



## DRAFT INFORMATIONAL LETTER

<b>Transmittal:</b>	16-INF-XX
<b>To:</b>	Voluntary Provider Executive Directors Developmental Disabilities State Operated Offices Directors Developmental Disabilities Regional Offices Directors
<b>Issuing OPWDD Office:</b>	Division of Person-Centered Supports Division of Service Delivery Division of Quality Improvement
<b>Date:</b>	<b>DRAFT FOR APPROVAL 6/23/2016</b>
<b>Subject:</b>	Home and Community Based Settings Transition Plan Implementation for Day Habilitation Services and Settings
<b>Suggested Distribution:</b>	Medicaid Service Coordinators (MSCs) Quality Assurance Staff Day Habilitation Directors, Managers, and Staff
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<b>Attachments:</b>	<b>Appendix A:</b> Guidance on the Day Habilitation Planning Process and Delivery of Person-Centered Home and Community-Based Settings Services and HCBS Settings  <b>Appendix B:</b> Considerations for Day Habilitation Providers in Facilitating Full Access to the Broader Community.



**Office for People With  
Developmental Disabilities**

<b>Related ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>Regulatory Authority</b>	<b>MHL &amp; Other Statutory Authority</b>	<b>Records Retention</b>
ADM #2012-01  “Responding to the Day Service Needs of the Medically Frail and Elderly Individuals Enrolled in the HCBS Waiver”, dated 12/15/2010  “Supporting Guidance to OPWDD Person- Centered Planning Regulations”	None		Mental Hygiene Law Sections 13.07, 13.09(b), and 16.00	6 Years from Date of Service: 18 NYCRR 504.3(a)

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**Purpose:**

The purpose of this Informational Letter is to communicate program and quality principles to Day Habilitation providers in preparation for the implementation of the federal Home and Community-Based Services (HCBS) settings Regulations.

On March 17, 2014, the Centers for Medicare and Medicaid Services (CMS) issued final regulations regarding requirements for Home and Community-Based settings in Medicaid (42 CFR 441.301 (c) (4)-(6)). In accordance with these final regulations, New York State is developing a Transition Plan that describes actions needed to bring all Waiver services and settings into full compliance with these rules over a time period of no greater than five years (i.e., full compliance required by March 2019).

This Informational Letter is a component of OPWDD's HCBS Settings Transition Plan. It is also needed to implement the required Heightened Scrutiny process (see: <http://www.opwdd.ny.gov/node/6252>) and for the ongoing review and monitoring of compliance with HCBS settings requirements in Day Habilitation services and settings.

Further details on the New York State or OPWDD-specific HCBS Settings Transition Plans can be found at the following link on OPWDD's website: [http://www.opwdd.ny.gov/opwdd\\_services\\_supports/HCBS/home](http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/home)

This Informational Letter was developed in collaboration with the HCBS Settings Day Habilitation Stakeholder Work Group. The Work Group is comprised of people supported, family members, provider representatives and provider association representatives that have extensive experience with day and employment-related services.

OPWDD intends to promulgate State regulations for HCBS Day Habilitation Services and Settings in the future based upon the federal regulations, CMS guidance, and this Informational Letter.

**Background:**

The HCBS settings requirements will apply to all, residential and non-residential settings, in which HCBS Medicaid Waiver services are delivered by no later than March 2019.

This Informational Letter specifies recommendations for complying with the HCBS settings requirements for Day Habilitation Services delivered in all settings and provides the basis for the Division of Quality Improvement (DQI) review of the provision of Day Habilitation services and supports, beginning October 1, 2016.

In accordance with OPWDD's HCBS Settings Transition Plan, it is anticipated that HCBS settings requirements will be enforced as part of OPWDD's certification/licensing requirements no earlier than October 1, 2018.

