

## G. Home and Community-Based Services (HCBS) Settings Compliance for Conversions of ICFs to IRAs

In January 2014, CMS promulgated final regulations describing standards for all HCBS waiver service settings. Those regulations became effective March 17, 2014 ([http://www.opwdd.ny.gov/opwdd\\_services\\_supports/HCBS/home](http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/home)). New York State has submitted a transition plan to CMS, which proposes a phased approach to achieving and demonstrating compliance with the standards over the next 3.5 years. In the first phase, which began October 1, 2014, OPWDD undertook a statewide assessment of a sample of certified residential settings to determine the current readiness of New York's developmental disabilities service system to achieve full compliance with the new settings standards.

At the same time that these baseline assessments and regulatory changes are underway, providers are preparing to assist individuals to transition from institutional settings (ICFs) to community settings and waiver services, in fulfillment of the ICF Transition Plan (<http://www.opwdd.ny.gov/node/4971>). It is important that OPWDD assure that all ICF conversions in which individuals remain in their current location will constitute a true change in the way each person is supported to be a member of his/her community, and it is therefore essential that providers understand the expectations that will be placed on any ICF conversions and any new IRA development. For these reasons, OPWDD has developed a Checklist for providers proposing to convert ICF settings to waiver settings to self-report on progress being made towards full compliance with the HCBS Settings rules (see Section V. Forms and Related Helpful Resources/Guidance).

**OPWDD will request that providers complete this HCBS Settings Checklist for ICF to IRA Conversions for each site being converted and document their answers to the checklist items in their ICF conversion proposals. If the provider cannot attest full compliance with any element of the HCBS settings rule in Section 1 of the checklist at the anticipated date of ICF conversion, OPWDD will also require completion of Section 2: The HCBS Settings Compliance Action Plan for ICF to IRA Conversions.** The Compliance Action Plan should be submitted with the ICF conversion proposal template and should document every activity the provider will take to ensure full compliance with the HCBS settings rule as soon after conversion as possible, but no later than October 1, 2018.

**All ICFs that convert to IRAs on or after March 17, 2014 are presumed to be institutional in character and will be subject to what is called “heightened scrutiny” by the federal government.**

In addition to the HCBS Settings Checklist for ICF to IRA Conversions and the HCBS Settings Compliance Action Plan for ICF to IRA Conversions, any provider submitting a proposal for ICF conversion on or after January 1, 2016 can choose to submit a package of evidence and documentation to undergo the heightened scrutiny process as early as possible. If an agency chooses to do so, OPWDD will include the evidence package for that site in the next occurring heightened scrutiny public comment process and submission to CMS. Evidence/documentation should be sent to: [Heightened.Scrutiny@opwdd.ny.gov](mailto:Heightened.Scrutiny@opwdd.ny.gov).

**Please refer to OPWDD's HCBS settings toolkit for further information regarding how to comply with the HCBS settings rule:**

[http://www.opwdd.ny.gov/opwdd\\_services\\_supports/HCBS/hcbs-settings-toolkit](http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/hcbs-settings-toolkit)

- Part 1 and Part 2 OPWDD HCBS Settings Assessment and Guidance from 2014-2015 survey year: <http://www.opwdd.ny.gov/node/5765>
- OPWDD ADM# 2014-04: <http://www.opwdd.ny.gov/node/5760>

- Revised OPWDD Heightened Scrutiny-HCBS Protocol and guidance from 2015-2016 survey year: <http://www.opwdd.ny.gov/node/6256> and <http://www.opwdd.ny.gov/node/6254>
- October 13, 2015 Memo to Providers on Heightened Scrutiny Process: <http://www.opwdd.ny.gov/node/6252>
- New person-centered regulations: [http://www.opwdd.ny.gov/regulations\\_guidance/opwdd\\_regulations/person-centered-planning](http://www.opwdd.ny.gov/regulations_guidance/opwdd_regulations/person-centered-planning)
- Person-centered checklist: <http://www.opwdd.ny.gov/node/6251>

Please note that immediate compliance with the CMS person centered planning and process requirements of the new HCBS waiver settings rule (CFR 441.301(C) (1-3) is required upon conversion to an IRA. Helpful additional resources about person centered planning are available at [http://www.opwdd.ny.gov/opwdd\\_services\\_supports/person\\_centered\\_planning](http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning).

