



**Office for People With  
Developmental Disabilities**

# **HCBS Settings Revised Transition Plan**

## **Informational Webinar**

**February 23, 2015 -- 3:00-4:30 PM**  
**February 24, 2015 -- 5:00-6:30 PM**  
**March 10, 2015 – 1:00 PM to 2:30 PM**

# Topics

- Brief overview of HCBS Settings Rules
- Elements of OPWDD's Revised HCBS Settings Transition Plan
- Highlights of CMS Non-Residential Settings Guidance/Indicators
- Next Steps



# Brief Overview of HCBS Settings Regulations



# HCBS Settings Final Rules

- The **final rule** was effective March 17, 2014 with up to five years for full compliance based upon approval of a state's transition plan
  - Defines consistent definition of community settings **across all HCBS Medicaid authorities**
  - Final rules applies to **all settings**, not just residential
  - Defines **person centered planning** requirements
  - Is based upon the **“nature and quality of participant's experiences”**



# Key Elements of HCBS Settings

- The setting is integrated in, and supports full access to, the greater community;
- Selected by the individual from among setting options;
- Ensures individual rights of privacy, dignity and respect and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.



# Key Elements of the Final Regulations

## In provider controlled residential settings:

- Individual must have legally enforceable lease/agreement
- Individual has privacy in their living unit including:
  - Lockable doors
  - Choice of roommates
  - Freedom to furnish/decorate
- Individual controls own schedule
- Individual has access to food at any time
- Individual can have visitors at any time
- Physical accessibility to the setting



# What Does this Mean for Providers and People Served?

- Regulations establish additional rights that must be honored for HCBS waiver participants
- Modifications must be:
  - Supported by specific assessed need
  - Justified in the person-centered service plan
  - Documented in the person-centered service plan



## **Modifications to these Rights must be part of the Person Centered Planning Process. Documentation must include:**

- Positive interventions and supports used prior to any modifications
- Regular collection and review of data to measure the effectiveness of the modification
- Established time limits for review of any modification
- Informed consent of the individual
- Assurance that the interventions and supports will cause no harm to the individual



# Revisions to OPWDD's Transition Plan



# Why are there Revisions to the Transition Plan?

- OPWDD's initial Transition Plan included residential settings only. The initial Transition Plan was formally published for public comment on May 2, 2014 through June 3, 2014.
- In mid December 2014, CMS issued the long-awaited Non-residential Settings Guidance and Exploratory Questions triggering the need for OPWDD to update its initial Transition Plan to include non-residential settings transition.



# Context: Where are we with the Initial Transition Plan? (March 2014- Present)

- ❑ Implemented public input process, Spring 2014
- ❑ Operation of HCBS Settings Stakeholder Steering Committee to help shape residential implementation
- ❑ Developed/Issued ADM # 2014-04—October 20, 2014.
- ❑ Developed and Implemented HCBS Settings Assessment Tools and Interpretive Guidance for IRAs/CRs—began reviews Nov. 2014-Sept. 2015
- ❑ Surveyor and Provider training Fall 2014
- ❑ CQL POMs workshop implementation for DQI surveyors and state operations staff is ongoing

# Major Action Items in Revised Transition Plan

## Jan.-April 2015

- Legislative Authority -- NPA
- Resubmit Waiver

## July 2015

- Anticipated Waiver Approval
- Develop PCP Regs effective 10/1

## June 2016

- Conclude development of HCBS Waiver Regulations

## October 2018

Ongoing monitoring/  
Compliance with HCBS Settings Regs



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# Revised Transition Plan Integrates OPWDD's Transformation Agenda

NYS Plan to Increase Competitive Employment Incorporated

Increase Self-Direction Opportunities Plan Incorporated

CQL POMs Training; other communications and training initiatives

Development of Person Centered Protocol Pilot late 2015/early 2016

Implement NYS START Program fully by October 2018



# Additional Revisions

- Transition Plan for Day Habilitation and Prevocational Services (Non-Residential Settings)
- Description of OPWDD's Proposed "Heightened Scrutiny Process"



# CMS Non-Residential Settings Guidance issued in mid Dec. 2014

- ✓ Exploratory Questions for non-residential settings
- ✓ Final Question and Answers