**Person-Centered planning is foundational to the spirit, intent, and substance of the HCBS settings regulations. It is expected that agencies will use effective person-centered planning processes and practices, in accordance with federal regulations and guidance and OPWDD requirements, to ensure compliance with HCBS settings requirements.** Person-Centered Planning Process Regulations and Rules published by CMS on March 17, 2014 (42 CFR 441.301 (c) (1-3), and also published in OPWDD regulations (14 NYCRR Part 636 with amendments to Parts 633, 635, 671, and 686) are not specifically addressed as a part of this Informational Letter but do apply to the provision of Day Habilitation Services. **See Appendix A for further information on Person-Centered Planning Habilitation Planning.**

## **Program Implications:**

### **A. What are Day Habilitation services?**

Day Habilitation services help people achieve satisfying and rewarding connections and relationships within their community. Services are **primarily**<sup>1</sup> delivered separate and apart from the person's home and can otherwise be provided anywhere in the community that a person wishes to explore and learn new skills. In certain circumstances, such as in responding to the day service needs of medically frail and elderly individuals, and in accordance with each person's individualized needs, Day Habilitation services can be provided in the person's home when transport to and participation in a group Day Habilitation program would be contrary to the medical or physical needs of the individual <sup>2</sup>.

In accordance with OPWDD's HCBS Waiver, Day Habilitation services are defined as assistance with acquisition, retention or improvement in self-help, socialization and adaptive skills including communication, travel and adult education that take place in a non-residential setting, separate from the person's private residence or other residential arrangement. Activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, community inclusion, relationship building, self-advocacy and informed choice.

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<sup>1</sup> As specified in the 1997 Waiver Key, pages 8-17 and 8-18, "Day Habilitation services are provided primarily in a non-residential setting separate and apart from the person's home/residence with exceptions to promote transition or adaptation. The location where the service is given, whether in the home or anywhere outside the residence, should be determined from the outcome(s) which has a value for each person. The proportion of time spent at home versus in the community should reflect the person's needs and desires and the philosophy that a person should, whenever possible, receive day services in the community.

<sup>2</sup> Guidance on this can be found in the OPWDD Informational Letter titled " Responding to the Day Service Needs of the Medically Frail and Elderly Individuals Enrolled in the HCBS Waiver", dated December 15, 2010.

## **B. Program Standards for Implementing Day Habilitation Services in Accordance with HCBS Settings Requirements.**

The following are OPWDD's programmatic expectations for complying with HCBS settings requirements in certified Day Habilitation Service settings:

**1. Habilitation service provision is required to support full access to the greater community to the same degree of access as people not receiving HCBS Services.**

This means that:

- Home and community-based services, supports, and settings must be designed to help people to: engage in full access in community life to the same degree of access as people without disabilities; seek employment and work in competitive integrated settings if they so choose; engage in meaningful activities; explore meaningful relationships and social roles; reside in the home of one's choice; and share in other hallmarks of community living in accordance with individualized needs and preferences identified in the person's habilitation/service plan.
- HCBS settings must seek to optimize and not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, employment options, physical environment, and with whom to interact.

The following are program quality principles for Day Habilitation Services related to facilitating full access to the broader community<sup>3</sup>:

- The setting affords and provides a variety of meaningful non-work activities in integrated community settings that are responsive to the goals, interests and needs of people served. The appropriateness of these activities are measured through the review of outcomes achieved by each person relative to their interests not solely on the delivery of the service itself. The person's priorities for these activities should be documented in the Habilitation Plan or associated Plan documentation as described in Appendix A.
- The setting encourages and supports individuals to freely choose and control their own schedules and activities based upon what is most important to the person with opportunities for personal growth (for example, preferred activities in and out of the day program setting, impromptu preferences, etc.) in the same manner as people without disabilities. The provider/site should ensure that sufficient support is available based upon peoples' priorities in their Plans for scheduling and activity preferences.<sup>4</sup> When

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<sup>3</sup> These standards are based upon the CMS Exploratory Questions for Non-residential settings that can be found on CMS's website at: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html> (See Settings Requirements Toolkit)

<sup>4</sup> With regard to freedom and control of schedules and activities, CMS states that a person's ability to receive services identified in the person-centered service plan should not be infringed upon by any provider for any

more individualized supports are desired, the person's plan can be reviewed through the person-centered planning process to include additional or alternative services or supports. See Appendix B for more information.

