

HEIGHTENED SCRUTINY - HCBS SETTINGS PROTOCOL GUIDELINES

PURPOSE

1. **Identify certified sites where** HCBS Waiver Services are delivered, that require *heightened scrutiny* of compliance with HCBS Settings regulations.
2. **Assess the residential sites** identified as requiring *heightened scrutiny* against the **HCBS settings** regulations.
3. Implementation of these reviews is in support of OPWDD's Transition to HCBS settings compliance. **Full compliance with the regulations is not yet required** (target date October 2018). The above actions will lay the groundwork for future DQI activities related to assessment and demonstration of OPWDD's certified setting compliance with HCBS Settings requirements.

IMPLEMENTATION

1. Implement **Section 1** of this Protocol during all **Recertification and Annual Visits** to the following certified programs:
 - IRAs (except FSR/IRAs)
 - All Community Residences (including Apartments)
 - All Day Habilitation Sites
 - Day Training Sites where HCBS Waiver Pre-Vocational services are delivered
 - Other sites where HCBS Waiver Pre-Vocational services are delivered
2. If all standards in Section 1 are "met", STOP. You do not need to complete Sections 2-6.
3. **Sections 2, 3, 4, 5, and 6** must be implemented only if the following conditions are met:
 1. The site is an **IRA or CR**
AND
 2. One (1) or more standard(s) in Section 1 is "**not met**"
4. **Sample Dependent Standards: Sections 2, 3, 4, and 6** include standards that require **person-specific information** to be gathered in order to inform your decision. These standards are identified as "**SAMPLE DEPENDENT**" in the guidance and "**SD**" in the standard. This means that In order to make a decision, these identified standards require you to gather information about the sample individual(s) unique experiences and circumstances based on methodologies most appropriate to the issue (interview, observation and review of person centered plans). Gather information according to the Sampling Strategy below, but it does not mean that your decision is based solely on this information. If you discover a situation involving non-sample individual(s) that would require the standard to be "not met" it must be indicated as "not met". These standards should be determined "not met" if any one person's situation does not meet the standard. "Rule of One" does not apply.

PROTOCOL DOCUMENTATION: This will be required on paper protocol until the QI platform is tested and ready.

1. All demographic information indicated in the document
 - Agency
 - Site: OC# & Address
 - Start / End date
 - Current # of people served at the site (does not include people on temporary respite)
 - Team responsible and Surveyors participating
 - Names of people in sample including those added if needed for HCBS response.
 - Each Observation Period (start time/end time)
 - People present for each observation
 - Specific justification if no people observed
 - Interviewees: Full name and contact type (e.g. Individual, parent/family, etc.)
2. Indicate met or not met for each required standard (see Implementation Section Above above)
3. Document rationale for your decision
4. Document any general comments that you want to capture about the site, in the General Comments section.

GENERAL GUIDANCE

Observation must occur in order to make a decisions on the majority of the standards on this document.

- **Observation** is essential when people' ability to describe their life experience is limited or lacking.
- **Observation** is also essential to validate information gathered through interview from people, advocates and agency staff and documentation.
- **Observation** must be of sufficient duration to gather information needed to assess the standards.
- Note: Observation may be intrusive in situations where an individual lives in a small setting/apartment with less than 24 hour support. In these settings, if determined to be too intrusive by the individual or surveyor, observation may be limited to evaluation of the person's residential setting.

Interview:

- **Individual in Sample:** Discussion with the people in the sample should be conducted in the manner and form of communication effective with the individual. This can occur formally or informally according to what seems to be the most effective strategy. Interviews should be conducted in a location and manner comfortable for the individual. He or she may request to have a preferred family member or staff assist them, however should not feel pressured to have the conversation with their assistance if against their wishes. It is always beneficial to establish with the person and by asking others, the best way to engage with the individual so they understand you and you know how he/she communicates to understand their responses.
- **People who know the person well:** Family and staff members and MSCs may be the primary interview source or provide supplemental information depending on the standard being assessed and the individual's ability to communicate. Decisions on who to interview and whether to do so formally or informally should be dependent on your assessment on how to effectively to get information that you require. When others are serving as a surrogate for the individual's point of view sure to ask questions in such a way that

requires them to think for the person, requiring them to consider how the act, respond, vocalize, move, etc. when they prefer something, when they don't like something, when they are bored, when they are alert and engaged, etc. Ask staff or family how they use this awareness to make decisions regarding service plans, supports, activities, clothes, roommates, food etc.

- Interview all parties necessary to evaluate the standards. Interviews should not be approached as "either/or". For example, while the individual in the sample may be a great source of information, staff working closely with them may provide additional information or perspective. Family may provide information based on their understanding of the person's experience but staff may be able to fill in gaps about the house operations and the person's service plan, daily routines and experiences.

Individual(s): Guidance, when referring to input from the **Individual** will also encompass people who know them best in situations when the individual is reliant on others to be or support their own voice/perspective. When using the input of others, the reviewer must consider whether this aligns with all other evidence gathered during the review, when decision making for the standard.

SECTION 1: HEIGHTENED SCRUTINY TRIGGERS	
STANDARD	GUIDELINES
1-1. The site is in a location other than on the grounds of a public institution	<p>The site is not on the grounds of a public institution.</p> <p>A public institution means an institution that is the responsibility of a governmental entity over which a governmental entity exercises control.</p> <p>OPWDD developmental centers, OMH psychiatric centers, institutions for mental diseases, prisons, addiction centers and state run nursing homes are considered public institutions. A former developmental center that has been closed is also considered a public institution.</p> <p>A public institution DOES NOT include: a medical institution (i.e., hospital including VA hospital), child care institution, publically operated non-ICF community residences, universities, libraries, and public non-residential schools.</p> <p>If the site is on the grounds of a public institution as described above, the standard is <i>NOT MET</i>.</p>
1-2. The site is in a building separate from a publically or privately operated facility that provides inpatient institutional treatment.	<p>The site is not in a publically or privately operated facility that provides inpatient institutional treatment.</p> <p>Inpatient institutional treatment includes all the settings listed above under definition of public institution as well as any private settings delivering inpatient institutional treatment such as a private mental health facility delivering inpatient care.</p> <p>If the site is in a building providing inpatient institutional treatment as described above, the standard is <i>NOT MET</i>.</p>
1-3. The site is in a location other than immediately adjacent to a public institution.	<p>The site is not immediately adjacent to a public institution.</p> <p>Immediately adjacent means that the setting/site is next to and abuts the public institution. See definition of public institution in number 1. "Abuts" means that the setting/site property is contiguous or touching the public institution's property with no intervening parcel of land between the two settings/sites.</p> <p>If the site is immediately adjacent to a public institution as described above, the standard is <i>NOT MET</i>.</p>

<p>1-4. The site meets the following description: It did not convert from an ICF on or after March 17, 2014.</p>	<p>The site is not a former ICF which converted to another program on or after March 17, 2014.</p> <p>Any setting/site that was formerly an ICF on or after March 17, 2014 is subject to heightened scrutiny per OPWDD Counsel due to language listed below from CMS federal register. CMS states, “we recognize that repurposing existing building structures is a tool used to control costs. However, we believe that such structures should not be a state’s first option when looking to increase the pool of community-based residential settings. Such structures were often built and operated in such a way that they inherently hinder people from participating in the broader community, and reduce people’ control of how and where they receive services. However, there may be circumstances where such a setting could be repurposed in a way that it would meet requirements for HCB settings and would no longer have the characteristics of an institution. The final rule allows a state to submit evidence for CMS’ consideration in this circumstance”.</p> <p>If the site had been an ICF, but converted to a program providing HCBS Waiver services (e.g. IRA, Day Hab, Pre-Voc site) anytime between March 17, 2014 and the date of your visit, the standard is <i>NOT MET</i>.</p>
<p>1-5. The site is located apart from other certified facilities.</p> <p><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>	<p>The site is not part of a group of multiple settings co-located and/or clustered and operationally related, that results in isolation or inhibiting community interaction.</p> <p>A cluster is a grouping of two or more settings in the same vicinity/geographic location in which predominantly people with I/DD and/or people receiving Medicaid HCBS are served. Co-located settings are those that are located on the same address/property whether different floors or units within the same building or different buildings on the same property where predominantly people with I/DD and/or people receiving Medicaid HCBS are served. <i>The key element of concern is whether these co-located or clustered sites have the effect of isolating/segregating people with disabilities/people receiving Medicaid HCBS from the broader community.</i></p> <p>The following are examples of settings/characteristics triggering heightened scrutiny where the standard would not be met.</p> <p><input type="checkbox"/> The setting is situated on a private campus where there are multiple group homes and/or facilities only for people who have disabilities and/or receive Medicaid HCBS on the same provider’s property (e.g., a private community, campus or village specifically for people with I/DD and/or people who receive Medicaid HCBS).</p> <p><input type="checkbox"/> The setting/site is collocated with other settings/sites/facilities for people with disabilities (e.g., group home located on same property as a day habilitation facility; group homes located on same property as administration building of the agency; group homes clustered/collocated congregating a large number of people with developmental disabilities; day settings co-located with other service types such that people who participate do not leave the site/participate in</p>

broader community) **to the extent that interaction with the broader community is inhibited and/or people are isolated from the broader community.**

Guidance:

The survey team would flag this standard as not met, if the clusters of sites are separate and apart from other homes/businesses/organizations in the community such that people with disabilities who live and/or engage in activities in and around these sites would be unlikely to run into/interact with anyone else in the vicinity other than people with disabilities/people receiving Medicaid HCBS.

For non-residential settings, heightened scrutiny would likely be triggered if service participants have limited to no access to the broader community and/or receive the majority of their non-residential supports in the same site/facility due to the collocation/clustering. For example, a Day Habilitation location collocated with an Article 16 Clinic and a Day Training/Prevocational setting where participants of the Day Habilitation setting do not go out in the community but spend their day either in Day Hab on site, in Prevoc on-site and/or attending Article 16 services (or some combination of these supports on any given day on site) would trigger heightened scrutiny (and would likely not meet HCBS settings standards as well).

Please note, that there may be communities where there are several sites for people with disabilities co-located and/or clustered within the same vicinity, however, if other homes and/or businesses or other organizations that are not exclusive to people with disabilities are in close proximity/in the same vicinity (across the street, behind, next to, on the same street, etc.), these clustered/collocated sites would not likely be subject to heightened scrutiny as the vicinity in which these settings are located is integrated.

The availability of public transportation and geographic proximity to other community resources and their usage by participants including shopping, entertainment, worship, etc. can also be taken into account in determining whether these sites are subject to heightened scrutiny. If the site is located in the community among other private residences, retail businesses, banks, shopping, parks, etc. to the same degree as other homes/businesses/organizations in the community, standard 5 would be met and these sites would not be subject to heightened scrutiny.

A very rural setting may preclude people from frequenting their local communities in the same manner as people living in an urban setting, but this is also true for the public at large. **The key analysis lies in the phrase, “to the same degree of access that non-disabled people have to their local community”.**

If the site is co-located or part of a cluster and this results in inhibiting interaction with people who are not disabled/not receiving HCBS Waiver services, this standard is *NOT MET*.

<p>1-6. 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>	<p>If any of the following factors are present, the standard <u>would NOT MET:</u></p> <p><input type="checkbox"/> The setting/site is clustered (i.e., adjacent to, in close proximity to) other settings/sites for people with disabilities such that the cluster isolates people with disabilities and/or inhibits people from interacting with the broader community (see above guidance to number 5).</p> <p><input type="checkbox"/> The setting is designed to provide people with disabilities multiple types of services and activities on the same site (e.g., housing, day services, medical, behavioral, therapeutic, and/or social and recreational activities); (i.e. people with disabilities have little to no interaction/experiences outside of the setting); resulting in limited autonomy and/or regimented services.</p> <p><input type="checkbox"/> People in the setting have limited if any interaction with the broader community (i.e., the setting is set up and operated in such a way that people with disabilities have limited to no interaction/experiences outside the setting, regardless of the settings location).</p> <p><input type="checkbox"/> The setting/site appears to be more isolating than other settings in the same vicinity/neighborhood as the setting under review and/or CMS guidance has specifically mentioned the setting type as a setting presumed to isolate. For example:</p> <ul style="list-style-type: none"> • setting is a gated community; • setting is a farmstead or disability specific farm community; • setting is a residential school; • setting has fencing, gates, or other structural items setting it apart from homes in the vicinity; • setting is labeled by signage as a setting for people with disabilities, thus not blending with the broader neighborhood/community; • setting is close to a potentially undesirable location (e.g., dump, factory, across the street from a prison or other institutional setting, etc.) that is isolating and/or inhibits people from interacting with the broader community; • setting has video camera surveillance: This is a factor as it may indicate additional security measures different from those of typical residences in the community. This is different from security systems periodically or routinely used in residences/residential neighborhoods through local cable or digital security companies.
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COMPLETE SECTIONS 2-6 ONLY IF ONE OR MORE OF THE ABOVE SECTION 1 STANDARDS IS “NOT MET”
Each remaining Section must be completed if any Section 1 standard is NOT MET.

