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Employment • Homes • Friendships

ICF Conversion Guidance Webex
December 19, 2014



AGENDA

- Introduction and ICF Transition Plan Update
Abiba Kindo, OPWDD Associate Deputy Commissioner, Regional Offices
- Person-Centered Planning and Choice
Kate Bishop, Director, Health & Community Support, Division of Person-Centered Supports
- HCBS Settings Rule and ICF Conversions
Brian O'Donnell, Regional Director, Bureau of Program Certification, Division of Quality Improvement
- Cultural Competence
Nicole Weinstein, Assistant Director, OPWDD Office of Inclusion/Diversity and Special Projects
- Q & A – questions submitted by computer

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Implementing the ICF Transitions Plan

OPWDD has been working with provider agency representatives since May to address questions related to:

- Funding for ICF conversions, downsizing & closure
- How to make greater use of non-certified residential settings
- How to ensure new IRA settings meet new HCBS settings and person-centered planning standards
- How to motivate movements of people currently in supervised IRAs – to less restrictive settings

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Guidance on ICF Transitions

OPWDD has released:

- Message to Stakeholders (*Sept. 11, 2014*)
http://www.opwdd.ny.gov/opwdd_about/commissioners_page/commissioners_message
- ICF Transition Implementation Strategy (*Sept. 11, 2014*)
- Fiscal Policy for ICF Conversion with No Change in Capacity (*Sept. 11, 2014*)
- ICF Conversion Guidance (*Dec. 3, 2014*)
- Conversion/Transition Proposal Template (*Dec. 3, 2014*)
- Message to Stakeholders (*Dec. 3, 2014*)
- Communication tools for providers and DDROs to use with individuals, families and the public (PPTs, Brochures) (*To be released soon*)

OPWDD will continue to work on outstanding issues related to ICFs that must downsize or close, and will release more guidance, as needed, in the months ahead.

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First Phase – Conversions

- ICFs serving 14 or fewer people may convert from ICF operations to IRA operations without downsizing.
- These conversions will be held to new HCBS settings standards and Person-Centered Planning standards. **Meeting these standards will be easier in smaller homes.**
- Conversions will need to demonstrate that they are much more than a name change.
- Providers will be asked to submit proposals to their DDRO using a Conversion Proposal template.
- OPWDD will be tracking closely the individuals proposed for transition (through conversions and downsizings) and reporting the change in ICF census and IRA census to CMS.

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New Conversion Policy Developments

- **Fiscal Policy for Conversions with No Change in Capacity** – will be expanded to note that providers may downsize using the current revenue-neutral funding available to conversions with no capacity change.
- **HCBS Settings Compliance** – the 12/3/14 guidance will be amended to require:
 - Full compliance with the rule at the time of conversion or by the time the rest of our waiver settings are fully compliant, currently proposed for 10/1/16
 - A brief report within the proposal, documenting how the rule is being met (i.e. community integration and transportation, informed choice of residential setting, staffing & person-centered planning)

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ICF Conversions Guidance

Explains (in one place) the activities that have always been used for converting ICFs, plus two new activities:

1. Checklist for compliance with HCBS Settings rules
2. A review of choice being offered and person-centered planning for each individual

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Next Steps

- Three workgroups are continuing:
 - ICF Transition Process Workgroup
 - Fiscal Solutions Workgroup (working together with the Large ICF Workgroup)
 - Large ICF Workgroup
- By early spring, we expect to have a fiscal policy for supporting the needed downsizing of larger ICFs.

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Person-Centered Planning for ICF Conversion/Transition Proposals

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Basic Fundamentals of PCP

- Person-Centered Planning is the first step towards ensuring the delivery of person centered supports.
- The individual is ALWAYS at the center of the person-centered process.
- The individual should be as involved as he or she wants to be or is able to be.
- The person in a planning role is “conflict free” meaning that there is no bias toward particular service providers.

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- The PCP process is **directed by the person** to help us learn how **they** want to live and understand what supports they feel are needed to help them move toward a life they consider meaningful and productive.
- Providing individuals with knowledge about services available and their ability to explore various opportunities helps to increase the likelihood of achieving the desired outcomes that are most important to them.
- Factors such as health and wellness, are important areas for focus during the planning process.