- The setting affords opportunities for people to have knowledge of or access to information regarding age-appropriate activities including competitive work/employment support options, volunteer options, community organizations and activities, shopping, religious services, retirement activities, career and educational advancement, medical appointments, dining out, etc. outside of the setting, and identifies who in the setting will facilitate and support access to these activities if applicable.
- The setting allows people freedom to move about inside and outside of the setting as opposed to being in one restricted room or area within the setting<sup>5</sup>.
- The setting encourages visitors or other people from the greater community aside from paid staff to be present and interact with people supported and for people supported to interact with visitors as appropriate and consistent with similar settings for people who do not receive Medicaid HCBS.
- The setting provides people with contact information, access to and training on the use of public transportation such as buses, taxis, etc., and schedules and telephone numbers are available in a convenient location. Where public transportation is limited, the setting provides information about resources for the person to access the broader community including accessible transportation for people who use wheelchairs.
- The setting assures that tasks and activities for the person with disabilities are comparable to tasks and activities for people of similar ages who do not receive HCBS services.
- Setting staff are knowledgeable about the capabilities, interests, preferences and needs of people supported and use this information to help facilitate and support access to the broader community for people served.
- The setting allows people to have a meal/snack at the time and place of their choosing consistent with people in similar settings (e.g., work setting, senior citizen center), who do not receive Medicaid HCBS. For example, the setting affords people full access to a dining area with comfortable seating and the opportunity to converse with others during break or meal times and affords dignity to diners; the setting provides for alternative meal and/or private dining if requested by the person through the person-centered planning process; and people have access to food at any time consistent with people in

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reason. Further, CMS states that preventing an individual from receiving any service identified in the person-centered service plan is a direct violation of the person-centered plan requirements and the home and community based setting requirements specified in this regulation. Additionally, any setting not adhering to the regulatory requirements will not be considered home and community based. The supports necessary to achieve an individual's goals must be reflected in the person-centered service plan as required under § 441.301(c)(2). **2966 Federal Register** / Vol. 79, No. 11 / Thursday, January 16, 2014.

<sup>5</sup> For example, people who do not require rights modifications in this area should have the freedom to leave an activity and move around the building; stretch their legs; get a drink of water; get some fresh air; take a break; change activities, etc. consistent with activities/practices in similar settings (e.g., work setting, senior citizen center setting, etc.) for people who do not receive Medicaid HCBS. There should be no blanket rules on freedom of movement that apply to all people supported.

similar and/or the same setting who do not receive Medicaid-funded services and supports.

**2. HCBS Settings and Staff Delivering Services Must Facilitate Informed Choice and Protect Peoples' Rights.**

This means that staff encourage, promote, support and address the following as outlined below in accordance with the person's Habilitation Plan and ISP:

- The setting reflects individual needs and preferences and supports the capacity of individuals to achieve their goals and outcomes.
- The setting encourages and supports people to make informed choices by exploring with the person the potential consequences and responsibilities of decision making.
- The setting ensures that people can freely choose with whom to interact.
- The setting is physically accessible, including access to bathrooms and break rooms, appliances, equipment, etc. with no obstructions such as steps, lips in the doorway, narrow hallways, etc. limiting peoples' mobility in the setting. If obstructions are present, environmental adaptations such as stair lifts or elevators to ameliorate the obstructions are provided/available. The setting ensures individualized physical accessibility.
- The setting protects individuals from coercion and inappropriate use of restraints.
- The setting informs and provides individuals with a mechanism to file anonymous complaints.
- The setting posts or provides information to people about their rights and how to make a request for additional supports and/or to change their supports and services.
- The setting does not prohibit people from engaging in legal activities in a manner different from people in similar and/or the same setting who are not receiving Medicaid funded supports and services.
- The setting encourages, respects and supports people's observance of cultural, religious/spiritual, and other preferences in accordance with the person's choices and background.
- The setting ensures that individual independence and freedom is not abridged for convenience of staff and/or by well-meaning but unnecessarily restrictive methods of providing services and supports.
- The setting ensures that provider Day Habilitation service policies and procedures do not include blanket restrictions on individual autonomy, independence and/or HCBS settings principals and standards.

Staff are expected to explore and promote positive approaches to safeguards that enable the person to have "dignity of risk." More information on this topic can be found on OPWDD's website at [http://www.opwdd.ny.gov/opwdd\\_services\\_supports/person\\_centered\\_planning/risks-and-safeguards](http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning/risks-and-safeguards) .

