these disparities through addressing the financial disincentives inherent in supportive housing, family care, and smaller group homes; providing substantial technical assistance to providers; and requiring group home providers to offer other alternatives; and by other means.

All respondents stated that the final CMS HCBS settings regulations may have potential to have major implications on providers and cannot become another unfunded mandate on the part of the State and Federal governments. These respondents further noted that the regulations may result in the need for additional funding to ensure full compliance such as necessary settings modifications or relocations and that the State or Federal government should fund this.

Through OPWDD's Transition Plan, OPWDD intends to develop an HCBS Settings Assessment Tool based upon the final CMS regulations and CMS Exploratory Questions, to assess the level of adherence to the new HCBS regulations in order to provide baseline data in which to identify the major challenges and issues that the system will need to address for full compliance with the new rules. The information learned through administration of the HCBS Assessment Tool will be used by OPWDD to update its initial transition plan to CMS and to address any systemic issues identified.

Draft Administrative Memorandum Version 7, November 2013 and State Regulations

Several respondents advise that OPWDD should ultimately issue proposed State regulations in lieu of an ADM as these changes are too important and substantial to be issued through an ADM. A respondent stated that while CMS has issued some guidance, the regulatory language contains unequivocal statements that are not echoed in OPWDD's Draft ADM. This respondent further states that the regulatory language is a clear prescription while OPWDD's ADM uses softer language such as "encourage" and "try" and while the ADM references that serious consequences will result from non-compliance, OPWDD has always made such assertions but has not held providers accountable for these types of practices. It was further noted that the final regulations make clear that "to the same degree of access" is not the same as "in the same manner" and that OPWDD will need to ensure its ADM and implementation reflects this important principle and that HCBS services themselves do not get in the way of a person being able to engage in the community anywhere at any time.

OPWDD agrees that it needs to update its draft ADM to take into account the final HCBS regulations and that it will ultimately need to hold providers fully accountable for these requirements. OPWDD also agrees that New York State regulations must be developed and will do so after we have assessed our service system for baseline information on compliance; issued an ADM to the field based upon the final regulations; once NYS's overarching transition plan is finalized, and after CMS has issued all of its promised additional guidance. This strategy will ensure that OPWDD's regulations can take into account all requirements and guidelines as well as enable OPWDD to identify the areas that will need the most regulatory interpretation and review.

Person Centered Planning

Several respondents advise that OPWDD will need to be very clear about the role of Medicaid Service Coordination (MSC)/Service Coordinator with reference to the requirements in the final HCBS settings regulations. It was also noted that the regulations regarding conflict free case management would require a restructuring of OPWDD's service system. It was stated by at least one respondent that while OPWDD guidance documents require that individuals be empowered to direct their planning process and to choose who attends/participants in planning meetings, staff may not always respect and support these individual choices. It was also noted that real person centered planning takes a great deal of time and that the typical MSC caseload does not allow sufficient time to do person centered planning properly.

OPWDD agrees that there is a need to be clear about roles and responsibilities as we move forward with transition planning and implementation and to guard against potential conflicts of interest in the person centered planning and service delivery process. OPWDD's transition to a managed care infrastructure through DISCO's will enable OPWDD to fully address these regulatory provisions. In the meantime, OPWDD's existing Medicaid Service Coordination

protocols review for conflicts of interest between the service coordination/person centered planning function and the service delivery function and OPWDD requires that there be separate reporting hierarchies and individual choice of service providers and evidence of such during these review processes.

Certified Residential Settings

All provider affiliated respondents noted that in order for residential service providers to offer roommate choice and other personal choices in certified settings and for housing opportunities to be maximized, OPWDD must reexamine its existing processes for offering residential vacancies, including prioritization and referrals, to allow both prospective individuals and individuals who live in the homes to fully participate in decision making on roommates/housemates in order to comply with the CMS regulations.

A respondent advises OPWDD that the new regulations do not allow for a blanket prohibition on overnight visitors and that OPWDD must provide clarity on this point.