SECTION 2: HCBS Settings Requirements: *ACCESS TO COMMUNITY*

STANDARD	INTERPRETATIVE GUIDELINES
<p>2-1. People are encouraged and supported to have FULL ACCESS (scheduled and unscheduled) to the broader community, in the same manner as people not receiving HCBS. (SD)</p>	<p>SAMPLE DEPENDENT <i>Assess through Interview, observation, and review of documentation</i></p> <p>Having “FULL ACCESS” to the community means:</p> <ul style="list-style-type: none"> • Supports and services do not segregate or isolate people from their own neighborhoods. • The expectations for people with disabilities should be the same as any other people living in their community. • People are encouraged and supported to interact with others who do not have disabilities. • Community activities do not require individuals to stay as an entire group of others with disabilities that are insulated/isolated from the public at large. • Group community activities were chosen individually by the person among options and the group trip is not the only activity that the person ever engages in to access the broader community. • Individuals are provided options for community activities other than group activities. • Please note: People may not be able to frequent their local community as often as they like in very rural settings, but this may also true for the public at large in that rural area. <p>Survey Activities and Considerations:</p> <ul style="list-style-type: none"> • The service plan must identify the person’s choices for meaningful community inclusion activities and the desired frequency/duration of these activities. The service plan includes the Habilitation Plan or other applicable attachments. • Verify that the person’s priorities and preferences and desired frequency for community activities are being supported by the residence. Verify that the community activities identified in the plan are provided as described. • There should also be evidence that people have opportunities to participate in unscheduled community activities as well • Indications of community involvement may identified via personal allowance records and through community logs/activity logs or daily notes kept by the residence • Interview the person and other parties who can provide accurate information regarding the person’s interest in community and integrated activities and their participation.

- Verify that the person has community experiences other than through group “outings” or through their day program. If the activity was with others consider whether this was because the person wanted to be with/chose to be with the others.
- **People are “supported”**: People who have less experience with community life may need more supports and exposure to new opportunities. Staff or other arranged supports should encourage people to take part in the community in a way that is experiential or meaningful to each individual person. When uncovering personal interests and preferences, staff should also be attentive to non-verbal cues, especially for those who are unable to communicate verbally. Supports could also include providing assistance and training in identifying activity options, identifying what is occurring in their community, navigating public transportation and arranging **access** to get to these activities. Where public transportation is unavailable (e.g., bus, subway, cab), the person should be supported by utilizing other resources to access the broader community, such as finding volunteers and natural supports.

Select MET if all the following are evident :

- The person’s priorities and preferences for community engagement identified in their written plan are provided as described;
- The person experiences both planned/scheduled and spontaneous community activities
- The person receives needed assistance and supports to **engage** in community activities and perform social roles that are of interest. This can include but is not limited to: volunteer, choir member, neighbor, sibling, serving on a committee, being in a club, church member, etc.
- Staff support the person to discover and participate in new experiences and activities, and facilitate **access to information** (flyers, newspapers, internet, and/or word of mouth) to learn of activities occurring outside of the setting. **AND:**
- There are specific and **recent examples** of when the person was encouraged and supported to have full access to the community and/or supported through a discovery process in the community (within the past 2-3 weeks)

Select NOT MET if any of the following are present:

- The person is not supported to participate in community and social activities identified in their written plans
- The person is not supported to participate in preferred, chosen, requested community or social activities
- There are obstructions that serve to ***isolate*** the person from full access to the community, and there has been no effort to address these barriers/obstacles in a timely manner for the person.
- Nothing is done to help the person access the broader community/discover the broader community
- The person appears isolated from full access to the broader community, e.g., the person reports that the only community activities that he/she engages in were group activities involving only other residents of the house and paid staff.

	<ul style="list-style-type: none"> • If all people including the sample attend the same types of activities with little choice of options or evidence of individualized interests. • Documentation and interviews suggest that people only frequent the community through the same limited set of activities, with little variance or options being offered and usually in larger groups (4 or more). • People are not able to participate in activities alone (with supports as needed) • People are not able to participate in activities with only those people/friends/peers chosen by them (because staffing requires certain groups or group sizes)
<p>2-2. Sufficient transportation is available and used to support individualized choices of activities and schedules</p>	<p><i>Assess through Interview, observation, and review of documentation</i></p> <p><i>Please also refer to the information you have gathered in question 2-1 regarding whether people are supported to have full access to the community</i></p> <p>This standard reviews the availability of transportation and the possible barriers to community access due to transportation issues. Determine whether sufficient transportation is provided, facilitated, and/or arranged so that people have opportunities to access to their local community and neighborhood in accordance with their unique and individualized priorities for meaningful community inclusion per their plan. This includes the ability to accommodate more than one person’s choices. Lack of transportation to activities contributes to a residence having isolating qualities. The obligation of the provider may vary to a certain extent with the setting’s location and the practical availability of public transportation.¹ For example, if public transportation is not readily available and accessible, the provider has a greater obligation to help people make arrangements for transportation to community activities.</p> <ul style="list-style-type: none"> • Interview people, advocates and staff at the residence regarding desired activities occurring outside the home and how sufficient transportation is arranged to ensure that people are able to participate in their community and social activities, especially when several choices are requested during the same or overlapping time periods. • Transportation may be via vehicles available to the site, public transportation, or transportation arranged with volunteers and natural supports • Consider availability of accessible transportation sources if needed by individuals • Review documentation such as activity logs, daily notes, and transportation logs • Note whether this corresponds to the information you have gathered in Question 2-1 regarding full access to the broader community • Consider whether transportation insufficiency results in predominantly large group activities and/or the inability to enable unscheduled/spontaneous community activities. <p>Select MET if:</p> <ul style="list-style-type: none"> • Peoples’ priorities for meaningful community activities based on their interests and need for supports do not appear to be hampered by lack of transportation based on discussion and documentation review. And

¹ Just Like Home, Advocates Guide to State Transitions, page 14

	<ul style="list-style-type: none"> • Access to transportation is facilitated by residential staff, whether provided directly or through assistance in accessing public transportation or other arranged transportation methods to support peoples' priorities for meaningful community inclusion. • Transportation arrangement is sufficient to allow for planned and unplanned activities <p>Select NOT MET if any of the following are evident:</p> <ul style="list-style-type: none"> • Peoples' priorities for meaningful community inclusion activities are hampered by lack of transportation based on discussion and documentation review. • Transportation is not provided by the residence nor do people receive support to access other transportation sources to accomplish their community inclusion priorities • The only time transportation is facilitated is in group trips of four or more people and not based on peoples' priorities for community inclusion activities • Impromptu activities cannot occur due to transportation issues.
<p>2-3. Staff scheduling and general operations are sufficient and responsive to support individualized and personally meaningful community activities.</p>	<p>Assess through Interview, observation, and review of documentation</p> <p>This standard reviews whether staff resources, schedules and site operations to arrange supports for activities allow the provision of meaningful community activities for people. Determine whether community activities are limited for people due to staffing issues or due to failure of the site and/or staff to support the person to resolve other barriers to their participation. This can include efforts to arrange for use of natural supports and other creative resources to ensure that people's priority activities are met, activities are individualized, and activities do not routinely need to occur in groups.</p> <p>Select MET if: Both of the following are evident:</p> <ul style="list-style-type: none"> • Staffing resources and other arranged supports are sufficient to support the individuals in their priority/chosen community activities (use evidence from 2-1 to inform this determination); AND • Survey activities evidence that the home's management is responsive to facilitate staffing changes, scheduling adjustments and other accommodations so that their priorities for meaningful community activity in accordance with their plans may occur and surveyor verification activities supports this. <p>And</p> <p>Any of the following are evident</p> <ul style="list-style-type: none"> • Staff work together on an ongoing and routine basis to ensure that priorities for meaningful activities are met. • Staff demonstrates an overall willingness, flexibility, and good attitude about supporting people in the community • Staff upon interview demonstrates understanding and thoughtfulness regarding the priorities identified for people in their person-centered plans. • Staff can cite examples of when opportunities for individualized activities have been facilitated • There is concerted effort to collaborate with natural supports and community resources.

- Staffing schedules appear sufficient and allow for individualized activities on a consistent basis
- There are active endeavors to overcome staff related **barriers** to community activities.

Select NOT MET if any of the following:

- There is a lack of evidence that staff are aware of the priorities identified in peoples' person-centered plans.
- Activities are reported to only occur in groups because of staffing issues rather than the interests of people.
- Based on interview, observation, and documentation, **staffing appears to be insufficient** to support individualized and personally meaningful community activities, and there are recent examples that support this finding

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SECTION 3: HCBS Settings Requirements:	
SITE OPERATIONS/PRACTICES PROMOTE HCBS RIGHTS & ARE NOT INSTITUTIONAL IN NATURE	
STANDARD	INTERPRETATIVE GUIDELINES
<p>3-1. The home has a process to assess living arrangement choice and satisfaction.</p>	<p><i>Assess through interview and documentation</i></p> <p>This question examines where the residence has a clear process in place to ensure that people are satisfied with their current living arrangement.</p> <ul style="list-style-type: none"> • Assess whether the residence has mechanisms to obtain input from individuals to determine whether people are happy with their current living situation. • The mechanisms do not have to fit a particular template. It can be a formal agency assessment focused on satisfaction with living arrangements, it could be a component of routinely scheduled service planning activities, or it could be another mechanism. • There must be evidence that this topic of satisfaction is specifically and thoroughly assessed and addressed. It should not be a simple question asking “<i>Do you like living here?</i>” or “<i>Do you like your home?</i>” • This mechanism should include documentation of the individual’s response. • Assessing satisfaction includes providing the person with information on other living arrangements options. This means other options whether or not they are currently available or need to be developed and arranged. <p><u>Select MET if both are evidenced:</u></p> <ul style="list-style-type: none"> • The residential agency and/or residence have mechanisms in place to assess satisfaction with living situation and there is documentation to evidence this AND • The process includes discussion with the person that they have a choice of living arrangement and options that are possible, including a non-disability specific setting <p><u>Select NOT MET if any of the following are noted:</u></p> <ul style="list-style-type: none"> • Satisfaction/choice of living arrangements is not at least annually evaluated by the residence/residential agency, • There is no documentation available to evidence that a mechanism that assesses satisfaction with living arrangement is implemented

3-2. The home has process to assess roommate choice and satisfaction.

Assess through interview and documentation.

This question examines where the residence has a clear process in place to ensure that people are satisfied with their current roommate situation. This can include assessing whether they:

- are satisfied having a roommate
- are satisfied their current roommate, and/or
- whether they have no roommate but would prefer to have one

Conduct review activities to identify:

- Whether the residence has **mechanisms** to obtain input from individuals to determine whether people are happy with their current roommate situation.
- The mechanisms do not have to fit a particular template. It can be a formal agency assessment focused on satisfaction with living arrangements, it could be a component of routinely scheduled service planning activities, or it could be another mechanism.
- There **must** be evidence that this topic is specifically and thoroughly assessed and addressed. It should not be a simple question asking “*Do you like you roommate?*”
- This mechanism should include **documentation** of the individual's response.
- Assessing satisfaction includes providing the person with information on other living arrangements options. This means other options whether or not they are currently available or need to be developed and arranged.