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EXPECTATIONS FOR PROVIDERS

- PCP and ICF Conversion or Transition Proposals must show that individuals were involved in a PCP process.
- We will be looking for evidence that individuals have
 - An Increased Voice
 - Greater Autonomy
 - Making Informed Choices of Support Options
 - Opportunities for Community Integration and Participation

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An Increased Voice

The process:

- Seeks to listen, discover and understand the individual and what is important to him or her.
- Gives individuals the chance to talk about what is important to them and the personal outcomes they want to achieve in their lives.
- For people who have trouble speaking for themselves, that others in their life who know them well and understand what is important to them speak on their behalf.
- Individuals and those supporting them help determine potential problems that might get in the way of reaching their outcomes and develop strategies to help address these challenges.

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Greater Autonomy

- Provides individuals opportunities to have as much independence as they are able.
- People are encouraged and supported to be as self sufficient as they are able.
- Opportunities to self-direct supports and services are explored.

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Making Informed Choices of Support Options

- Have various service options been explained to the individual?
- Have opportunities for various support models been explored?
- Planning should determine what desired outcomes have been achieved by the individual and what supports and services may best help them reach their desired outcomes that have not been achieved.

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Opportunities for Community Integration and Participation

- Will seek evidence the individual is receiving services in the most integrated settings possible and in the community where they choose to live.
- This is especially significant if they choose to stay in their current living setting.
- The PCP process should provide integrated, holistic planning and demonstrate that planned supports will facilitate community involvement and participation at level desired by the person.

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AREAS for PCP REVIEW CRITERIA Based on Hallmarks of PCP

- The individual and people important to him or her are included in lifestyle planning, and have the opportunity to express preferences and make informed decisions.
- The individual's routines, supports and services are based upon his or her interests, preferences, strengths, capacities and service needs.
- Activities, supports, and services foster skills to achieve personal relationships, community inclusion, dignity and respect.
- The individual uses, when possible, natural and community supports.
- The person has meaningful choices, with decisions based on his or her experiences.

* A checklist identifying the noted hallmarks and indicators of achievement will be used and is posted for your review.

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PCP METHODOLOGIES

- There are a number of person centered planning methodologies.
- OPWDD is not prescribing any particular one.
- Some of the most recognized methodologies can be found on OPWDD's Person Centered Planning Website: http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning/various-person-centered-planning-methodologies
- OPWDD recognizes the CQL POMs interview process as an effective measure of the PCP Process: http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning/POMs_fact_Sheet_clean

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HCBS Settings Rule and ICF Conversions

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Demonstrating compliance with HCBS Settings Standards

- Regulations describing standards for HCBS settings became effective 3/17/14.
- OPWDD is conducting a statewide assessment to determine NYS readiness to achieve full compliance with the new regulations.
- Assessment will be completed by the end of 2015 at which time OPWDD will develop a final survey protocol to incorporate into survey activities.

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Major Threshold Questions for HCBS Settings:

1. Does the home **have the effect of isolating individuals?** Practices and operations review;

And

2. Does the home have **institutional qualities** instead of HCBS qualities?

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Key Themes of the HCBS Settings Rules

- The final rules establishes an **outcome oriented** definition that focuses on the **nature and quality** of individuals' experiences
- The new standards are **"experiential"** and about **"qualities"** of the setting
- The regulations focus on whether individuals supported have the **"same degree of access"** as others in the community

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Key Themes

- **True person centered planning practices** and person directed service delivery must be evident for every person.
- **Integration with the community:** The setting must support full access by the person to the greater community including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving HCBS.

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Full Access to the Community

- Like people without disabilities, people receiving HCBS choose where they go and when they return.
- Can still be integrated in the community if located in a rural area as long as people can travel around and participate in community life **in the same way** that other people who live in that community do.

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Full Access to the Community

Does NOT mean:

- the **only** time a person is ever in the community is on a “group trip”
- All **activities scheduled by staff** without input from individuals/others re: interests/preferences.
- People only frequent community through same **limited set of activities** or with **little variance/options** offered.