It was stated that group homes often are unable to support people to have individualized choice and control of their schedules due to staff shortages and other reasons. The respondent states that support for the person to control their own schedule is a condition for continued qualification as an allowable HCBS setting. This respondent also feels that it is not unusual for individual access to visitors, food, privacy, telephones and intimate relationships to be restricted based upon blanket facility rules. The respondent advises OPWDD to increase its staffing ratios at homes to meet CMS requirements for individualized choice and control of schedules, to significantly increase monitoring by means of unannounced visits and interviews with individuals, and to spell out in clear terms that non-compliance is impermissible.

OPWDD agrees that the federal rules require that people have freedom to control schedules and activities and that providers support the person to do so. Providers must be flexible to allow people to remain in their home on days when they do not want to attend other services, or are not able to do so because of an illness. If a person is not satisfied with their supports, the person, his or her service coordinator and advocates should review the ISP and assess whether alternate services would be preferred. OPWDD is working to promote self-direction, which would give individuals the opportunity and flexibility to pursue possible options that would increase the likelihood they would want to participate in activities in their community. The federal regulations are clear that people need to be fully engaged and at the center of the planning process for home and community based services. OPWDD also agrees that any blanket facility policies that restrict individual rights will not be permissible.

As OPWDD goes forward with the multi-year planning process for this transition we will assess our operational policies and practices, including vacancy management in certified residences

from the perspective of both individuals looking for residential opportunities and individuals already residing in the residence where a vacancy occurs, to ensure that the rights established in the HCBS Waiver Settings Final Rules are addressed.

Health and Safety, Rights, and Rights Modifications

One respondent expressed concerns about the right of “access to food at any time”. It was noted that while the Draft ADM addresses issues of safety consideration, it does not address the issue of health concerns such as obesity and other related health concerns and that guidance in regard to selection of appropriate foods, portion size, and frequency of consumption are paramount to maintaining good health. The respondent recommends perhaps inserting language around these topics in guidance documents and power points.

Another respondent advises OPWDD to say that no modifications of the qualities/conditions for provider controlled/operated housing be permitted unless and until less intrusive and more positive efforts to address the need have been attempted in good faith, over a period of time sufficient to demonstrate their likelihood of success, and have failed after good faith effort to correct causes of failure without modifying relevant conditions, in which case such efforts must be documented. This respondent advises OPWDD that considerable attention will need to be devoted to ensure that providers are retrained to understand that safety does not trump individual rights to autonomy, freedom of choice and action and that “minimize” does not mean eliminate.

One respondent notes that they are pleased with OPWDD’s approach to statements of health and safety considerations being addressed in the context of the person’s interests and preferences and are not to be considered the absolute priority to limit a person’s access to community life or personal resources. This respondent further states that CMS has now formalized this requirement through its regulations specifying very narrow circumstances upon which access to community life to the same degree of access as others can be limited.

OPWDD agrees that there are circumstances where ‘modifications’ to a person’s rights are necessary for health and safety reasons but should not be imposed without following the process and requirements outlined including trying positive approaches first. The rules further specify that any modifications to these rights must be addressed in the person centered plan, and that the person is fully engaged in the development of the plan. The modifications must be specific, tied to a particular need, time-limited and routinely evaluated to ensure the continued need for the limitation. The service planning process should continually explore options that assist the person to gain the skills needed to have full expression of these rights. Limits cannot be placed on a person’s rights without the person being engaged in decision making, and restrictions must be addressed in the person centered planning process on an on-going basis

with the desired outcome of the person living with optimum independence and full access to community life.