**The Authorized Agency Provider Representative must attest to the accuracy of the responses in this ICF Conversion Proposal Template, and in Sections 1 and/or 2 of this checklist by signing the ATTESTATION at the end of this document.**

**Note: All page references below are to pages in the following guidance document: <http://www.opwdd.ny.gov/node/6256>**

Section 1: HCBS Settings Checklist for ICF to IRA Conversions Home and Community-Based Services (HCBS) Settings Requirements:	For Authorized Agency Rep Use		CHECK HERE IF: "NOT MET" area was <b>added</b> to Compliance Action Plan
	MET	NOT MET	
<b>A. Heightened Scrutiny*:</b>  An ICF is NOT considered to be a Home and Community-Based Setting. ICFs that are converting to IRAs on or after March 17, 2014 will undergo OPWDD and CMS's "heightened scrutiny" process to determine whether the site has the qualities of an HCBS setting. Providers will need to <b>demonstrate</b> and show evidence that the site <b>does not isolate</b> individuals from the broader community and that service delivery practices are <b>not institutional</b> in nature. See October 13, 2015 Provider Communication Memo on the Heightened Scrutiny Process.			
1. The site is in a location other than on the grounds of a public institution. (p 4 Guidance)			
2. The site is in a building separate from a publically or privately operated facility that provides inpatient institutional treatment. (p 4 Guidance)			
3. The site is in a location other than immediately adjacent to a public institution. (p 4 Guidance)			
4. The site is located apart from other certified facilities. <i>It is not part of co-located and/or clustered programs/sites that are operationally related resulting in the isolation from and/or inhibition of interaction with the broader community.</i> (p 5-6 Guidance)			
5. The site's design, appearance and/or location <u>is not</u> institutional and <u>does not</u> isolate people from the broader community. (p 7 Guidance)			
<b>AGENCY WILL SUBMIT EVIDENCE/DOCUMENTATION FOR EARLY HEIGHTENED SCRUTINY REVIEW OF THIS SETTING (Send evidence/documentation to: <a href="mailto:Heightened.Scrutiny@opwdd.ny.gov">Heightened.Scrutiny@opwdd.ny.gov</a>).</b>	YES	NO	

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<b>B. Person Centered Planning Requirements and Habilitation Planning:</b>  <b>PLEASE NOTE:</b> Federal requirements for Person-Centered Planning went into effect on March 17, 2014. ICFs converting to IRAs MUST therefore comply with the person-centered planning regulations at the time of the ICF conversions.			
1. The agency/site uses a person-centered planning methodology and it is effectively implemented. (p 45-51 Guidance)			
2. Residential Habilitation plans are person-centered and reflect the informed choices of individuals. (p 45-51 Guidance)			
3. Individualized Plans of Protective Oversight (IPOP)s and/or Habilitation plans reflect risk factors and safeguards, including having back-up plans in place for when an unexpected event occurs. (p 45-51 Guidance)			
4. Person-centered habilitation plans are understandable and accessible to individuals. The plans are provided in plain language and in the person's preferred language, which includes Braille, if necessary. (p 45-51 Guidance)			
5. Residential Habilitation plans incorporate meaningful and individualized activities, including individualized community-based activities that individuals want and what supports are needed. (p 45-51 Guidance)			
6. Individuals have been provided written notice regarding their right to a person-centered planning process.			
7. Individuals choose people that they want to participate in the person-centered habilitation planning process and assist the person in decision-making.			
8. Individuals are provided with information and support to make informed choices and direct the PCP habilitation process to the maximum extent possible.			
9. Services and supports provided by the site which are identified in ISPs are based on individualized interests, preferences, strengths, capacities, needs, and outcomes.			
10. Person-centered planning habilitation meetings are scheduled at times and locations that are convenient to all individuals.			
11. The person-centered habilitation planning process includes strategies to address disagreements, and conflict-of-interest guidelines for all individuals.			
12. Individuals are provided with methods to request updates to their person-centered habilitation plans.			
13. Person-centered habilitation plans demonstrate and support a meaningful and individualized person-centered planning process.			
14. Person-centered habilitation plans reflect person-centered goals and desired outcomes for individuals.			