Select MET if:

- The residential agency and/or residence have mechanisms in place to assess satisfaction with roommates and there is documentation supporting this **AND:**
- During the process there is discussion with the person that they have a choice of living arrangement and options that are possible arrangement including a non-disability specific setting

Select NOT MET if any of the following is evident:

- Satisfaction with roommates is not at least annually evaluated by the residence/residential agency
- There is no documentation available to evidence that a mechanism that assesses satisfaction with roommate living arrangement is implemented

<p>3-3. The home takes timely action to address peoples' dissatisfaction with the living environment. (SD)</p>	<p>SAMPLE DEPENDENT Assess through interview and documentation review as needed. Ask the individual, family, staff, or others whether the person is living where and how they want to live.</p> <p>The residence and agency should have mechanisms to address identified dissatisfaction with living arrangements in a timely manner. This may be addressing factors in the current home (e.g. conflict resolution for roommate problems) or if necessary, supporting people to pursue alternative living arrangements. If dissatisfaction has been reported, verify that the agency has taken steps to evaluate the reasons for the person's dissatisfaction, address any issues identified, and propose possible solutions.</p> <ul style="list-style-type: none"> • If a person is unhappy with his/her current living arrangement, there should be documentation that the agency is assisting the individual in looking for/arranging an alternative setting or option that better meets the person's needs/preferences. • The residential facility does not need to act alone. Communication of the issues with the person's MSC, family members and others who may play an active role in assisting the person and facilitating the solution. • The residential agency should implement and monitor actions take to address dissatisfaction, to ensure the actions are taken and effective. • Sometimes options are limited, but the agency should be making a concerted effort to find creative solutions to honor individual preferences. <p>Select MET if:</p> <ul style="list-style-type: none"> • There is no evidence of dissatisfaction • Dissatisfaction had been expressed or documented, but at the time of the visit it has been resolved to the person's satisfaction • Dissatisfaction has been expressed or documented and there are active and consistent actions to bring to resolution, whether is an in house resolution or obtaining a new living situation. • If the first discovery of dissatisfaction is during your visit; and the agency has implemented a mechanism to assess satisfaction at least annually, select MET if you assess there were no other indicators that would have evidenced to facility staff that the person was not happy. <p>Select NOT MET if any of the following are evident:</p> <ul style="list-style-type: none"> • While action is initially taken to address dissatisfaction, there is not monitoring of progress and actions taken until longer term resolutions can be provided. OR: • Interviews reveal that one or more residents are unsatisfied with their current living arrangement and the concern has gone unaddressed, with no documentation or explanation why. • If the first discovery of dissatisfaction is during your visit and 3-1 and/or 3-2 are NOT MET, select NOT MET. • If the first discovery of dissatisfaction is during your visit; and the agency has implemented a mechanism to assess satisfaction at least annually, select NOT MET if you assess there were other clear indicators that evidenced that the person was not happy, but no recognized and addressed by the agency.
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3-4. The home has a process to offer people keys to enter their home (or other method to enter their home independently).

Through discussion, observation and documentation review, you will need to determine how the home is operated regarding this standard.

People should have a means to control their access to their home similar to all people who have a place of residence. This reduces reliance on others and encourages independence and enhances personal autonomy regarding entrance, security and use of their home. Accordingly, the residence/residential agency should have **mechanisms** that **inform** residents that they may have a key (access) to their home and verify whether they would like this. The most frequently is addressed by offering individuals a key to their home. The challenge to both providers and reviewers is to ensure that judgments of cognitive and/or physical abilities and resultant ability to use/benefit do not result in decisions to not make the offer. “Key” is the most common form of access and most understandable, however “key” should be recognized to equate with more independent access. So the offer mechanism should allow for offers beyond a “key” if another means should be considered and is more functional for the individual based on their unique circumstances. Access is dependent both on house design and needs of the individuals. While it may be providing keys to door locks, other options include but are not limited to lock codes, card swipes, automatic sensors, etc. *If people express interest in the offer of more autonomy in access to their home, the facility should work with the individual and/or their supports to a meaningful solution.*

Verify that the residence implements procedures to offer individuals a key/or other autonomy-oriented access to their residence. **It is simply not enough for the residence to provide keys/access to people only “upon request”**. The option to have a key/more independent access must be explicitly offered to **each** person living in the residence.

The standard approach of the residence should be that **all** people are informed and offered the above without residential staff making an assumption for the person. Some people may require support and guidance in making the decision whether or not they would like more autonomy to enter their home.

Select MET if:

- There is evidence that the residential agency has systems (mechanisms) in place to offer all residents the opportunity to have more independent access (e.g. a key) to their residence on a routine and ongoing basis: AND
- There is evidence that the mechanism is implemented

Select NOT MET if any of the following is evident:

- The residential agency lacks any verifiable mechanism or system to offer people the option of having a key/means of access to their residence
- There is evidence that the residence only provides keys/access “upon request” of the person
- Based on interviews, there are indications that the residence is dismissive of people’s capabilities to use keys or have more independent access, and restrict the implementation of the mechanism to offer to a select few accordingly.
- It is evident people are not offered the opportunity to possess keys/have more independent access to their home, and/or are not provided keys to their home even when requested.
- People are denied keys without justification for the rights limitation.

3-5. The home has a process to offer people keys to their bedrooms (or other method to control access to their bedroom independently).

Through discussion, observation and documentation review, you will need to determine how the home is operated regarding this standard.

The residence should have **mechanism(s) to inform** residents that they may have a key/a means to secure access to their bedroom. This means that the residence has procedures, and an overall system in place that offer and support the provision of bedroom keys to residents. **It is simply not enough for the residence to provide keys/means of security and access to people only “upon request”.** The option must be explicitly **offered to each** person living in the residence.

As this requirement is intended to provide individuals the privacy, security and independence we have in our own homes and bedrooms, it is incumbent upon the agency as part of its procedures to ensure that only appropriate staff have access to the person's bedroom. Staff that do have access should have a justifiable and reasonable need to have access to the person's room.

The standard approach of the residence should be that **all** people are informed and offered the means to control access to their bedroom. Some people may require support and guidance in making the decision whether or not they would like the use of a key to enter their home.

If people are not permitted to have a key to their bedroom, it must only be due to clearly evaluated, justifiable, and documented reasons. **Prohibiting or preventing someone from the use of a key is a modification to the person's rights**, and informed consent must be present and must be based upon a specific and individualized assessed need. Positive supports and interventions must be tried first, before any restrictive measures. This restriction must also be reviewed periodically in order to determine whether it is still necessary.

Select MET if all of the following are met:

- There is evidence that the residential agency has systems (mechanisms) in place to ensure that all residents have been offered the opportunity to have a key/means to secure their bedroom; AND
- There is evidence that the mechanism is implemented.

Select NOT MET if any of the following are evident:

- The residential agency lacks any mechanism or system to offer people the option of having a key/or other means to control access to their bedroom
- There is evidence that the residence only provides keys/means to control access “upon request” of the person
- There are indications that the residence is quickly dismissive of people's capabilities to use keys and therefore do not offer
- It is evident people are not offered the opportunity to possess keys to their home, and/or are not provided keys to their home even when requested.

3-6. The home takes timely action to provide requesting people with keys or other independent access to their home and/or bedroom.

SD

SAMPLE DEPENDENT

Verify that the residence has taken action to accommodate people identified to want more autonomy regarding residence and bedroom access, whether identified through the agency's mechanism to inform and offer or through self-initiation.

This standard should be answered through interviews and documentation review for with people identified in the sample.

- When an individual has expressed more independent access, determine that the residence has taken timely action to respond to the request.
- "Timely action" means that the residence acts upon a person's wishes without unnecessary delays or generalized excuses.
- If you discover requests are unresolved determine whether consistent and appropriate actions are being taken to address the request.
- It is inappropriate for a residence to immediately dismiss the option of someone having a key/independent access because the facility considers them to be "not capable". If a person has difficulties with using a key, they might benefit from training and may need additional environmental or staff supports to access their home and/or bedroom in a more independent manner. For example, an environmental modification might be able to be made to the door, or a key pad may be possible alternatives to the use of a key. A consideration of "degree" of autonomy should be considered. For example: and individual may always need staff support or supervision for entry and exit, but the person's autonomy may be bolstered if they keep their own key in their purse, and its use is their means to enter the house. The residence should thoughtfully investigate possible alternatives.
- If individuals are not permitted to have a key/means of access to their home and/or room it must only be due to clearly evaluated, justifiable, and documented reasons.
- **Prohibiting or preventing someone from the use of a key is a modification to the person's rights**, and informed consent must be present and must be based upon a specific and individualized assessed need. Positive supports and interventions must be tried first, before any restrictive measures. This restriction must also be reviewed periodically in order to determine whether it is still necessary.

Select MET if all applicable bullets below are met:

- There is evidence that people have received the key and/or more independent access as requested. **AND:**
- People are supported to use and learn these features when necessary, to increase their autonomy.
- If people are not provided key/independent access, it is only because they have either made the decision that they are not interested or there is clear justification, documentation, and informed consent for the rights restriction.

Select NOT MET if:

- People are not provided keys/independent access to their home when requested (allowing for time to arrange)
- People are denied keys without justification for the rights limitation
- There are indications that the residence is dismissive of people's capabilities to benefit from use of keys or other modalities therefore do not provide
- The residence dismisses independent access without due diligence (such as training, additional supports, environmental modifications)

3-7. People have full access to the typical facilities in the site.

Assess using all survey methodologies including conversations and observation.

- People should have full and independent access to all areas and routine living spaces of the residence without restrictions or barriers (e.g. locks, gates, requiring permission, etc.)
- People have access to and are supported to access the kitchen, laundry, access to cupboards/closets for supplies, areas where their excess personal possessions are stored (e.g. off-season clothing, seasonal room decorations, etc.) and use of the appliances and facilities in the home.
- The site and its facilities should be physically accessible according to the needs of the residents.
- If needed, the home provides environmental supports and adaptations to assist people to use and access their home environment. Adaptations may include: Grab bars, wheel chair accessibility, ramps, modified equipment, and features that support people's use of their home. For example, if a person uses a wheelchair, consider whether their closet is arranged so that their belongings are reachable by them, a counter top in the kitchen modified to support their interests in preparing meals and accessing the food and utensils
- If the laundry, supplies and or storage are on another floor, e.g. basement or attic, or 2nd floor that is non-accessible, consider whether the residence takes action to facilitate access in a manner that does not limit autonomy or creates a staff dependent situation.
- Assess whether house rules and practices limit or interfere with access by the residents.
- In addition to physical access do individuals receive education and support to use equipment such as stoves, microwaves, and washer/dryer?
- Equipment is adapted, if needed, due to people' physical characteristics.
- The setting should supports ways to enhance the independence of people according to their needs and abilities? (Home modifications, use of technology, and other innovative ways that the site is able to enhance the ability of residents to have more independence).
- Ask people and staff if any modifications to the residence are needed, or have been made to increase the ability of people to access their environment.

Please Note: This applies if it is the home's **features or operations** that lead to dependence. It does not apply if people require staff assistance due to **clinical needs** that must be addressed with inclusion of access limitations, either temporarily or permanent.

Select MET if:

- People have full access to and use of their home and its features and appliances.
- The home is arranged and designed to facilitate independence.
- People are observed to and supported to function as independently as possible within their home environment and/or supported toward independence and/or as needed.
- If barriers are in place due the needs of one or a few, the residents who can have free access are accommodated in effective ways (e.g. provided a key, physical barrier is specific only to the person clinically restricted, etc.)
- Barriers and limited access occurs only with clear clinical justification after deliberation and alternative methodologies were ineffective, and there is required supporting documentation.

	<p>Select NOT MET if:</p> <ul style="list-style-type: none"> • Areas of the home are "off limits" to people living there either by physical barriers or rules, policies, and procedures without justification and related rights limitations evidence and documentation • Areas of the home are accessible only for limited time periods without justification and related rights limitation evidence and documentation. • People are not encouraged or supported to function independently in their home. • The home is not conducive to ensuring independence, resulting in dependence on staff.
<p>3-8. Peoples' schedules and routines are personally determined by their needs, interests and preferences (not by the staff or agency operations). SD</p>	<p>SAMPLE DEPENDENT</p> <p>Assess through observation, discussions with individuals, staff and others, and record review.</p> <p>This standard considers whether the program operationally supports individualized schedules and routines. This includes activities of daily living as well as recreational and leisure activities. Determine how people are accommodated to live their life and complete activities at times and in a manner that is meaningful and preferred. Gauge whether there are opportunities for residents to make choices about their day-to-day schedules, in the same way that people who do not receive HCBS can do.</p> <p>Consider whether the site promotes and enables people to follow an individualized daily routine without having to adhere to general rules and schedules. A "house schedule" may be written, <u>or</u> it may only be evident through observation of the operations and flow of activities in the program. Evaluate whether the program uses a set routine that is strictly followed. It is natural in most households as well as certified residences to have some general routines, such as offering routine meals within a certain time frame, but the residence should also demonstrate accommodations in those routines when people either verbally or behaviorally demonstrate that they would prefer not to engage in them at a set time.</p> <p>Things to consider:</p> <ul style="list-style-type: none"> • Schedules individualized, rather than everyone following the same schedule inside the residence, and when accessing community activities and events. • Staff demonstrate willingness to offer choice and accommodate individualized preferences or requests regarding daily activities • Staffing is sufficient and flexible to accommodate, optimize, and support individual choice • The facility is operated optimizing the choice, autonomy, and satisfaction of residents rather than for the convenience and efficiency of staff. • When a person is not feeling well, he/she can choose to stay home from work or day program on that day • Everyone does not and/or is not expected to participate in the same regimented meal times, activities, bed times, waking times, leisure activities, television time, etc. • Residents know they have a choice or they have been given a choice regarding how to schedule their activities

- There should not be one posted schedule that everyone is expected to follow: e.g. group outing at 4pm, dinner at 5, showers at 6, meds at 7, without any indication of choice or the right of the person to refuse?
- People and/or staff report following the same schedule all the time
- There should not be a house curfew or scheduled time that people have to return to the residence
- Any schedule of activities posted/available makes clear that people have a choice to participate. Such schedules should offer multiple options based on the interests and preferences of the residents.