Second public comment period for revisions to this Transition Plan:

(NOTE: summary of the second public comment period will be inserted here)

General Remediation Action Items Applicable to both Residential and Non-Residential Settings Transition:

The following remediation activities updates OPWDD's initial Transition Plan and includes elements applicable to both Residential and Non-Residential Settings and OPWDD's Transformation agenda:

- **April 2015:** The FY 2015 Enacted Budget expanded OPWDD's Nurse Practice Act exemption for staff working in non-certified settings -- such as individuals living in their own apartment or homes -- subject to the completion of a Memorandum of Understanding (MOU) between OPWDD and the State Education Department (SED). Before approving the MOU, technical amendments to Social Services Law, Executive Law and Mental Hygiene Law have been proposed in the FY 2016 Budget to clarify that OPWDD has statutory authority to oversee nursing-related services in non-certified settings, as well as authority to engage in the corporate practice of nursing. As OPWDD continues to assist individuals with developmental disabilities in moving from larger institutional facilities to smaller homelike settings that are integrated in the community, the enactment of this legislation and negotiation of an MOU will facilitate the transition to HCBS-compliant settings.
- **July 2015: OPWDD's Comprehensive 1915 C Waiver Renewal** is anticipated to be approved by CMS which concludes negotiations on the scope and array of HCBS waiver services and OPWDD's HCBS Settings Transition Plan.
- **July 2015:** Conclude the development of OPWDD person centered planning and process regulations based upon the federal regulations. These regulations would be effective October 1, 2015 which will also be the starting point for OPWDD enforcement of these requirements through its survey and certification processes.
- **Targeted for 12 months after HCBS Waiver Approval by CMS:** Conclude the development of any necessary HCBS waiver regulatory changes through the NYS and OPWDD regulatory processes. This includes any necessary changes for full alignment with HCBS Settings requirements in order to commence ongoing monitoring and enforcement of these requirements for both residential settings and non-residential settings **by October 2018.**

The following is additional remediation actions 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.

- **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>); This plan includes the implementation of Pathways to Employment Waiver Service (completed) and OPWDD's Plan for the closure of Sheltered Work-shops (by May 2020).
- **Increase Self-Direction Opportunities and Options:** See NYS Self-Direction Policy and Work Plan (<http://www.opwdd.ny.gov/transformationagreement/quarterly-report/OPWDDSelfDirectionPolicy>).
- **Enhance Person Centered Planning, Service Delivery and Outcomes:**
 - OPWDD is promoting the adoption of the Council on Quality and Leadership (CQL) Personal Outcome Measures (POMs) 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 contracted with CQL to provide the POMs workshops to DQI surveyors and state operations staff to build this capacity. In addition, OPWDD is working with CQL to integrate the POMs philosophy into its quality indicators (see enhance provider performance below). The CQL POMs is also a required feature of the quality managed care oversight design for the specialized managed care plans for people with developmental disabilities known as Developmental Disability Individual Support and Care Coordination Organizations (DISCOs).
 - OPWDD has also updated its Person-Centered Planning Curriculum to focus on the following:
 - consistent practices and clear expectations defined for outcome focus and planning expectations;
 - reinforcement of person centered outcome expectations from the plan of support;
 - reinforce opportunities for self-direction in support models and principles of self-determination;
 - incorporation of the 21 POM domain areas for consideration in the planning process;
 - incorporation of pertinent portions of the recommended safeguard areas for consideration from the OPWDD stakeholder group known as the Person Centered Quality Committee.

- OPWDD includes information and resources on the OPWDD website about Person-Centered Planning to build and enhance this capacity in the field.
- **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. The first phase of this project is the development of a Person Centered Protocol that incorporates HCBS settings expectations and CQL POMs philosophy. OPWDD anticipates beginning a pilot of this tool in late 2015/early 2016. This tool will incorporate enforcement of the federal person centered planning and process requirements expected to be included in OPWDD's regulations with an effective date of October 1, 2015. This tool will also facilitate the monitoring and enforcement of the HCBS settings requirements by October 2018.
- **Develop Guidance and Tool box for Providers:** OPWDD revised 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 transitioning to full compliance with the regulations and quality improvement approaches. This guidance and toolbox builds upon OPWDD's transformation initiatives including those identified above. See: http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/hcbs-settings-toolkit OPWDD also created an HCBS Settings Toolkit on our website to assist providers to understand and implement the new requirements. The HCBS Settings Toolkit can be accessed at the following link on OPWDD's website: http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/hcbs-settings-toolkit. OPWDD will continue to maintain this toolkit which includes links to the NYS Transition Plan; CMS Toolbox; the hcbsadvocacy.org website; OPWDD resources such as Person-Centered Planning and the Strengths and Risks Inventory Tool; and many other helpful resources.
- **Ensure effective communications and training across the OPWDD system on the new requirements:** OPWDD is working on planning for communications and training relative to the new HCBS settings requirements. Action items include continuing to work with CQL on delivering POMs training for OPWDD staff; working on plans to ensure consistent training for direct support professionals, supervisors and other professionals statewide on the direct support professional competencies which align with HCBS Settings requirements; and other training and culture change/communication strategies.