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15. The person-centered habilitation plans reflect and document the habilitation services and supports that individuals have opted to self-direct.			
16. The person-centered habilitation plans are finalized and agreed to with the written informed consent of individuals.			
17. The person-centered habilitation plans are signed by the providers responsible for implementing the person-centered habilitation plan.			
<b>C. Integrated Settings, Natural Supports, and Community Access:</b>			
1. The site has sufficient transportation capacity that supports people's individualized options and choices for activities and schedules. (p 10-11 Guidance)			
2. The site has sufficient staff capabilities to support scheduled and unscheduled individualized community activities on a regular basis in the same manner as individuals not receiving HCBS. (p 11-12 Guidance)			
3. The site provides individuals full access and engagement in the community to the same degree as others in that community. (p 8-10 Guidance)			
4. The site facilitates and promotes the establishment, maintenance, and optimization of natural supports, based on individual preferences.			
<b>D. Policies and Procedures that promote HCBS rights:</b>			
1. The agency/site has an overall written plan that is implemented and effective, such as a Quality Improvement Plan, which addresses CMS HCBS Settings, including self-assessment of improvements that are needed, measurable activities, and timeframes for achieving compliance with the requirements.			
2. There are written policies and procedures implemented for the agency/site that overall address ensuring individual comfort, preferences, and independence. These policies and procedures are effectively implemented. (p 24-25 Guidance)			
3. There are written policies and procedures implemented for the agency/site that address providing full access, as appropriate, to typical common living areas of the residence, such as the laundry room, pantry room, use of kitchen, and use of appliances. (p 19-20 Guidance) This is also reflected in the Site Specific Plan of Protective Oversight (SPOP) for the residence. These written policies and procedures are effectively implemented.			
4. There are written policies and procedures implemented for the agency/site regarding the ability of individuals to access food of their choosing at any time. These policies and procedures are effectively implemented. (p 39-41 Guidance)			
5. There are written policies and procedures implemented for the agency/site regarding the right of individuals to independently control their personal resources and spend their personal funds. (p 42 Guidance)			

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6. There are written policies and procedures implemented for the agency/site regarding assessment of overall individual satisfaction with supports and services that are received, including steps for ensuring timely action if a person is dissatisfied. These policies and procedures are effective. (p 13-15 Guidance)			
7. There are written policies and procedures implemented for the agency/site that address overall individual satisfaction with the level of access to the broader community, with the appropriate amount support provided. These policies and procedures are effectively implemented. (p 8-11 Guidance)			
8. There are written policies and procedures implemented for the agency/site regarding assessment of roommate/living arrangement choice and satisfaction, including steps for ensuring timely action if a person is dissatisfied. There are mechanisms in place to revisit choice of living arrangement periodically, including the right to choose to live in a non-disability specific setting. These policies, procedures, and mechanisms are effectively implemented. (p 14 Guidance)			
9. There are written policies and procedures implemented for the agency/site that address opportunities for individuals to receive visitors at times of their choosing and in private (and without the need for prior facility approval). Policies and procedures regarding visitors must not be unnecessarily restricted or regimented. These policies and procedures are effectively implemented. (p 38-39 Guidance)			
10. There are written policies and procedures implemented for the agency/site regarding the provision of home and bedroom door keys to individuals and/or other appropriate means of independent access. This includes the process in place to designate which staff should have access to bedroom door keys (with the agreement of the individual) and how privacy is protected. These policies and procedures are effectively implemented. (p 15-17 Guidance)			
11. There are written policies and procedures implemented for the agency/site related to keeping health and personal information of individuals' private and not posted publicly in the site. These policies and procedures are effectively implemented. (p 36 Guidance)			
12. There are written policies and procedures implemented for the agency/site that overall support individualized routines and person-centered utilization of community resources. These policies and procedures are effectively implemented. This may include areas such as: <ul style="list-style-type: none"> <li>• Maintaining individualized and varying schedules rather than uniform and/or regimented site schedules that everyone must follow</li> <li>• Utilization of public transportation, use of volunteers, and/or natural supports that can help establish and sustain community access</li> </ul>			
13. There are written policies and procedures implemented for the agency/site to provide information to individuals and family members/advocates on the rights and due process requirements for HCBS			

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settings and there is a process in place to review these rights on a routine basis. These policies and procedures are provided in plain language and in the person's preferred language. These policies and procedures are effectively implemented. (p 27 Guidance)			
14. There are written policies and procedures implemented for the agency/site that address modification or restriction of rights, including use of positive interventions, individualized assessment of need, informed consent, and periodic review of the restrictions. It also addresses what actions that are taken to ensure the rights of others in the facility are accommodated when environmental protections are in place due to one individual's needs. These policies and procedures are effectively implemented. (p 32-35; Guidance)			
15. There are <b>no</b> blanket house rules, policies, or procedures for the agency/site that are barriers/obstacles in guaranteeing that individuals are able to exercise their HCBS settings rights. (p 30-31 Guidance)			
<b>E. Staffing, Education, and Training:</b>			
1. There is evidence of implementation of the DSP Code of Ethics and the OPWDD Direct Support Professional Competencies in accordance with ADM#2014-3 and such competencies are implemented with site staff.			
2. There is evidence of staff training on HCBS Setting requirements, including rights, informed choice, dignity, respect, autonomy, and community integration. The training is effective. (p 25-26 Guidance)			
3. There is evidence of staff training on individual rights and how to support individuals exercising control over their lives. The training is effective. (p 25-26 Guidance)			
4. There is evidence of staff training on how to actively support and promote individual choice of activities and meaningful community inclusion. The training is effective. (p 25-26 Guidance)			
5. There is evidence of staff training on how to ensure privacy, including when assistance is provided, when entering bedrooms, when residents are receiving visitors, making phone calls or sending e-mails. The training is effective. (p 36-38 Guidance)			
6. There is evidence of staff training on cultural competency, including what it is, why it is important, and respecting the cultural/religious/other backgrounds of residents. The training is effective. (p 22-23 Guidance)			
7. The site has adequate staffing plans implemented for meeting individual plans, preferences, and priorities, and choice of community activities. The plans are effective. (p 20-22; 25-26; 45-49 Guidance)			
8. The site has adequate staffing plans implemented to ensure that individuals are able to effectively and routinely engage in activities in their Plan. The plans are effective. (p 20-22 Guidance)			
9. The site has adequate staffing plans implemented to ensure that individuals are not isolated from the broader community. The plans are effective.			
<b>F. Rights, Due Process, and Housing Protection:</b>			