Select MET if 4 or more of the following are evidenced:

- The person reports that he/she has informed choice regarding his/her schedule and priorities for activities are supported
- There is evidence that schedules for activities are individualized, person-centered, and adapted when necessary
- Interview with people and staff indicate that people are supported/encouraged to communicate with staff regarding preferences for their daily schedule and are not prevented from doing so.
- There is evidence based upon your observation and interviews that there is variation in daily schedules and in routines
- The residence overall is making a concerted effort to honor individualized schedules that best meet peoples' needs/requests.
- Schedules of routines and other activities are created based on peoples' priorities, preferences and needs of the people who reside there.
- Staff and/or people report a wide variety of activities that vary from person to person.
- People are aware of and can exercise their right to refuse to participate in an activity if they so choose.

Select NOT MET if (any of the following are present) :

- Activity schedules are regimented with little individualized choice or decision-making evident
- The person is coerced to engage in certain activities when they choose not to, explicitly/verbally or through other cues.
- There are blanket house rules about watching TV, curfews, playing music, phone calls and using computers, etc.
- The person expresses dissatisfaction with the opportunity to control his/her own schedule and make choices about activities
- There is no evidence available to verify that the person's known preferences are being respected and acted upon.
- There are schedules posted that everyone is required to follow on a daily basis with no individualization.
- Most activities occur in groups and are based on convenience rather than request.

	<ul style="list-style-type: none"> • People report/display dissatisfaction with the schedule that they follow and this has been unaddressed by the residential staff. • Schedules of people appear identical or very similar to one another. • Staff or people report that the entire house follows the same routine daily, with little variance of day-to-day activities and • People are not offered opportunities to make informed choices regarding free time, meal time, etc. • Staffing schedules are rigid, so that supports are not provided so that people can engage in routines and leisure activities at a time and manner that benefits them. For example, staffing does not allow people to make different choices of what they would like to do for leisure activities or when • People are not able to make a choice to stay home from their day program or other scheduled activity if they do not feel well, or for reasons that you and I can decide to stay home on a given day (e.g., vacation day, mental health day).
<p>3-9. Peoples' cultural, religious, and lifestyle backgrounds and/or choices are supported by staff.</p>	<p>Assess via observation and documentation of activities, the setting and staff, as well as interviews.</p> <p>There should be evidence that staff make efforts to respect and offer opportunities for people to understand their ethnic and cultural backgrounds and offer various cultural, religious, or ethnic experiences. Natural supports for people may also have family traditions and favorite food dishes, etc. that the site should be aware of. People should have opportunities to participate in the traditions and activities with their peers that are of interest to them and to share personal values and beliefs. If people have not previously made decisions related to learning about or expression of cultural backgrounds, there should have be an introduction of the topic to the individual/family, and efforts to assist the person to explore in order to determine interest and whether further future engagement should occur.</p> <p>Please also note: There may also be instances where the values and beliefs of family members of a person may conflict with the person's own beliefs. It is important that the program and staff ultimately respect the wishes of the person, and the wishes of the person should be their primary concern.</p> <p>Select MET if most of the following are either met, or there are no apparent barriers to the following:</p> <ul style="list-style-type: none"> • People have choice and personal expression in their room decorations related lifestyle, spiritual and cultural choices • There is evidence that people attend religious activities of their choice that are important to them. • People are able to visit ethnic shops, attend ethnic festivals, and follow international sports • Menus reflect ethnic diversity reflective of the people living in the residence. • Staff offer opportunities for unique experiences based on the cultural, religious, and ethnic backgrounds of people. This includes supporting exploration of options if interest is expresses by the person. • Clothing and grooming is appropriate to religious or cultural choices of the individual. • The sexual preferences and gender identities of people are respected

	<ul style="list-style-type: none"> • There is evidence that staff communicates with natural supports and are sensitive to fostering family traditions and values. <p>Select NOT MET if any of the following is evident:</p> <ul style="list-style-type: none"> • Actions are not taken to discover and explore the backgrounds of people and support people in this discovery if interested. • Interviews with staff and/or people reveal that there are missed opportunities for participation in religious, cultural or ethnic events that are individualized due to facility inattentiveness to requests or opportunities • Observation and interview reveals that individual preferences for ethnic foods is ignored or denied by staff • Holiday decorations are not reflective of all the cultures of residents. • There is evidence that the values, beliefs, and traditions shared by staff or the agency directly conflict with those of the person, and have resulted in the person being unable to participate in activities important to them or express themselves the way that they choose • Individuals who are interested to do so are denied participation in celebrations of other cultures or religions, because it is not associated with their ethnic or spiritual origin and therefore considered inappropriate. <p>Examples of circumstances resulting in a “NO” answer:</p> <ul style="list-style-type: none"> • Carlos is originally from the Philippines. He visits his family in NYC on a routine basis. His family sends him back to his residence with his favorite foods which include exotic dishes such as fish eyes. Staff routinely disposes of the food upon receipt, finding the food to be disgusting, and provide him with excuses like the food was not chilled enough on the trip (spoiled) or contains too much sodium for his diet. Carlos complains to staff on a routine basis that he is unable to eat the food that he wants to because “staff won’t let him”. • An Orthodox Jewish resident is unable to have separate dishes and refrigerator for kosher foods because no one else in the house follows those religious observances. • Residents routinely attend the church that staff or the majority of their housemates attend rather than supporting people to attend churches based on their own religious preferences. • A Muslim resident is not allowed the opportunity to participate in the house celebration for Christmas and feels left out of group festivities. Staff does not offer the opportunity and choice to participate.
<p>3-10. People are encouraged and supported to express their preferences and choices in personal appearance, i.e. style and dress.</p> <p>SD</p>	<p>SAMPLE DEPENDENT Assess via observation of the setting and staff, as well as interview with the person.</p> <p>The person has the right to be heard regarding what clothes they want to wear and their grooming habits. Does the person want to grow their hair long, or wear a beard, or be clean-shaven with no beard? Does the person have a specific clothing style or personal expression that is important to him/her? Does the agency support the person adequately to make these decisions about clothing and personal style?</p> <p>Consider:</p>

- Who shops and chooses clothing for the individual?
- Is clothing congruent with age, interests, comfort and fabric preferences, color?
- Do individuals like their clothing, hairstyle, clean shaven, mustached or bearded, etc.?
- Are they supported to maintain their chosen style?
- In the absence of specific style choices, is person supported to maintain style appropriate to age, culture and historical or learned preferences
- Is the fit of clothing appropriate to the person and style?
- Who decides what clothing a person wears daily?
- Are individuals able to participate in clothing choices? Do they want help? What kind of help?
- Do personal style & clothing choices makes sense based on what the person tells you and/or what you know about the person from interview and documentation review. (E.g. color, fabric choices, pull over vs, buttons, etc.)
- Are hairstyle choices made of staff convenience and assistance they need to provide vs. personal choice/interest?
- Did the person choose their hairstyle? Where/who cuts and styles it? How often it is cut/styled?
- Do people appear to be receiving supports to maintain the appearance they want and that assists them in their social and community activities?
- Are clothing and grooming appropriate to religious or cultural choices of the individual.

Select MET if:

- The person is wearing clothing that fits appropriately and expresses their own personal fashion choices and style, and/or the person can point to particular aspects of clothing or personal grooming and explain why they like them, and/or the person reports that staff helped them to find specific items that matched their preferences when shopping or getting dressed; **AND:**
- The person's grooming habits are healthy and satisfactory (to the individual) – not causing impact to their social acceptance. The person or their representative reports that personal grooming (hair style, makeup, etc.) habits are chosen by them, individually.

Select NOT MET if:

- The person is wearing clothes that don't fit (not by choice).
- The person expresses that they would like a choice of what they wear and how they look but they are not permitted or provided choices and afforded decision making.
- The person's grooming needs are not addressed and it is negatively impacting his/her social acceptance.
- Everyone in the home has the same haircut, style of dress, etc., and not by choice.

<p>3-11. People are encouraged and supported to express their preferences and choices in décor in their personal living space. SD</p>	<p>SAMPLE DEPENDENT</p> <p><i>Assess via observation of the setting and staff, as well as interview with the person.</i></p> <p>Individuals also have preferences regarding their environment, such as what they find comfortable, visually appealing, and how to display their interests and priorities. Individuals' bedrooms, and apartments for small living environments should be reflective of the individual's choices. It is understood also that some people are happy to live simply. Others may have diagnoses which make highly personalized environments difficult to provide or maintain, however every effort must be made to assist the person to have a living space that they like and are comfortable in.</p> <p><u>Select MET if any of the following is evident:</u></p> <ul style="list-style-type: none"> • The person reports that staff assist him/her to change decorations and/or purchase new decorations to reflect his/her tastes. • The person is satisfied with the decorations in his/her personal space and does not report a desire for changes. • Staff have an understanding of the person's tastes and it is evident that staff encourages the person to decorate as he/she so chooses. • Based on review of the person's person-centered service plan or habilitation plan and interview with the person, his/her bedroom reflects hobbies, interests, collections, family/friends, and memorable events, etc. <p><i>Select NO if any of the following are evident:</i></p> <ul style="list-style-type: none"> • None of the above are present. • The facility uses the individual's destructive behaviors as justification for individuals not having a living environment reflective of their individuality, without efforts to decorate in a manner that will not result in property damage • Individuals room look very similar due to facility control or purchasing practices
<p>3-12. People are supported by staff to exercise control and choice in their own lives.</p>	<p><i>Assess via observation of the setting and staff, as well as interview with the person.</i></p> <p>This standard is a global one, and should be based on your overall findings from section 3 standards. It looks at whether the person is empowered to exercise choice and control over their own lives. There should be evidence and observation should support whether the program actively promotes individual choice, autonomy, and decision-making. This includes having choices of activities for meaningful community inclusion and having the ability to form and maintain relationships with people of their choosing. This also means that their religious and spiritual preferences are respected. The program should not be quick to make decisions for people without engaging them and ensuring that they have an active role in making their own choices to the highest degree possible.</p>

Select MET if:

- There is documentation of membership in community groups and organizations
- Community activities that the person participates in are meaningful to the person
- Sexual preferences and gender identities are respected
- People have their own calendars with interests and personal plans (whether or not they make and schedule their own plans independently)
- There are mechanisms in place to ensure that people provide input and choice into the activities that they would like to participate in.
- Personal decisions related to relationships are respected
- Religious/spiritual preferences are honored
- There are examples of people demonstrating choice and control and interviews with people support this

Select NOT MET if:

- People are denied the ability to participate in community LGBT activities and events that they would like to attend.
- People have few opportunities for input into choices of activities or interests
- Community activities are not personalized or meaningful for people. (Does everyone go to just a few, local places like the dollar store with little evidence of having input into individualized outings?)
- There are examples of people not being allowed to maintain personal relationships with people who are important to them. (Are people supported, for example, to have a romantic relationship or does the site limit or prohibit the ability of people to associate with people of their choosing?)
- There is little evidence of community memberships or participation in any meaningful or individualized way.
- The staff plan out community activities without involving people and people lack opportunities for decision-making related to those activities.
- Evidence and observation reveal that staff make choices for people in many facets of their lives rather than engaging them in a person-centered way