- **Implement the NY START Program:** NY START is a community-based program that provides crisis prevention and response services to individuals with intellectual/developmental disabilities and behavioral health needs, as well as their families and those who provide support within the community. The NY START program offers training, consultation, therapeutic services and technical assistance to enhance the ability of the community to support individuals with intellectual/ developmental disabilities and complex behavioral health needs, and focuses on establishing integrated services with providers. Providing supports that help individuals to remain in their home or community placement is NY START's first priority. Full statewide implementation of the NYS START Program is anticipated by October 2018.

- **Performance Measures Monitoring:** OPWDD will use key performance indicators 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.
 - 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.

- **Implementing the “Heightened Scrutiny” process:** OPWDD plans to move forward with the following process for determining which of its settings (both state operated and voluntary not-for profit provider operated) **may** trigger heightened scrutiny:
 1. OPWDD will clearly articulate the criteria triggering heightened scrutiny based on CMS regulations, guidance documents, and OPWDD's Assessment Tools.

2. OPWDD will establish an inventory of settings through its survey process beginning October 2015 through September 2016 that are presumed not to be HCBS settings compliant from the regulations and guidance and will make a determination on whether these settings meet heightened scrutiny for review by CMS through a protocol to be developed. Depending upon stakeholder work group activity and progress with the non-residential settings transition planning it may be necessary to defer the inventory and determination process for non-residential settings until October 2016 through September 2017.
3. OPWDD will submit evidence to the Secretary of CMS for those settings where OPWDD, based upon review and public input (based on characteristics of settings), determines that the setting does meet HCBS requirements and does not isolate people with developmental disabilities from the broader community. By the first quarter of 2017, OPWDD will forward these settings and the provider documentation as well as survey verification results to CMS for their review and final determination. The timeline for non-residential settings may need to be deferred until the first quarter of 2018 depending upon the non-residential settings transition planning process.
4. Settings in the inventory that do not meet HCBS under heightened scrutiny will need a transition plan implemented prior to March 2019 for relocation and/or changes to the setting except in the case of a sheltered workshop setting, where the transition plan will not be required to be implemented until May 2020 consistent with the “New York Plan to Increase Competitive Employment Opportunities for People with Developmental Disabilities, Final Approved Plan-May 1, 2014.”

Transition Plan Specific to Residential Settings Remediation:

OPWDD is in the process of conducting a review of all providers and a sample of their certified residential settings through OPWDD’s on-site surveys and direct interviews of a random sample of individuals served in these settings in order to gauge system compliance and improvements needed for full compliance to occur through this transition period. This assessment effort began in November 2014 and will conclude in September 2015.

In order to develop the residential HCBS Settings Assessment, OPWDD worked extensively and transparently with the Regulatory Reform/HCBS Settings stakeholder work group comprised of representatives of all stakeholder groups including individuals and family members throughout the summer of 2014. The materials from each work group meeting were posted publically to ensure full transparency (see: http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/stakeholder-workgroup-resources). The stakeholder work group provided input and feedback on the development of OPWDD’s HCBS Settings Administrative Memorandum as well as the HCBS Settings Residential Assessment Tools. The iterations of these documents can be viewed on the stakeholder work group webpage through the link provided above. In addition, OPWDD created an HCBS

Settings Toolkit on our website (see: http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/hcbs-settings-toolkit) with resources and tools to assist providers to transition their programs and services for full compliance. OPWDD continues to add resources to the toolkit as new resources are identified or developed.