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1. There is a lease or written occupancy agreement for residents that provides tenant protections and appeals/due process from evictions. (p 28-29 Guidance)			
2. Individuals have been informed regarding what rights they have to due process and under what circumstances a resident may be required to relocate in accordance with NYCRR Part 14 633.12 and the HCBS Settings Administrative Memorandum #2014-04. (p 28-29 Guidance)			
3. Individuals have been provided with information regarding their rights in plain language and in the person's preferred language, which includes Braille, if necessary. (p 19 Guidance)			
4. Individuals have been made aware of who to contact and the process to make an anonymous complaint. (p 29 Guidance)			
<b>G. Rights Modifications, Restrictions, and Protections:</b>			
1. For any modification or restriction of rights, the agency/site has written plans for individuals that describe positive, less intrusive approaches that have been tried but not successful, leading to the use of current interventions for individuals. (p 32-35 Guidance)			
2. For any modification or restriction of rights, the agency/site has written plans for individuals that include individualized assessed need and/or behavior that justify the inclusion of the restriction, and/or rights modification. (p 32-35 Guidance)			
3. For any modification or restriction of rights, the agency/site obtains written informed consent from individuals and/or their family members/advocates. (p 32-35 Guidance)			
4. For any modification or restriction of rights, the agency/site has mechanisms in place to ensure periodic review of data for effectiveness and necessity of the restriction. (p 32-35 Guidance)			
5. The agency/site has incorporated HCBS rights into rights modifications for individuals, requiring due process and informed consent (as specified above in G1-4).			
<b>H. Privacy, Choices, and Access:</b>			
1. Bedroom doors are lockable by individuals. (p 16-17 Guidance)			
2. Bathroom doors are lockable and privacy is protected. (p 17-18 Guidance)			
3. There are private areas to make phone calls, receive visitors, or send e-mails.			
4. Residents are able to have visitors at the residence at any time. (p 38-39 Guidance)			
5. Health information for individuals is kept private and not posted publicly. (p 36 Guidance)			
6. Bedrooms are individualized and reflect individualized interests and tastes. (p 25 Guidance)			
7. There are no "house schedules" that require all residents to follow a particular fixed schedule for waking up, going to bed, eating, leisure, etc. Individual schedules are supported. (p 20-22; 30-31 Guidance)			
8. Residents have access to television, radio, computer internet, and leisure activities that can be utilized at their convenience.			
9. Residents have access to food 24/7 and there are mechanisms in place to keep individual food preferences available. (p 39-41 Guidance)			

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10. There is full unrestricted access to typical living spaces in the home for all residents, including the kitchen, dining area, laundry room. (p 19-20 Guidance)			
11. Residents have control over their own personal resources. (p 42 Guidance)			
12. Individual choice is facilitated for all residents regarding services and supports, and who provides them. (p 20-22; 23-26 Guidance)			
13. All residents understand how to file an anonymous complaint (p 29 Guidance)			

**ATTESTATION**

I attest that the information and responses that have been provided for this ICF Conversion Proposal Template, HCBS Settings Checklist for ICF to IRA Conversions and HCBS Settings Compliance Action Plan are accurate and are reflective of agency policy and site and service delivery practices in accordance with the HCBS settings requirements as detailed in the OPWDD HCBS Settings Transition Plan Administrative Memorandum #2014-04 and OPWDD Provider Communication Memorandum dated 10/13/15, <http://www.opwdd.ny.gov/node/6252>. I also attest to being fully compliant with the federal person-centered planning and process requirements for each person served in the converted IRA prior to its opening.

**Authorized Agency Representative Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_