Note: Non-residential options and choices must be consistent with both the transformation agreement and the guidance on HCBS Settings



# Highlights of Non-Residential Guidance – Purpose

- Offer **considerations** as States assess non-residential settings
- Serve as **suggestions** to assist states and stakeholders in understanding what **indicators** might reflect the presence or absence of each quality in a setting
- States tailor their review to the type of services relevant in their state



# Highlights of Non-residential Guidance Issued mid Dec. 2014

- The state should consider whether the right service is being appropriately provided to achieve its goal, including the duration of the service and the expected outcomes of the service— **i.e., The right service at the right time in the right setting**
- The CMS regulation **does not “prohibit facility-based or site-based settings.”**

Such settings “must demonstrate the qualities of HCB settings, **ensure the individual’s experience is HCB and not institutional in nature,**” and “ensure that the setting **does not “isolate the individual from the broader community”**”

If a setting is designed specifically for people with disabilities/individuals in setting are primarily people with disabilities, **the setting may be isolating unless the setting facilitates people going out into the broader community.**



# Highlights of Non-residential Guidance Issued mid Dec. 2014

- Nature of service impacts how HCBS settings requirements get addressed especially when the service is highly clinical/medical in nature.
- People must have the option to be served in a setting that is not exclusive to people with the same or similar disabilities.



## Summary of indicators in CMS Non-Residential Exploratory Questions

- Opportunities for meaningful non-work activities in integrated community settings for period of time desired by person
- Individualized schedules that focus on needs, desires, and individual growth
- Freedom of movement inside/outside setting-people not restricted to one room or area
- Knowledge/access to info on age appropriate activities including competitive work, shopping, attending religious services, medical appts. dining out, etc. and who will facilitate/support these activities



# Summary of indicators in CMS Non-Residential Exploratory Questions

- Setting located in community among residential, businesses, restaurants, etc. that facilitates interaction with broader community
- Visitors (other than paid staff) encouraged—evidence of visitors present at regular frequencies
- Employment settings provide opt. to negotiate work schedules, break times, benefits, etc. same as people without disabilities
- Access to info and training on use of public transportation and accessing broader community
- Tasks and activities comparable to tasks and activities for people who do not have disabilities
- Physical accessibility of the setting



# Summary of indicators in CMS Non-Residential Exploratory Questions

- Setting reflects individual needs and preferences
- Setting policies ensure informed choice
- Setting options offered include non-disability specific settings such as volunteering in the community; engaging in non-disabled community activities such as the YMCA; etc.
- Setting options include the opportunity for people to choose to combine more than one service delivery type or HCBS in any given day/week (e.g., competitive employment and day habilitation)



# Summary of indicators in CMS Non-Residential Exploratory Questions

- Information about individuals kept private-i.e., no posting of schedules for PT, OT, medications, restricted diet, etc.
- Setting supports individuals who need assistance with personal appearance as they desire—this assistance is provided in private
- Respectful communication and interaction in manner that each person prefers to be addressed
- Informed consent obtained through PCP prior to modifications of any rights including the HCBS settings rights
- Setting offers secure place for storage of individual personal belongings
- Physical setting supports a variety of individual goals and needs (e.g., indoor and outdoor gathering spaces, places for solitary activities; etc.)



# Summary of indicators in CMS Non-Residential Exploratory Questions

- Individuals can choose with whom to do activities inside and outside the setting
- Access to meals/snacks at any time consistent with individuals in similar and/or same setting who do not receive HCBS
- Setting provides and posts information on Rights
- Setting does not prohibit individuals from engaging in legal activities in a manner different from non-disabled people
- Setting affords opportunities for tasks and activities matched to individual skills, abilities, and interests.