The following is the remediation activity timeframes relative to OPWDD’s initial Residential Transition Plan with relevant updates where noted:

<ul style="list-style-type: none"> • Began Feb. 2014 and ongoing: Convene information sessions with various OPWDD stakeholder groups on the final HCBS Settings regulations for public education purposes.
<ul style="list-style-type: none"> • 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. (Completed)
<ul style="list-style-type: none"> • 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. (First phase Completed)
<ul style="list-style-type: none"> • 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. (Completed—HCBS Settings Residential Transition Plan Administrative Memorandum issued October 20, 2014)
<ul style="list-style-type: none"> • 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. (Completed)
<ul style="list-style-type: none"> • October 2014 – September 2015: Implement OPWDD’s on-site HCBS Settings Assessment (note: this period aligns with DQI’s annual survey cycle). (In process)
<ul style="list-style-type: none"> • 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.
<ul style="list-style-type: none"> • 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, 2018:** 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, 2018 implementation. This includes holding providers accountable for noncompliance with any components of the CMS HCBS settings requirements that weren't already required by OPWDD prior to the CMS regulations being finalized. (Note: the date of this action item has been extended from October 2016 to October 2018 based on public input received indicating that the October 2016 date was too soon for this transition.

The following information is more detail on Transition Plan and Remediation Activities that Have Been Completed to Date and/or are in Process:

OPWDD Comprehensive On-Site Residential Assessment:

OPWDD is in the process of conducting a review of a sample of the certified residential settings operated by each HCBS provider through on-site surveys and direct interviews of a representative sample of individuals served in these settings.

This assessment includes certified IRAs and CRs and began on 11/1/2014 through 9/30/2015. OPWDD developed its assessment tools using the information contained in the CMS HCBS Settings Tool Kit and Exploratory Questions as well as the stakeholder input provided to OPWDD while crafting its HCBS Settings Administrative Memorandum for Certified Residential Settings. In addition, OPWDD incorporated 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 was possible in the assessment tool.

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, training needs, the time frame needed for full compliance across the developmental disability service system, and continuous quality improvement efforts needed to achieve these goals.

In addition, in accordance with OPWDD's quality initiatives, OPWDD DQI will begin assessing the degree to which all provider agencies are embracing the HCBS settings quality 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. This activity is scheduled to commence beginning October 1, 2015 with the implementation of OPWDD's new Person Centered Protocol.

In addition to the remediation activities described in this section, the activities outlined in the General Remediation section above also apply to residential settings where applicable.

Remediation Plan for Non-Residential Settings

On December 17, 2014, The Centers for Medicare & Medicaid Services (CMS) released the final elements of the Home and Community-Based Services (HCBS) Toolkit—guidance to assist states in complying with the home and community-based **non-residential settings** requirements in the HCBS Rule. The release of this information triggers the need for OPWDD to update its initial preliminary HCBS Settings Transition Plan to include remediation action needed for non-residential settings.

The following remediation activity timeline pertains to transition activity related to OPWDD's Day Habilitation and Prevocational services/settings. Working with OPWDD's Regulatory Reform/HCBS Settings Stakeholder Work Group, OPWDD will achieve the following no later than October 2018:

- Develop and implement criteria/ expectations defining site based Day Habilitation and Prevocational Services and Community Based Day Habilitation and Prevocational Services (i.e., without walls).
- If necessary, develop and implement separate billing mechanisms for site based Day Habilitation vs. Community Based Day Habilitation and Site Based Prevocational Services vs. Community Based Prevocational Services.
- Develop and implement regulations and guidance based on the new design elements.
- Develop oversight/certification requirements and protocol revisions needed to oversee revised service models.
- Develop outcome and performance measures.

OPWDD will begin to hold non-residential settings accountable through its certification and licensing processes for HCBS settings requirements and the above programmatic changes beginning no later than October 2018.

The remediation actions for all other non-residential settings are addressed under NYS's Draft Plan to Increase Competitive Employment Opportunities for People with Developmental Disabilities (<http://www.opwdd.ny.gov/node/4791>).