INTENTIONALLY BLANK

SECTION 4: HCBS Settings Requirements:
RIGHTS PROTECTIONS

STANDARD	INTERPRETATIVE GUIDELINES
<p>4-1. People are provided information about their rights, including HCBS rights, in a manner understandable and accessible to them.</p> <p>SD</p>	<p>SAMPLE DEPENDENT <i>Assess through interview with the person or someone who knows the person well, as well as record review</i></p> <p>Look at the information provided to the person about their rights (including those related to HCBS rights) and determine if the documents has been written clearly, using people-first, plain language. People-First Language emphasizes the person, not the disability. By placing the person first, the disability is no longer the primary, defining characteristic of an individual, but one of several aspects of the whole person. People-First Language is an objective way of acknowledging, communicating, and reporting on disabilities. It eliminates generalizations and stereotypes, by focusing on the person, not just their diagnoses. A verbal explanation of the plan should be offered/provided to the person and/or their representative.</p> <p>The person should understand, if capable, what their rights are and should have a meaningful way to access this information. Information about rights should be provided with respect to the person’s communication style, sensory skills, preferred language, and cultural considerations, resulting in their understanding of the content. Consideration of preferences for visual or auditory communication, presence of a supportive family or staff member should be present. Auxiliary aids and services must be available at no cost to the person. For persons with limited English proficiency, language services must be available at no cost.² For example, using low literacy materials and interpreters, picture symbols, Braille, or American Sign Language (ASL). Providing meaningful access to rights becomes especially important in instances where the person and/or their representatives have limited English proficiency (LEP).</p> <p>In certain circumstances, depending upon the person’s strengths and capabilities, this question may need to be answered from the perspective of the family member/advocate who knows the person best.</p> <p>Select MET if:</p> <ul style="list-style-type: none"> • There is evidence and/or other documentation that indicates that rights were explained and provided to the person and/or his/her representative in plain language in a way that is accessible to the person. • The person reports that they understand and can discuss their rights and feel satisfied with how the information has been presented to them. <p>Otherwise, select “NOT MET”.</p>

² 42 CFR 435.905b

4-2. People are provided a written lease or occupancy agreement that provides eviction protections, due process appeals, and specifies the circumstances when eviction could be required.

SD

SAMPLE DEPENDENT

Assess using BOTH documentation and interview with the person and/or their representative.

CMS' intent is that in order for a residence to be considered Home and Community-Based, the resident has a lease or written residency/occupancy agreement that provides protections that address eviction processes and appeals comparable to those provided under the jurisdictions of landlord-tenant law.³

It is the agency and residential setting's responsibility to ensure that residents are fully informed of their rights, including when eviction or involuntary discharge is necessary. There should be written evidence of an **occupancy agreement** or another comparable written agreement with the agency, in the person's file. This agreement should address the circumstances under which the person could be required to relocate and the **due process/appeals** available to them. **IMPORTANT: The written agreement MUST have the above information that includes eviction protections and due process.**

Please note that the written agreement may also state any reasonable *limits* on furnishings and decorating and sleeping or living units, in addition to any eviction or discharge process that is outlined.

Beyond written documentation, it is important to interview the person and/or his/her representative to determine if they have **awareness** of these rights. Ask if they have been informed that they should have an agreement with the residence that provides protections if the agency asks them to move. Verify that they have received paperwork that describes the conditions for moves and due process rights.

Select MET if:

- There is evidence of a **written occupancy agreement that specifies due process and appeals regarding the person's residential setting and circumstances, under which he/she could be required to relocate.** This can be a written residential/occupancy agreement that outlines 633.12 Notice of Rights and specifies the circumstances upon which the person would be required to relocate and the due process/appeals provided in these circumstances. This document can be combined with a Notice of Rights **as long** as the occupancy agreement section specifies **protections/appeals from eviction** and circumstances upon which the person could be **required to relocate;**
AND two of the following are evident:
- There is evidence that the person and/or their proxy/advocate was informed of these housing protection rights (for example, there are signatures on the document, the person has a copy, and the person/proxy can explain what their due process/appeals rights are if they are asked to relocate).
- The person and/or their representative can produce a written document that outlines their rights to housing protections/due process, and the person/representative has an understanding that the paperwork contains this information and/or;

³ 2960 Federal Register / Vol. 79, No. 11 / Thursday, January 16, 2014 / Rules and Regulations

	<ul style="list-style-type: none"> • The person and/or their representative can describe the process that will occur when someone is asked to relocate from the residence. <p>Select NOT MET if any of the following are present:</p> <ul style="list-style-type: none"> • There is no evidence of a written occupancy agreement that includes due process/appeals and specifies circumstances where the person could be required to relocate and the due process/appeals available. OR: • There is an occupancy agreement but no evidence of the person having been informed of these rights. OR: • If there is a written rights document, it lacks information on housing protections, protection from eviction, and due process/right to appeal.
<p>4-3. People know how to make an <u>anonymous</u> complaint regarding the residence/living situation.</p> <p>SD</p>	<p>SAMPLE DEPENDENT</p> <p>Assess using BOTH documentation and interview with the person and/or their representative.</p> <p>The ability to make an anonymous complaint is a right guaranteed under the Constitution’s First Amendment pertaining to Freedom of Speech. Freedom of speech is the right to communicate one's opinions and ideas without fear of retaliation or censorship. Anonymity is important because people may be fearful of voicing their concerns and may fear that they could receive punishment or retribution for it.</p> <p>Information should be made available regarding how to make an anonymous complaint and who to contact. People should be made aware of this right, and informed that they are protected from retaliation, censorship, and repercussions for making a complaint. Examine whether the facility makes information about how to register an anonymous complaint sufficiently available to people and determine via interviews if people are aware of this process and understand it. While individuals are often informed of grievance processes, the ability for anonymity is sometimes not part of this written process. Verify that information is provided in an understandable matter. While reporting a complaint to the MSC is often cited is the mechanism a person would use, consider whether this report can be handled in a manner that will protect the anonymity of the complainant.</p> <p>Select MET if:</p> <ul style="list-style-type: none"> • The person and/or his/her representative can tell you who they would contact to make an anonymous complaint and/or how they would go about doing it. The contact/process is appropriate given the living arrangement and is appropriate to assure anonymity. • Information is provided/made available to program participants regarding contact information to register a complaint anonymously, (e.g. phone # for complaints/hotline, neutral 3rd party ombudsperson, etc.). <p>Otherwise, select “NOT MET”.</p>

<p>4-4. The site is absent of generally applied rules that limit people's rights and access. There are no blanket house rules, policies or procedures that limit individual rights, independence, choices or autonomy.</p>	<p>Assess through discussions with staff, people, and others; observation, and record review</p> <p>This is a systemic review of the facility/house rules/as well as agency/facility policies and procedures. This review is different than the review of the <i>person's experience</i>.</p> <p>Request and review the rules, policies and procedures of the program and/or agency. Ask staff and people if there are any general rules. Look for any blanket restrictions on any of the HCBS Settings rights or other individual rights (including Part 633.4). In some cases, the agency may have general and systemic policies & procedures for house rules and resident responsibilities that will need to be reviewed. Be aware the blanket house rules are sometimes unwritten but are still routinely applied. Observation and interview may evidence if this is the case. If blanket rules are identified, is this a systemic agency-wide rule, or is it specific to the program being surveyed?</p> <p>In addition to the rights under Part 633.4, <u>HCBS Settings Rights</u> also include the following:</p> <ul style="list-style-type: none"> • Written lease agreement that includes due process and protections from eviction • Privacy in bedrooms and bathrooms • The ability to lock bedroom doors with only appropriate staff having keys • Having a key/access to the front door • Being informed of living environment options and choices including living alone or with roommates I choose/prefer • Freedom to furnish and decorate their bedroom the way that they choose (but within the agreed upon specifications in the written lease agreement) • Freedom and support to control their own schedules and activities • Freedom to come and go from the residence at any time • Access to food at any time • The ability to receive visitors of their choosing at any time • A setting that is physically accessible to the person <p>Examples of house "rules" or limiting policies:</p> <ul style="list-style-type: none"> • Set times when the kitchen or laundry can be accessed. • Phone use times • Bed times/Lights out times • Rules regarding when and how people may leave the home • Rules about when and how people can access their home (for example, residents are not allowed keys, cannot come home unless staff is home, or cannot access food outside of designated mealtimes.) • Visitation rules and restrictions • Restricting people from decorating their bedrooms the way that they choose • House curfews or scheduled times that people have to return to the residence • Strict, inflexible mealtimes.
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	<p>Generalized program rules can result in unnecessary or inappropriate restrictions on choice, independence, rights and personal autonomy for people. Blanket policies and procedures and/or house rules should not unnecessarily restrict the ability of people to come and go whenever they so choose. People should also be able to complete routine activities at the times they prefer. For example, there should not be a curfew or other requirement for a scheduled return to the setting that is applied to all residents of the setting regardless of the capabilities of the residents. There should not be blanket expectations put upon people in the house without appropriate justification and documentation.</p> <p>Select MET if both of the following are met:</p> <ul style="list-style-type: none"> • There are no blanket rules, policies/procedures, or expectations that restrict the ability of people to determine their own "schedule" for activities in and out of the program; AND: • Observations and documentation review demonstrate and people/staff report that people are free to determine their activities and activity times (This means that they provide no information that there may be unwritten blanket rules restricting people). <p>Select NOT MET if either of these is evident:</p> <ul style="list-style-type: none"> • There are house rules/ policies/procedures or expectations that restrict people. (This does not include house rules that are expectations of mutual respect and polite behavior among housemates.) • While not written explicitly, there is evidence through observation or interview that there are general understandings of blanket house rules that result in restricting people without justification.
<p>4-5. People are permitted by the program to engage in any legal activities per their interests.</p>	<p>While not identified as SAMPLE Dependent this can be verified easily for people in sample.</p> <p><i>This is a general question that is best answered upon review of documentation, interview, and overall observation of the residence how it operates and its policies.</i></p> <p>This verifies that practices, policies and procedures in place at the setting do not prohibit the rights of people to participate in activities of their choosing (as long as the activity is legal). The residence and staff do not necessarily have to agree or believe in the choice of the individual, but it is important that the choice is still honored.</p> <p>Support for activities of choice requires that meaningful discussions on risks and safeguards occur, and that people are making informed choices.</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Are the rights of people to make choices regarding their activities and associations honored? • Are choices arbitrarily restricted or limited because of value judgments or beliefs of staff? • Did you observe instances in which the choices of people were not honored? • Policies and procedures or rules do not bar people's engagement in legal activities.

	<ul style="list-style-type: none"> • Examples of legal activities include but are not limited to: Legal venues for gambling, alcohol use, sexual activity, pornography, attendance at movies with “R” ratings; etc. <p>Select MET if:</p> <ul style="list-style-type: none"> • There is evidence that people are engaging in legal activities of their choosing, and are not arbitrarily prohibited from participation in those activities. • If people engage in legal activities that present a risk to their well-being, it is based on informed decision-making that includes discussion of risks, safeguards and alternatives. • If restrictions to engage in legal activities are enforced, it is only with specific justification and documentation, as per CMS requirements. <p>Select NOT MET if:</p> <ul style="list-style-type: none"> • There are indications that people are denied the opportunity to engage in legal activities without justification and required documentation. OR: • The residence or residential agency has policies and procedures or rules that prohibit legal activities.
<p>4-6. Rights limitations comply with HCBS and 633.16 requirements. SD</p>	<p>SAMPLE DEPENDENT</p> <p><i>Assess using Interview, observation, and documentation review</i></p> <p>Please Note: A finding of “NOT MET” under 633.16 regulations will result in a <u>deficiency</u> to the agency per the existing Behavior Services Protocol.</p> <p>A person's rights include:</p> <ul style="list-style-type: none"> • Civil rights as a US citizen; • Rights guaranteed under NYCRR Part 633.4; • Rights that apply to provider-owned or controlled Settings, as stated in the HCBS Settings regulations issued by CMS. <p>When assessing this standard, consider all routine aspects of a person's life, access, and opportunities. Rights restrictions and rights modifications include alterations to any personal rights identified above, including rights limitations, restrictions, and intrusive interventions as defined in NYCRR Part 633.16. Rights restrictions and modifications may or may not require an individualized behavior support plan. Any modification of rights must be supported by a specific assessed need and justified in the person-centered service plan. CMS Regulations identify standards related to any modification or restriction of rights in HCBS settings.</p> <p>The following requirements must be documented in the person-centered service plan (or behavior support plan). For further guidance of the following requirements, refer to the HCBS Assessment Guidance Document using the crosswalk to find specific pages:</p> <ol style="list-style-type: none"> 1. Identification of a specific and individualized assessed need;

2. Documentation of the positive interventions and supports used prior to any modifications to the person-centered service plan;
3. Documentation of less intrusive methods of meeting the need that have been tried but did not work;
4. Includes a clear description of the condition that is directly proportionate to the specific assessed need;
5. Includes a regular collection and review of data to measure the ongoing effectiveness of the modification;
6. Includes established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
7. Includes the informed consent of the individual;
8. Includes an assurance that interventions and supports will cause no harm to the individual.