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Person’s Choice Should Not be a Group Activity or Nothing:

- CMS explains that people “must be afforded choice regarding the activities in which they wish to participate including whether to participate in a group activity or to engage in other activities which may not be pre-planned” 79 Fed Reg. at 2978

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“Access to Food at Any Time”

CMS states, “we disagree with the commenter’s belief that a residential setting cannot reasonably accommodate an individual’s preferences on a 24-hour per day basis. The opportunity for individuals to select the foods they eat, store food in their room, and eat in their room and to decide when to eat are all ways in which the access to food requirement can be met.” (79 Fed Reg. at 2965-2966)

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Site Characteristics/Key Considerations

- “Home-like”
- Access & Accessibility
- House Rules”—No blanket policies that limit person’s rights
- No House Schedules that require all residents to do things at certain times
- No prohibitions from people engaging in legal activities
- Privacy
- Individualized scheduling of & participation in activities & support to do so

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Key Considerations

The Home’s staffing schedules and operations ...must be sufficient to support peoples’ choices and participation in meaningful community activities

- Staff works together on an ongoing basis to ensure that priorities for meaningful activities are met
- Concerted efforts to collaborate with natural supports/community resources
- Staff demonstrate understanding regarding peoples’ priorities
- Staff facilitate opportunities for individualized activities

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Federal Requirements if Rights Modification is Necessary

Must be supported in the Plan as follows:

1. ID of specific assessed need
2. Documentation of positive interventions and supports used prior to modification
3. Documentation of less intrusive methods tried
4. clear description of condition in direct proportion to the assessed need
5. Inclusion of regular collection/review of data to measure effectiveness of modification
6. Established timeframes for periodic review
7. Informed Consent of the person
8. Assurance that interventions/supports will cause no harm to the person

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The Bottom Line

“The new rule seeks to improve **quality of life** for people with disabilities by ensuring that HCBS funding is used only for services in settings that are **truly integrated, as opposed to those that replicate institutional environments in all but name.**”

ASAN Policy Brief, “Defining Community: Implementing the new Medicaid HCBS Rules”, 9/2014

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CMS Points Out That:

- “size can play an important role in whether a setting has institutional qualities and may not be home and community-based.” 79 Fed Reg. at 2968
- ‘...potential issue is the large concentration of a large number of people, without meaningful interaction with the broader community. Large population settings may be most suspect, particularly when a high percentage of the setting’s residents are persons with disabilities.’ (“Just Like Home: An Advocate’s Guide for State Transitions Under the New Medicaid HCBS Rules” June 2014, by National Senior Citizens Law Center (NSCLC), pg. 10)
- **Large Settings may be subject to “Heightened Scrutiny” by CMS and/or OPWDD.**

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HCBS Settings Assessment (i.e., Checklist) for ICF Conversions

- The purpose of this assessment is to **evaluate** the prospective IRA to determine its compliance with HCBS settings regulations.
- OPWDD will require each provider undertaking an ICF to IRA conversion to complete this assessment (i.e., checklist/self-survey).
- If there are aspects of the checklist which the provider cannot attest to achieving compliance, the provider **must develop a Plan for HCBS Settings Compliance** and submit to DQI for approval.

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ICF Conversions and HCBS Settings Rules

- Providers will need to achieve full compliance with the settings standards regulations and the heightened scrutiny standards **by October 2016 or when all IRAs are expected to comply.**
- A written plan for compliance with HCBS Setting requirements is required at the time of the conversion.

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Key Considerations

- Does the ICF **staffing** schedule allow for individualized community activities?
- Does the site have enough **transportation** to allow for individualized access?
- Have staff been **trained** on HCBS Settings requirements and rights?
- Do **policies and procedures** overall support informed choice, person-centered planning, and individualized schedules/activities?