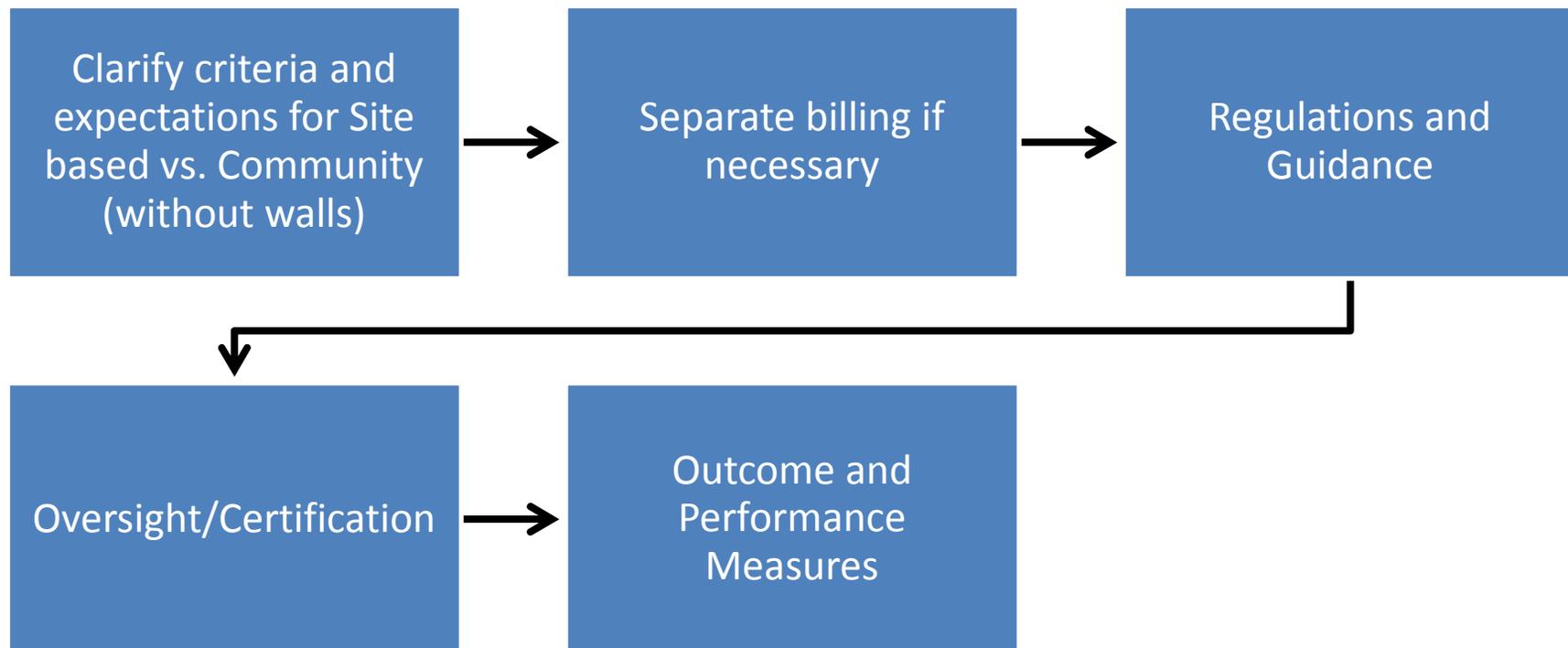


# Summary of indicators in CMS Non-Residential Exploratory Questions

- Choice regarding services, provider and settings—opportunities to visit/understand the options
- Setting affords people the opportunity to regularly and periodically update or change their preferences
- Setting ensures people are supported to make decisions and exercise autonomy to greatest extent possible
- Setting staff are knowledgeable about the capabilities, interests, preferences and needs of individuals



# Remediation Plan for Day Habilitation and Prevocational Services – Achieve the following no later than October 2018



# What is “Heightened Scrutiny”?

- A CMS process for submitting evidence to the CMS Secretary for settings “presumed not to be HCBS” where the State finds that the settings are not institutional and do not isolate people with disabilities and therefore can meet HCBS.
- State must overcome the presumption that such settings are not HCBS