For Rights Restrictions and Limitations due to Behavioral Concerns:

If a person has a restriction/limitation in place because of a **behavioral concern**, they should already have a behavior support plan in place that addresses the elements above. If the person requires any limitations to rights expected in HCBS settings due to identified behaviors, the BSP would also be the appropriate place to provide the required documentation.

For Rights Restrictions and Limitations due to Health or Safety Concerns:

In the event that any of the person's rights are limited or modified for a person because of **health or safety concerns** (such as using a bed rail or helmet because of Epilepsy), it may not be necessary or appropriate to develop a behavior support plan. However, the requirements in #'s 1-8 still apply and need to be documented. In those instances, the information regarding limitation/restriction may fit appropriately into an Individualized Plan of Protective oversight (IPOP), habilitation plan, or safeguard section of the ISP.

Note: *If the IPOP is selected by the provider as the document source for required information, ensure that the information is documented in a manner or location that does not confuse staff's ability to identify **current** strategies to be implemented. (This note is made as requirements #2 and #3 above may provide historic strategies no longer used and determined not to currently be effective.*

Exceptions due to emergency situations involving an immediate, serious, and credible threat to health and safety:

The only exception to meeting the rights modifications requirements #1-8, above, is if there is an emergency situation where the person places themselves or others around them in serious jeopardy (i.e., there is an immediate, serious, and credible threat). In this case, the provider/staff must take immediate and appropriate action necessary to address the crisis situation, regardless of documentation present. Once the immediate crisis is over, the provider/staff is expected to reassess the person's preferences and needs using the a person-centered planning process, determine strategies to address health and safety threats determined to be recurring/likely to recur, and update the person's habilitation/service plan accordingly^[1].

[1] Federal Register /Vol. 79, No. 11 /Thursday, January 16, 2014 /Rules and Regulations , 2961, first column

In addition to the rights under Part 633.4, **HCBS Settings Rights must be afforded. Refer to Guidance for Standard # 4-4 for a list of these specifically described rights.**

Select MET if all of the following are present:

- **All eight (8) requirements for rights limitations noted above are met**
- **For documentation of positive and less-intrusive approaches:**
 - The person's BSP (when required) or another component of their service plan documents the description of positive and less intrusive approaches that were tried but were not successful, prior to inclusion of the current restrictions or intrusive interventions.
- **For documentation of a specific, individualized assessed need:**
 - The person's BSP (when required) or another component of their service plan includes the individualized description of each behavior or need requiring/justifying each restrictions or intrusive interventions; and
 - The use of the restrictive strategies in relation to the behavior/need appears justified.
- **For documentation of written informed consent:**
 - Written informed consent is evidenced through signature of consenting party for all limitations, restrictions, modifications. This may be through consent to the person's BSP (when required) or another component of their service plan that identifies the limitations; **OR:**
 - Verbal consent is documented for a restriction implemented fewer than 45 days; and
 - There is no indication that the process used to obtain consent was insufficient per 633.16 and 483 guidance noted above.
- **For documentation of periodic review for effectiveness:**
 - Documentation regarding implementation of strategies and resultant effect is collected as described in the plan, AND
 - This information is reviewed to determine effectiveness of strategies, AND
 - The review of implementation and effectiveness is conducted regularly per the time period identified in the plan, AND
 - Decisions regarding the continuation of a limitation, restriction, intrusion appear appropriate based on the documentation provided.

Select NOT MET if any of the following are evident: If "NOT MET", cite Part 633.16 in accordance with DQI's recertification review protocol and procedures.

- **For documentation of positive, less-intrusive approaches:**
 - The person's service plan or BSP does not include the required information.
 - There is no evidence that positive and less intrusive measures have been implemented and tested.
- **For documentation of a specific, individualized assessed need:**
 - The person's service plan or BSP does not include the required information; and/or

	<ul style="list-style-type: none"> • The use of the restrictive strategies in relation to the behavior/need does not appear justified and/or proportionate. • For documentation of written informed consent: <ul style="list-style-type: none"> • Written informed consent is not present. • Written informed consent is incomplete. • Consent is evident for some but not all limitations, restrictions, modifications. • There is evidence that the process used to obtain consent was insufficient per 633.16 and 483 guidance noted above. • For documentation of periodic review for effectiveness: <ul style="list-style-type: none"> • Any of the three components above (data collection, data review, or time period for review) is absent either in planning or implementation; and/or • The implementation of any component is inconsistent, incomplete or untimely; and/or • Decisions regarding the continuation of a limitation, restriction, intrusion are not justified based on the documentation provided. <p>Select “NA” - NOT APPLICABLE <u>only</u> if there are <u>no</u> rights modifications or restrictions of any kind including those applicable to both Part 633.4 and the new HCBS Regulations.</p>
<p>4-7. When environmental protections are in place due to one individual’s needs, action is taken to ensure that the rights of others in the facility are accommodated.</p>	<p>In the event that a rights modification affects another person in the setting who does not require a rights modification, documentation of the following is required in the individual’s person-centered service plan (or attachments):</p> <ol style="list-style-type: none"> 1. The impact that the rights modification has on the person not requiring the modification 2. The efforts taken to lessen the impact on the person, and: 3. The written informed consent of the person <p>Example: When one person requires a locked refrigerator for clinical reasons, this can impact the access and right of everyone in the residence to having food at any time. Steps must be taken to allow others in the facility access to the fridge, such as having their own key; or an alternate location to access the food.</p> <p>Select MET if all the following are evident:</p> <ul style="list-style-type: none"> • If there are justified rights modifications are the residence implements active measures to ensure that others’ rights are accommodated; AND • Individuals not requiring the rights modification are not negatively impacted by modifications required by their housemates; AND • Written informed consent has been provided. <p>Select NOT MET if any of the following are present:</p> <ul style="list-style-type: none"> • <u>Rights modifications in place for a housemate restrict individuals who do not require the modification;</u> • <u>Written informed consent has not been received from affected individuals</u>

	<p>Select “NOT APPLICABLE” only if there are <u>no</u> rights modifications or restrictions of any kind including those applicable to both Part 633.4 and the new HCBS Regulations.</p>
<p>4-8. Peoples’ health and other protected information is kept private/protected.</p>	<p>Assess this standard through observation of the program</p> <p>The standard addresses both protection of an individual's personal information as well as whether the facility is creating a homelike environment. Having protected health information and other personal information publicly posted is a violation of the person’s right to privacy. Besides violating the person’s right to privacy, it also contributes towards creating a more clinical and institutional atmosphere more like that of a hospital than that of someone’s own home. This type of personal information should be discreetly available only to relevant staff that need access to the information.</p> <ul style="list-style-type: none"> • Things to consider: Are personalized diet orders and person-specific food consistency requirements posted visibly in the kitchen for anyone to see? • Are bowel management regimens posted publicly in the program? • Are medical appointment notices, changes in medications, and other private and personal health care information posted publicly and visibly? <p>Select MET if:</p> <ul style="list-style-type: none"> • There is no evidence of private information being accessible to other residents, visitors, etc., in the home based on observation and walk through. <p>Select NOT MET if any of the following are evidenced:</p> <ul style="list-style-type: none"> • Schedules for peoples’ private medical appointments and medical information are posted in the home for anyone to see. • Peoples’ dietary restrictions/modifications are posted for anyone to see. • Other information considered private is posted, visible, and available to others.
<p>4-9. People have privacy in their living quarters as appropriate to the situation.</p>	<p>This question must be answered through general observation as well as interview with the person.</p> <p>The privacy of an individual should be respected in all aspects of life. Preservation of the person’s right to privacy is a basic human dignity. The residence and staff must ensure that the person’s need for privacy is respected and protected. This includes being able to have private conversations, having a say in who has access to their personal possessions and living space, as well as having privacy in bathing, grooming, and dressing.</p> <p>Look for <u>evidence</u> of the following HCBS Setting privacy requirements:</p> <ol style="list-style-type: none"> 1. Staff knocks and receives permission before entering the person’s room/living space. 2. The person has privacy in his/her sleeping and/or living unit; including the right to lock his/her bedroom or unit door if he/she chooses.

3. The person has privacy in the bathroom and can close and lock the bathroom door; assistance is provided **in private** when needed by the person.
4. The person has access to and is supported to make private phone calls and/or send private e-mails/text messages when it is convenient to him/her.

Considerations:

- Does staff talk with the person about private issues in front of others?
- Does staff communicate among themselves about the person in front of others?
- Does staff respect the person's privacy by asking the person's permission before entering his/her bedroom or living space, or do they just enter without requesting permission? Does their bedroom door close and latch? Does it lock if desired? Does the individual have the key to his/her bedroom with only appropriate staff also having access to a key?
- Is the person afforded privacy in the bathroom and bedroom, which is only breached based on identified clinical needs for assistance and supervision related to their safety?
- Staff are attentive to prevent exposure and visibility of individuals who require staff assistance during personal care and hygiene activities.
- In shared bedrooms, does the person have the degree of privacy desired and possible?
- Does the person have the opportunity to speak on the telephone, open and read mail, and visit with others, privately?
- Does the person ever have the opportunity to be by him/herself throughout the day or evening?
- Does the person know what personal information is collected about them, who has access to it, and where it is stored? Does the person have access to their information?
- Is personal medical information posted in areas visible to everyone?
- Does the individual provide consent regarding who has access to personal information about him/her?
- If applicable, is the person given the opportunity to take their medications and receive treatments privately with staff (or is the med cart rolled out to a public area for everyone to view⁴)?
- Is the individual supported, assisted, and reminded to facilitate their own privacy?
- Are the individual, their peers, and housemates supported, reminded, and assisted to respect each other's privacy?
- Are other potential barriers to the person's privacy observed?
- Is the layout of the residence conducive to private telephone conversations?
- Does it appear that the person has the opportunity to access the telephone or computer privately?
- The person has a say and has agreed to the people that can have access to their bedroom or living space. This will likely need to involve all direct support professionals employed at the residence.
- If the person does NOT have access to their bedroom key, is there written evidence to indicate why in their service plan and documentation?

⁴ Example provided by Ralph Lollar during CMS-NYS call 7/25/14

	<ul style="list-style-type: none"> • When asked, do individuals feel they have privacy when they get dressed, use the bathroom, or take a shower? • Do individuals report that staff respect their privacy regarding entry into their bedroom, phone calls, personal conversations, computer use, etc.? • Regarding private use of a telephone: A person may elect to have a personal cell phone or private telephone in his/her room if personal funds allow it, but the residence must ensure at minimum that the person can conduct private telephone conversations and e-mail conversations even if they cannot afford their own private telephone and/or computer in their bedroom. <p>Select MET if all the following are present:</p> <ul style="list-style-type: none"> • Observations evidence that privacy of individuals is respected as described above • Staff take action to maintain the privacy of individuals in their daily activities and social interactions (phone use, social media and computer use, conversations) as needed • Individuals as capable, report that their privacy is assured according to their needs <p>Select NOT MET if any of the following are evident:</p> <ul style="list-style-type: none"> • The privacy of individuals (as described above) is not considered/respected as observed in the actions of staff and operations of the home • Documentation or interview reveals a <u>pattern</u> of disregard or lack of support for peoples' privacy in their own space, in their conversations and social interactions, and/or in the assistance provided for personal care.
<p>4-10. People are allowed to have visitors of their choosing at any time. SD</p>	<p>SAMPLE DEPENDENT</p> <p><i>Assess through interview with the person and staff as well as review of documentation</i></p> <p>People have the right to have visitors at any time under HCBS settings. The staff should be supportive and should encourage people to maintain relationships that are important to them, to the extent desired by the person. To answer this standard, determine through interview if the person is satisfied with their ability to foster their personal relationships by having friends and family visit them in their home. Determine if they feel supported by staff in maintaining them. They should be able to visit with others to the degree and frequency desired. You may also want to interview staff to determine how they support and encourage residents to invite friends/family to their home as any person does with people important to them.</p> <p>Rights Modification: Through your review of the person's record, determine if there have been any restrictions placed on their ability to receive visitors. If there is an appropriate rights modification documented that restricts the right of the person to have a certain visitor or visitors in general, the rights modification must have been discussed and reviewed as part of the person-centered planning process. If related to an assessed</p>