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Compliance with HCBS Settings

Providers must submit a written report with the ICF conversion proposal outlining how the facility will comply with HCBS Settings requirements. The report must address the following areas:

- Staffing based upon individual needs and preferences
- Provision of transportation that allows for full access to the community
- Community integration
- Person-centered planning process
- How the facility offers and ensures that real choice of residential setting is honored

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HCBS Settings Checklist for Conversions of ICFs to IRAs:

The checklist includes the following categories:

- Heightened scrutiny
- Integrated Settings and Community Access
- Policies and Procedures that promote HCBS rights
- Staffing, Education, and Training
- Habilitation Planning and Person-Centered Planning Processes
- Rights, Due Process, and Housing Protection
- Rights Modifications, Restrictions, and Protections
- Privacy and Access

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Where to find more information about HCBS Settings

See OPWDD Administrative Memorandum #2014-04, "HCBS Settings Preliminary Transition Plan Implementation"

http://www.opwdd.ny.gov/opwdd_regulations_guidance/adm_memoranda

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Where to find more information on the HCBS Settings Rules

- **HCBS Settings Toolkit:**
http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/hcbs-settings-toolkit

- ✓ Strengths and Risks Inventory for Person Centered Planning;
- ✓ CMS Exploratory Questions for Residential Settings

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Where to Find ICF Conversion Checklist

- <http://www.opwdd.ny.gov/node/5744>

See “DQI Protocols” under the Regulations and Guidance Tab of the OPWDD website

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Cultural Competence

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What is Cultural Competence?

- Culture, language, class, race, ethnicity, religion, sexual orientation, and other diversity factors;
- Recognizes, affirms, and values the worth of individuals, families and communities; it protects and preserves the dignity of each; and,
- **It’s about meeting people “where they are”;** not trying to fit a square peg into a round hole.

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Why is Cultural Competence Important?

- Title IV of the Civil Rights Act of 1964;
- Mental Hygiene Law;
- NY Codes, Rules, and Regulations
- Home and Community-Based Settings (HCBS) Final Rule; and,
- **Bottom line:** We help people with developmental disabilities live richer lives.
How can we do that without being culturally and linguistically competent?

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**CC Proposed Best Practices:
Outreach and Education**

- **Education** – of both individuals and their families, and of the communities they are moving into from ICFs. It is our job to educate everyone; **be proactive**, rather than **re-active**.
- **Outreach:** Consider presentations in plain language, avoid jargon, use interpreters if necessary.

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**CC Proposed Best Practices:
Offering Communication and Language Assistance**

- Language assistance services **facilitate effective communication**; improve understanding; improve quality of services and supports.
- Individuals and family members/advocates communication and linguistic needs also should be considered to ensure **the best outcomes**.

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CC Proposed Best Practices:
 Discharge planning, waiver enrollment,
 service authorization

- Language access services are required **by law** and may be necessary for **effective communication**.
- Consider what is needed to communicate with each person, thinking about and planning for a person's language access needs, literacy levels, need for plain language, and any **cultural nuances**.

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Resources OPWDD Offers Providers:

- Language Access resources:
http://www.opwdd.ny.gov/resources/language-access/Language_Access_Resources_for_Providers
- Guidelines for Cultural and Linguistic Competence:
http://www.opwdd.ny.gov/resources/cultural_competence/home
- Guidelines for clear and simple communications;
- Guidelines for developing low-literacy printed materials; and,
- Cultural Competence and Diversity training.

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**Proposed Best Practices
 for Providers**

- Person-centered plans should take into consideration **culture and language needs**;
- Staff may need to **reach out to the ethnic community and religious/spiritual institutions** to provide desired activities and to make connections in the communities;
- **Cultural Competence Training:** It is helpful for staff to learn about how to serve people with diverse backgrounds and ethnicities;

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Proposed Best Practices for Providers

- **Rights and Responsibilities (MHL 6.33):** It is useful to translate and interpret them so people can understand what they are and how they can access them;
- **Assess for health literacy and language needs** at intake – *both* individuals *and* family members; and,
- **Encourage** cultural décor and signage in sleeping areas or personal spaces.

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Resources/Contacts

- OPWDD's Cultural and Linguistic Competence Web pages:
http://www.opwdd.ny.gov/resources/cultural_competence/home
- www.plainlanguage.gov
- www.ADA.gov

OPWDD Office of Inclusion/Diversity and Special Projects
Nicole.Weinstein@opwdd.ny.gov
 518-408-2146

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Concluding Thought:

Cultural competence is a journey that begins and ends with *respect*.

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Questions?

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