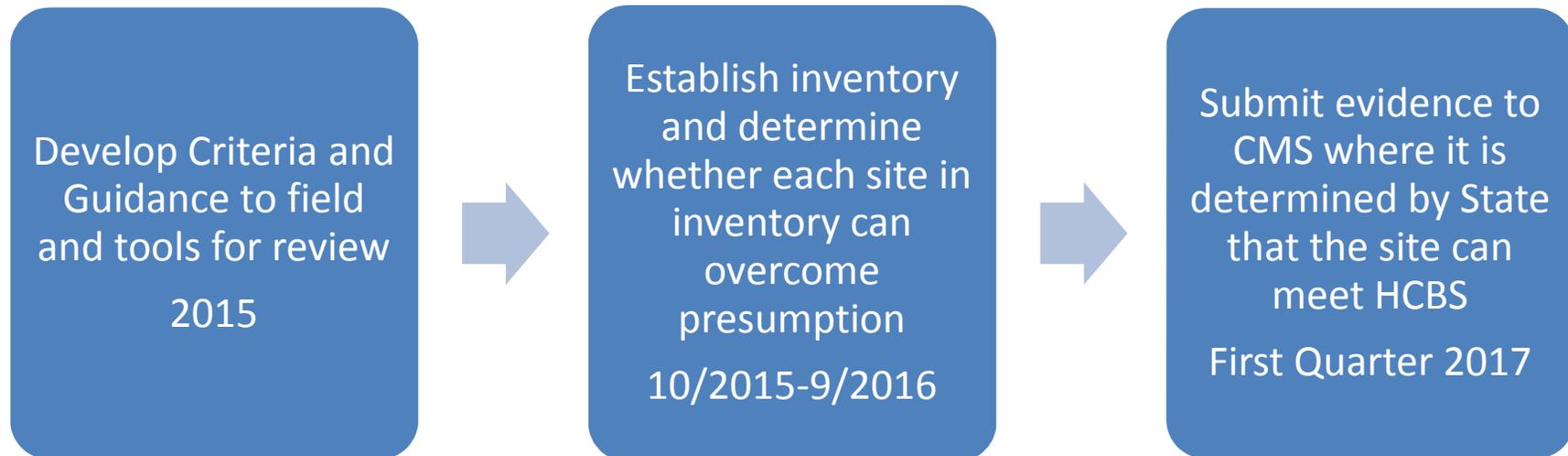


# Triggers for “Heightened Scrutiny”

- Locations that have qualities of institutions;
- Settings located in a building on the grounds of a public or private institution;
- settings that provide inpatient treatment;
- Settings immediately adjacent to public institutions;
- Any other setting that has the effect of isolating individuals from the broader community.
- Settings designed to provide multiple types of services and activities on-site;
- People in setting have limited, if any, interaction with broader community;
- Settings that use/authorize interventions/restrictions used in institutional settings;
- Settings that potentially isolate e.g., farmstead or disability specific farm community; gated community; residential schools;
- Multiple settings co-located and operationally related.



# “Heightened Scrutiny” Process Timeline



# Next Steps to Move Forward with Revised Transition Plan



# Stakeholder Committee Work Going Forward

## Two initial Subgroups Meet March– Summer 2015

Day  
Habilitation/Prevocational  
Led by Ceylane Meyers-Ruff,  
OPWDD

- Written recommendations for Criteria based on CMS guidance and OPWDD charge
- Will use existing prevocational services group with additional members added

“Heightened Scrutiny”  
Led by Maryellen Moeser,  
OPWDD

- Develop written guidance to field clarifying what triggers heightened scrutiny
- Develop the “evidence” package and review tool(s)



## Questions?

Public Comments Accepted Through March 18, 2015

**Direct Written Comments to:**

[Quality@opwdd.ny.gov](mailto:Quality@opwdd.ny.gov)

**OR**

OPWDD 44 Holland Avenue, 4<sup>th</sup> Floor  
Albany, New York 12229

**Verbal Comments to:** Alicia Matulewicz,  
(518) 473-9050



# Where to Get More Information?

OPWDD Public Announcement and Transition Plan:

[http://www.opwdd.ny.gov/opwdd\\_services\\_supports/HCBS/announcement-for-public-content](http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/announcement-for-public-content)

OPWDD HCBS Settings Toolkit:

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

CMS Toolkit:

[http://www.opwdd.ny.gov/opwdd\\_services\\_supports/HCBS/CMS Information on HCBS Settings](http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/CMS_Information_on_HCBS_Settings)