	<p>behavioral need, it must be documented in a Behavior Support Plan in accordance with all of the requirements of 633.16. See Standard 4.6 for further specific rights modification documentation requirements.</p> <p><u>Select MET if the following are met:</u></p> <ul style="list-style-type: none"> • There is evidence that people visit the person in his/her home. • The person reports that he/she can have visitors whenever he/she chooses. • The person receives encouragement and support from residential staff to have visitors (such as assistance in scheduling visits) • The person reports satisfaction with their ability to receive visitors at any time • OR, there is good evidence that the person has made the decision and is not interested in people visiting at this time, but understands they could if they wanted to. <p><u>Select NOT MET if any of the following are evident:</u></p> <ul style="list-style-type: none"> • There are blanket rules/visiting hours restricting the person from having visitors of their choosing at any time. • The person does not receive any support or assistance to have visitors. • The person is dissatisfied, and reports wanting people to visit and has been denied the opportunity and/or assistance not provided. • There are rights restrictions in place that do not include the required elements as specified in 633.16 <p><u>Example of a NOT MET:</u> <i>A person has a girlfriend from his workshop and expresses dissatisfaction that he doesn't get to see her outside the workshop. No efforts evident from the residence to facilitate the girlfriend visiting</i></p>
<p>4-11. People have access to food/snacks at any time. SD</p>	<p>SAMPLE DEPENDENT and Overall</p> <p><i>Assess through interview with the person and staff as well as review of documentation</i></p> <p>CMS has stated in commentary that this requirement means that people should have opportunities to choose the foods they want to eat, have the ability to store food in their room if they choose, eat in their room, and decide when to eat. Presenting a person with narrow food choice options, without their input, does NOT satisfy this requirement. Having access to food at any time does NOT mean that FULL dining services or meals should be available 24 hours a day, but rather applies to having <u>ACCESS</u> to food at any time.</p> <p>Rights Modification: Through your interview and review of the person's record, determine if there have been any restrictions placed on the person's access to food. Any modification or restriction to a person's food choices or choice of mealtimes is considered a restriction of the person's rights. If there is an appropriate rights modification documented that restricts the right of the person to have access to food at any time, the rights modification must have been discussed and reviewed as part of the person-centered planning process and must be supported by a specific assessed need. If related to an assessed behavioral need, it must be</p>

documented in a Behavior Support Plan in accordance with all of the requirements of 633.16. See Standard 4.6 for further specific rights modification documentation requirements.

Please Note: If other people are impacted by a restriction that is necessary for a specific person, the expectation is that reasonable approaches are taken to support the people who are impacted by the restriction and arrangements should be made so that other individuals have the right to access food at any time. This might mean asking staff when the person wants access to food, having a secure and locked pantry in their own room, or having a key to access the locked kitchen or pantry. For those affected by a rights restriction for someone else, **documentation** of the following is required in their person-centered service plan (or attachments):

1. The **impact** that the rights modification has on the person
2. The **efforts taken to lessen the impact** on the person, **and:**
3. The written **informed consent** of the person

Select MET if:

- The person has access to food 24-7, either through storing the food in their room and/or getting food from the refrigerator, pantry, and/or being supported, as needed to obtain food at any time, as appropriate to their individualized need.
- If a person does not have free access to food, there is an appropriate rights modification in place through the person-centered planning process that includes all the required elements.
- The residence/staff makes clear that access to food 24-7 is the person's right unless there is an appropriate rights modification.
- The residence/staff supports the person to budget, purchase, and store food that they choose so that it is available to the person at any time, unless there is an appropriate rights modification in place. **Note:** if the rights modification includes all of the required elements and has been appropriately considered through the PCP process, the answer can be MET.

Select NOT MET if:

- The person does not have access to food 24-7
- The person is not supported to purchase/store food per their interest.
- There are blanket rules/policies or operational practices in place that are obstacles/barriers to this right.
- If the person has a rights modification, or is affected by someone else's rights restriction, but it does **not** contain the required elements.

4-12. People can choose to eat meals where/when desired.

SD

SAMPLE DEPENDENT & overall

Assess through interview with the person and staff and review of documentation

Also refer to guidance in 4-11 regarding access to food at any time. The right to access food at any time also means that people can not only choose what food that they want, they also have the right to decide where and when they eat.

It is recognized that homes will have some routines in place regarding mealtimes. These routines should be related to the schedules, interests and requests of the people living there, rather than staff preference, staff schedules or facility organizational practices. Even with a daily or weekly routine, individuals should have the ability to eat their meals at other times chosen by them and may choose where to eat.

Please Note: Any change to a person's right to eat where and when desired is considered a rights restriction and must be supported by a specific assessed need and justified in the person-centered plan or behavior support plan., See guidance on standard 4.6 for further specific rights modification documentation requirements.

Select MET if:

- Individuals report being able to eat their meals when they choose, if they do not wish to have their meal at the scheduled time.
- During observation of meal times, people are not coerced to come to the table.
- During interviews with staff and others and/or documentation review, it is evident that there is flexibility provided for meals to accommodate individual schedules and preferences.

Select NOT MET if:

- During observation, people appear to be coerced to eat during the routine mealtime.
- A person requests to have their meal in their room or at another time and staff does not honor the request.
- There is documentation/written evidence that indicates there is no choice/flexibility to alter one's mealtime schedule.

4-13. People are supported and encouraged to decide how to spend their personal funds and to control their personal resources.

SD

SAMPLE DEPENDENT

Assess through interview with the person and staff and review of documentation

This standard should be addressed similar to #57 on the Universal Protocol, "The person's Personal Allowance is spent on items/activities of their choosing".

After reviewing the person-centered plan, consider the following:

- Does the person have a checking or savings account in his/her name, with control over the funds?
- Does the person have access to those funds when they choose? Is access to those funds provided in a timely manner?
- If the person earns a paycheck, are they aware that they are not required to sign it over to the provider?⁵
- Does the person spend or are they supported to spend their money on items/activities of their choosing?
- If a person needs support/assistance or training with how to manage their income, is that support provided?

Select MET if 2/3 of the following are evident :

- The person is provided needed supports to spend their personal allowance on activities/personal interests/goods that are meaningful to him/her;
- The person reports that they have access to their personal allowance funds when needed to engage in activities and make purchases of their choice; and,
- Residential staff helps the person to budget and make informed choices about purchases.

Select NOT MET if any of the following are evident:

- There is evidence through documentation and/or interview that the person does not receive sufficient support to exercise their right to spend their personal allowance funds on activities/items meaningful to him/her, **OR:**
- There are unnecessary/unreasonable barriers/restrictions on the person being able to spend their personal allowance funds, without an appropriate rights modification that clearly documents all the necessary elements.
- There is evidence that staff are making the decisions on how to spend the individual's money without regard to their needs of interests.

⁵ CMS exploratory questions page 2

SECTION 5: HCBS Settings Requirements: SITE ENVIRONMENTAL CHARACTERISTICS	
STANDARD	INTERPRETATIVE GUIDELINES
5-1 The residence appears “home-like”, rather than Institutional.	<p>This assesses the overall impression of the site based on your observations, review of documentation and discussions with people and staff.</p> <p>Considerations:</p> <ul style="list-style-type: none"> • Does the site reflect the unique interests and needs of the people living there? • Is the home decorated and furnished in a home-like vs. institutional manner? • Are efforts made to maintain the exterior and outside of the residence to blend in with the rest of the neighborhood, to the extent possible? (For example, is there unkempt vegetation overgrowth, large garbage dumpsters out front in plain sight, cigarette butt containers conspicuously by the front entrance door, and other features that easily identify the home as institutional?) • Are communal living spaces, such as living rooms, comfortably furnished and decorated per the interests and needs of the residents? • Are personal living spaces such as bedrooms personalized? • There are sufficient accommodations and seating for leisure, dining, and other routine activities when people are home. • If therapeutic equipment is required by people in the home, has the home made reasonable effort to minimize their conspicuous placement in the home, or is there adaptive equipment, lifts, shower chairs, etc. clogging up hallways and living rooms unnecessarily? • Does the location and display of equipment and documentation related to operations of the home (staff desktop computers, file cabinets, binders, medication storage) result in an institutional or non-homelike appearance? • Are there door alarms that sound off every time that they are opened? If so, is there appropriate clinical justification for the door alarms? Are the alarms overly loud, imposing and distracting to the residents? <p>Select MET if:</p> <ul style="list-style-type: none"> • The setting is "home-like" in appearance and features. • The home is <u>not</u> institutional in appearance and features. • People appear comfortable in their home. <p>Select NOT MET if:</p> <ul style="list-style-type: none"> • The home is institutional or office-like in appearance inside and/or outside • The home is not personalized in accordance with the people living there. • The home/physical environment does not meet the needs of the people living there.

<p>5-2. Surveillance cameras are not present in the site.</p>	<p>Assess through observation and interview</p> <p>Through observation and interview, determine whether one or more surveillance cameras are used inside the residence. Video cameras are currently NOT allowed inside HCBS residences, as per CMS. This means that they are prohibited in bedrooms, bathrooms, kitchens, and other common living areas of the residence. The use of video cameras inside of a residence is considered to be institutional.</p> <p>Please Note: This does not apply to some security cameras used outside of the residence, such as an apartment building owned by a landlord who uses surveillance cameras in public hallways not owned by the agency. This also does not apply to security systems like ADT that utilize surveillance cameras for security purposes which monitor outside of the residence and are typical in residential communities.</p> <p>Select MET if:</p> <ul style="list-style-type: none"> • <u>NO</u> surveillance cameras are in use inside of the residence, for any reason. <p>Select NOT MET if:</p> <ul style="list-style-type: none"> • Surveillance cameras <u>are</u> present inside the residence. <p>If NOT MET is selected: <i>The surveyor must complete a comprehensive review of documentation regarding why a surveillance camera is present. Include descriptions of the following in the “Rationale” section of the assessment document:</i></p> <ul style="list-style-type: none"> • <i>People impacted by surveillance camera;</i> • <i>The documentation reviewed and reasons/justifications stated for presence of the camera(s);</i> • <i>Provider staff and/or clinicians involved and the decision to use camera surveillance.</i> • <i>When installed/use implemented;</i> • <i>Associated time limitations and circumstances related to the use of the camera(s).</i> <p>The surveyor should immediately notify the Area Director regarding the presence of the surveillance camera.</p>
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SECTION 6: HCBS Settings Requirements - Section 6 is SAMPLE DEPENDENT INDIVIDUALIZED HABILITATION SERVICES PLANNING	
STANDARD	INTERPRETATIVE GUIDELINES
<p>6-1 Habilitation Plans reflect the individual’s informed choices and interests. SD</p>	<p>SAMPLE DEPENDENT</p> <p><i>Interviews with people in the sample and observation are critical for determining whether or not their habilitation plans reflect what is meaningful and important to them.</i></p> <p>Through interviews and documentation review, use your best judgment to determine whether habilitation plans seem aligned with person-centered planning principles. This standard is based on the people in your sample whose habilitation plans were reviewed.</p> <p>Look for evidence of true person-centered planning that is person-driven, guided, and shaped by the person at the center of the plan. This means that there is evidence of discussions with not only the person, but with their circle of support as well (both paid staff and natural supports). Habilitation plans must be implemented in such a way that ensures the person has as much control and informed choice as possible in their life regarding the priorities that are most meaningful to them.</p> <p>For people unable to specifically voice their choices, how well staff and others that know them well consider life from the person’s point of view is critical. When others are serving as a surrogate for the individual’s point of view sure to ask questions in such a way that requires them to think for the person, requiring them to consider how the act, respond, vocalize, move, etc. when they prefer something, when they don’t like something, when they are bored, when they are alert and engaged, etc. Ask staff or family how they use this awareness to make decisions regarding service plans, supports, activities, etc.</p> <p><u>For clarification on informed choices, please see refer to the HCBS Assessment Guidance Document using the pages identified in the crosswalk.</u></p> <p>In order for a person to make <u>informed and meaningful choices</u> and decisions, the following things need to be present in the person’s life:</p> <ul style="list-style-type: none"> • Concrete and varied life experiences with needed supports to help the person gain an understanding of options and opportunities; • Social support networks to help the person in choice-making, including family; • Opportunities for creative alternatives and a flexible approach that can meet the person’s needs and expectations, within available resources.⁶

The agency and site staff don't necessarily have to agree with the person's choices but there is an obligation to educate the person on the impact that those choices have. The education content should be consistent and credible. Staff should act on those choices, as long as they don't pose an immediate, serious, and credible threat to the health and safety of the person or others.

Considerations:

- Based on information available on personal interests and priorities, are people and do people report that they have the support needed to pursue their interests and priorities.
- People in the sample know about what's in their habilitation plans, including specific activities and outcomes addressed in the plan. People know how/why these activities and desired outcomes are in their plan. They agree to or choose the outcomes and activities in the plan.
- Ask people in the sample how long they have been working on specific outcomes identified in their plans to determine if they are current
- It is evident that decisions made during the planning process are the result of their direct input (when capable) and thorough knowledge and understanding of the individual.

Select MET if the following is evident for all individuals in the sample:

- The habilitation plans that were reviewed were found to be individualized and person-centered. This means that plans were developed *in conjunction* with people and overall reflect priorities, preferences, goals, needs, and interests for participation in meaningful activities
- Although the habilitation plan doesn't have to exactly match ISP valued outcomes, there should be a thread of similarity reflecting the goals and dreams that have been discovered during the person-centered ISP planning process. However, if the ISP is not person-centered (and the Habilitation Plan is) and there is evidence that the Habilitation provider/staff has attempted to address the ISP issues with the MSC, this attempt can be recognized for this indicator.
- The habilitation plans are reflective of the **CURRENT** desires and needs of the **people in your sample** (or if necessary, a surrogate/proxy that knows the person well)
- There is at least one clear goal or activity identified in the Habilitation Plan that will help move the person towards what is **most meaningful** to him/her.
- People were offered **informed choices** of services/supports and who provides them. This means that there is a clear indication of informed choice evident in the Habilitation Planning process. CMS expects that all services and support options will be articulated and discussed with the person.⁷

Select NOT MET IF any of the following are evident for one or more individual in sample:

- People did not participate in the development of their habilitation plan (unless this was their **clear** decision and choice to not participate).

⁷ 79 Federal Regulation at 2,989

	<ul style="list-style-type: none"> • Perspectives, preferences, and priorities for people were not considered during the planning process. • Plans are not current reflections of the status, wants, needs, interests, or goals for people in the sample. (For example, the person reports interests and desires that are important to them which are largely unrepresented in their plan) • People appear to be bored or uninterested in the activities outlined in their plan. • Plans are written in a "generic" or "one size fits all" type manner. The activities, goals, desired outcomes, and/or the strategies to achieve them lack personalization, meaningful choices, individualized considerations and guidance, etc.
<p>6-2 Habilitation Plans identify the priorities for meaningful and individualized community based activities that the individual wants, including desired frequency and the supports needed.</p> <p>SD</p>	<p>SAMPLE DEPENDENT</p> <p><i>Please refer to guidance in 6-1 (above) regarding considerations for ensuring that the plan is person-centered and reflects the meaningful and individualized community-based activities that are important to the person. Also, ensure appropriate interviews as described in 6-1. Also verify that positive approaches to safeguarding are occurring.</i></p> <p>Habilitation plans (or alternative documentation created for this purpose) should specify the varied community-based activities for which the person has expressed or demonstrated interest. This may include community activities intended to assist the person with functional skills, but should also include identification and planning for community integration based on individualized interests and priorities in leisure, recreation, associational memberships, and cultural interests (Some examples include church membership, social activities and social groups, clubs of shared interests, shopping and purchasing desired for needed items, etc.) Habilitation planning should go beyond just basic functional, generic, and easily "billable" activities. It may also be appropriate to acknowledge what training and skills are needed for the person to be able to access their community interests with more independence.</p> <p>Needed Supports and Safeguards:</p> <ul style="list-style-type: none"> • When reviewing the habilitation plan and the identification of preferred and wanted community activities, focus on whether there are safeguarding measures and back-up plans in place to support the person's choices for meaningful community based activities. • The support planning process and resultant plan should support the individual to manage identified risks and agree upon appropriate safeguards so that he/she has the freedom to live their life in the way that he/she chooses. • The individual's support needs and/or possible risks should not be an excuse for the person to not participate in desired activities. Proper support planning and provision of same should result in their participation in chosen community activities. • The person's planning should focus on positive safeguarding when possible and may not necessarily result in risk elimination. This should result in assisting the person to choose options that will help

keep them as safe as possible and manage the challenges and associated risks inherent in a community integrated life. Through this dialogue, it is also helpful to consider the consequences to the individual of **not** taking the risk of enhanced community participation.

- Supports may range from highly strategized safeguards such as staffing ratios, specific staff skills, and environmental previews to those more easily provided such as ensuring that an individual is provided the public transportation schedule with the routes they would need to take highlighted and it is verified their cellphone is in their possession.
- Consider, based on interviews with people in the sample and review of documentation, whether supports and safeguards are thoughtfully developed and determined restrictions justified, with the intention of creating meaningful opportunities for the person (rather than just restricting their independence or focusing only on functional risks).
- **Examples of Positive Safeguarding include:** Participation in education classes about how to have healthy relationships; Training and support on how to take public transportation independently; Training and supports to allow them independent access to their own bank account. In these examples, rather than being prevented from these opportunities for more independence due to risk concerns, there are **specific strategies** in place to help ensure the person's health and well-being while they participate in these activities.
- It is also important to note that some risks may be non-negotiable (fire safety, risk of committing crime).

More information on planning and managing risk can be found in the HCBS Assessment Guidance Document and on OPWDD's website at:

http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning/risks-and-safeguards

Select MET if:

*The key to this standard being "MET" is that community activities are identified AND the strategies, safeguards, and back up plans related to the activities and goals are in place for people and meaningful to them. Choose "MET" **ONLY** if this standard is present for **all** in the sample.*

- Habilitation plans or alternative documentation reflects community related interests and priorities that are important to the person, including desired frequency and supports needed for the person to engage in these activities (For example, Sam would like to attend the senior center in Albany at least once per week on Saturday mornings to participate in playing checkers. Sam needs one-to-one staff support while at the senior center to ensure appropriate social interaction with other players);

And/or:

- Habilitation plans and documentation reflect related activities that will enhance the ability of people to participate in community activities and interests (such as training in using public transportation,

training on becoming more independent with finances, discovery and research of new opportunities, etc.)

- Community activities and interests specifically relate to meaningful and documented community integration goals and desired activities that people are progressing with through these related activities (Such as, if the person wants to obtain/sustain employment but they need to learn to navigate public transportation to meet employment scheduling needs).
- There is clear evidence that demonstrates meaningful discussions have occurred on positive approaches to safeguarding and have resulted in the identification of specific risk areas in people's lives. The identified risks have resulted in the development of safeguards that have been documented in the habilitation plan and/or alternative documentation. **And/or:**
- People report an awareness of important safeguards and specific ways to be safe when participating in activities that are important to them, and these safeguards/strategies are documented in the person's plan.

Select NOT MET if any of the following are evident. A "NOT MET" for **one** person in the sample will result in a "NOT MET" for this standard:

- Meaningful community-related interests are absent from documentation or habilitation plans, and instead reflect only functional activities, such as tooth brushing, without any corresponding person-centered long-term goal towards increased integration and independence.
- Community-related activities are present in habilitation plans, but they are not individualized to people. Habilitation plans do not reflect what is meaningful or of interest to people. (For example, the community activities reflect what everyone in the house does together, the house activity schedule, and/or community activities were chosen by staff for the person; etc.)
- People report dissatisfaction and feel limited in their ability to try new things of interest to them and become more independent without having any clear understanding as to why.
- Documentation reflects limitations and safeguards without taking into account abilities and goals. Safeguards do not appear person-centered and specific to people.
- Safeguards and/or restrictions implemented appear excessive in relation to support needs and risks, with inadequate justification as to why they are in place, and with no long-term strategies identified to lessen those limitations.
- Safeguards reflect only functional areas of concern (e.g., choking; bathing; etc.).
- Action has not been taken to identify risks, supports, and/or strategies to help people engage in activities that are meaningful and important to people.

<p>6-3 Habilitation Plans are written with plain person-centered language, in a manner understandable to the individual.</p> <p>SD</p>	<p>SAMPLE DEPENDENT</p> <p><i>This standard is based on the people in your sample whose habilitation plans were reviewed. A “NOT MET” for one person in the sample will result in a “NOT MET” for this standard. Choose “MET” <u>ONLY</u> if this standard is present for all in the sample.</i></p> <p>CMS expects the planning process to be understandable and accessible to people and to reflect cultural considerations. Information should be provided in plain language and in an accessible manner. Auxiliary aids and services must be available at no cost to the person. For persons with limited English proficiency, language services must be available at no cost.⁸</p> <p>The habilitation plan, IPOP, and other corresponding documentation should be written using People-First Language. People-First Language emphasizes the person, not the disability. By placing the person first, the disability is no longer the primary, defining characteristic for a person, but one of several aspects of the whole person. People-First Language is an objective way of acknowledging, communicating, and reporting on disabilities. It eliminates generalizations and stereotypes, by focusing on the person rather than the disability. For example, she <i>has</i> autism vs. she’s autistic or he <i>uses</i> a wheelchair vs. he’s wheelchair bound.</p> <p>After reviewing habilitation plans and determine if it has been written clearly, using people-first, plain language. A verbal explanation of the plan should also be offered to people and/or their representatives when needed. People should understand, if capable, why they have a habilitation plan, and what is in it. In instances where people and/or their representatives have Limited English proficiency (LEP), there should be access to low literacy materials and interpreters.</p> <p>If people are non-verbal or have difficulty communicating or reading, their Habilitation Plans should be developed in as accessible a way as possible (such as using pictures, diagrams, verbal recording of the information, video, etc.).</p> <p><u>Select MET if most of the following, if applicable to the sample, are met:</u></p> <ul style="list-style-type: none"> • People (and/or their personal representatives) have an understanding of their Habilitation Plans • People know that they have habilitation plans and what is in them. • Plans are written using People-First Language. • People know where a copy of their plans are if they want to see them and/or the people have received a copy of their Habilitation Plan. • People can name an area or goal in their plans that they are working on. • Plans are written in plain English, or is otherwise accessible in such a way that makes them easily understood. • If English is a person’s second language, is a copy of their plan is available in their primary language • There is evidence that staff make every effort to make plans accessible and understandable to the people <p>Otherwise, Select “NOT MET”</p>
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⁸ 42 CFR 435.905b

<p>6-4 There is a means for people to report dissatisfaction with Habilitation Planning and/or the delivery of Habilitation Services, and ensure it addressed by the facility. SD</p>	<p>SAMPLE DEPENDENT</p> <p><i>This standard is based on the people in your sample whose habilitation plans were reviewed. A “NOT MET” for one person in the sample will result in a “NOT MET” for this standard. Choose “MET” <u>ONLY</u> if this standard is present for all in the sample.</i></p> <p>Habilitation plans have to be person-centered. This means that habilitation plans need to reflect the priorities and outcomes that are important to people, and that should become the foundation and basis for development and implementation of habilitation plans. Any issues or concerns people may have with the goals, content, and overall focus of their habilitation plans should be addressed by the program. There should be an overall system in place to receive feedback not only on the successes of habilitation plans, but also on areas of habilitation plans that require re-examination and revision.</p> <p>After interviews, observations, and review of habilitation plans, determine whether any issues, concerns, and general dissatisfaction have been addressed by the program in a timely manner.</p> <p>Questions to Consider:</p> <ul style="list-style-type: none"> • Upon interview with staff, can they explain the process in place to address circumstances whether someone is unhappy or dissatisfied with a goal or area of focus in their plan? How is this handled? • After interviewing people, have they discussed not liking a particular goal or area that they have been working on? If so, was this addressed timely by the program? • Is there evidence via record review that habilitation plans have been revised and revisited for someone that expresses dissatisfaction? <p>Select MET if:</p> <ul style="list-style-type: none"> • Individuals and their supports report that they are comfortable voicing dissatisfaction with habilitation service planning or delivery if needed or there is no evidence that people would not or could not report dissatisfaction. • There is evidence that any instances of dissatisfaction with habilitation plans or goals have been addressed timely AND: • Upon interviews and record review, it is clear that the program has a clear and timely process and overall system established to address instances of dissatisfaction with particular focus areas or habilitation plans overall <p><i>Otherwise, Select “NOT MET”</i></p>
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