- The setting uses plain language and accessible methods to communicate effectively with the person and facilitate the use of any necessary adaptive devices/equipment based on the person's assessed needs.
- The setting ensures that all information about people is kept private.
- The setting ensures that people who need assistance with personal hygiene to appear as they desire is provided in private as appropriate.
- The setting ensures that staff interact and communicate with people respectfully and in a manner in which the person would like to be addressed while providing assistance during the regular course of daily activities.
- The setting offers a secure place for the person to store personal belongings if applicable consistent with similar settings for people who do not receive HCBS.
- The setting assesses satisfaction with activities, supports, and services and addresses areas of dissatisfaction in a timely manner to result in resolution of issues and positive changes.

### **C. Requirements for Modifications of These Rights or Conditions in Day Habilitation Settings<sup>6</sup>**

**Rights should not be modified outside of the person-centered planning process or without the informed consent of the person or authorized surrogate.**

**The only exception to this is if there is an emergency situation in which the person places themselves or others around them in immediate jeopardy (i.e., there is an immediate, serious, and credible threat) in accordance with 633.16 (2)).**

In some cases, the needs of a person may dictate that he or she cannot safely access HCBS settings rights or that certain modifications to these rights may be needed or required. In this case, the provider/staff will take immediate and appropriate action necessary to address the crisis situation. Once the immediate crisis is over, the provider/staff is expected to reassess the person's preferences and needs using a person-centered planning process and to update the person's Habilitation/service Plan accordingly<sup>7</sup>.

Careful consideration is required for modifying an individual's rights and must be an integral part of an ongoing person-centered planning process.

The OPWDD Strengths and Risks Inventory Tool is a helpful guide to use in the person-centered planning process when exploring the person's informed choices and positive

<sup>6</sup> This section refers to the modifications of rights outlined in the HCBS settings federal regulations.

<sup>7</sup> Federal Register /Vol. 79, No. 11 /Thursday, January 16, 2014 /Rules and Regulations , 2961, first column

safeguarding approaches

([http://www.opwdd.ny.gov/opwdd\\_services\\_supports/person\\_centered\\_planning/other-resources](http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning/other-resources)). This person-centered planning process may also include the involvement of a circle of family and friends who the person and their advocates trust and choose.

The rights modification process should ensure a person's right to live safely with the supports they choose and should foster his/her independence and responsibility.

Any modification of the rights or conditions outlined in the HCBS settings regulations must be supported by a specific assessed need or legal requirement, and must be justified in the person-centered service plan or a required attachment, for example, a Behavior Support Plan, Individual Plan of Protective Oversight, or Day-Habilitation Plan as follows:

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

Special exception for #2 and # 3 above: A person's behavior that results from a disability or disorder documented in a clinical assessment may pose immediate jeopardy to the person or others. In these instances, attempts to try proactive interventions or less intrusive methods in place of a rights modification would likely result in serious harm, injury, or potential death to the person or others. Under these circumstances, the Day Habilitation service provider must provide a clear written justification, supported by clinical documentation, for omitting these important steps (for example, a person has an observed, documented history of choking when eating solid foods. Appropriate clinical assessments have recommended a modified diet. A clinical review has determined that the person does not understand the risks involved if he/she continues to eat solid food. The person must be on a modified consistency diet (for example, ground; pureed; etc.) in this case, and less intrusive alternatives to prevent ingestion of solid foods would likely cause serious health problems or death).

#### **D. Day Habilitation Provider Leadership and Staff are Expected to Demonstrate Adherence with these HCBS Quality Principles**

Day Habilitation providers are expected to use this Informational Letter, CMS guidance and CMS Exploratory Questions to actively plan and develop proactive approaches to

working towards and maintaining full compliance with the HCBS settings federal requirements in the delivery of Day Habilitation Services. Provider action plans should include the following:

1. Governance: The Board of Directors of each organization shall have oversight of the organization's commitment to these standards and the organization's continuous quality improvement plans and strategies involving these principles.
2. Organizational policies and procedures, training materials, and other applicable documents are consistent with the HCBS settings standards as set forth by CMS and OPWDD. Ensure that the organization implements policies, procedures, and practices that clearly define its commitment to the promotion and protection of individual rights. Policies, procedures and practices should be reviewed by the Provider and amended if there are any blanket rules/restrictions/practices that limit individual choice, autonomy, and/or any of the rights or conditions outlined in the HCBS settings federal regulations and as applicable in this Informational Letter.
3. Organizational self-assessment practices and strategies that review the demonstration of these quality standards in day-to-day operations should be undertaken for continuous quality improvement.
4. Agency training, orientation, and other applicable and ongoing communication, training, and learning mechanisms should be reflective of these expectations. This includes teaching and encouraging respect for each person supported as a unique individual with preferences, interests, rights, dignity, and self-determined goals. Providers should teach listening, learning and responding in ways that honor individuals and increase individual control; teach how to honor individual rights, dignity, and self-determination and how to support individuals to exercise control and choice in their own lives as well as compromise and conflict resolution. Agency staff should also receive training in cultural competence.
5. There should be active communication with stakeholders including staff and people served on these principles and solicitation of feedback from individuals served and their advocates on how to do better through satisfaction surveys, focus groups, residence meetings, and other applicable forums.
6. Provider practices should make clear that the needs and preferences of people supported determine the types of supports provided. Providers need to promote practices that enhance individual decision-making, for example, schedules, activities, staff hiring, training, supervising, evaluating, and etc., and in other areas where individual input and autonomy can be promoted and facilitated.
7. As direct support professionals are the foundation of the developmental disability service system and their day-to-day interactions with people with disabilities directly impact on the quality of life of every person served, providers/residential staff should ensure that the National Alliance of Direct Support Professionals (NADSP) Code of Ethics is fully embraced within the agency/residences) and that the provider is implementing the Direct Support Competencies in accordance with OPWDD's requirements (see Administrative Memorandum # 2014-03 and links:  
[http://www.opwdd.ny.gov/opwdd\\_careers\\_training/training\\_opportunities/core\\_competencies](http://www.opwdd.ny.gov/opwdd_careers_training/training_opportunities/core_competencies)  
[http://www.opwdd.ny.gov/opwdd\\_careers\\_training/training\\_opportunities/core\\_competencies/code-of-ethics](http://www.opwdd.ny.gov/opwdd_careers_training/training_opportunities/core_competencies/code-of-ethics)).

**Conclusion:**

OPWDD is committed to helping people have rich rewarding lives where they are part of their community with the same rights as everyone else. Agencies certified to provide Day Habilitation services are key to the provision of person-centered supports and services that drive the HCBS settings standards. This Informational Letter outlines OPWDD's guidance and vision for providers of Day Habilitation services in preparation for the implementation of the Home and Community Based settings regulations.

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## Appendix A:

### **Guidance on the Habilitation Planning Process and Delivery of Person-Centered HCBS Services and Supports in Accordance with These Standards<sup>8</sup>**

In accordance with CMS regulations (42 CFR 441.301 (c) 1-3)), the “Person-Centered Service Plan” must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional and health related needs, as well as what is important to the individual with regard to preferences for the delivery of supports and services.

The Habilitation Plan describes assistance that staff provide to help the person reach his/her goals and valued outcomes as identified in the overarching Individualized Service Plan (ISP). In OPWDD’s system, the Habilitation Plan is a required component of the Person-Centered Service Plan (i.e., Individualized Service Plan (ISP)) for the provision of Waiver habilitation services. Therefore, the Habilitation Plan and the process for Habilitation planning must also be person-centered and person-directed in accordance with CMS regulations.

The following standards reinforce OPWDD Administrative Memorandum #2012-01 (the Habilitation Plan), and establish the starting point and foundation for meeting the HCBS settings Standards in certified Day Habilitation settings and in the provision of Day Habilitation supports and services. Habilitation Plans are a required attachment to the Person-Centered Plan (i.e., ISP) and must be coordinated with the ISP. As such, the Habilitation Plan is encompassed in the person’s service plan. A quality Habilitation Plan includes the following:

- Habilitation Plans are person-centered/person-directed, individualized, and include activities and interactions that are meaningful to the person.
- Habilitation supports and services are focused on the development of skills that are needed to facilitate greater degrees of choice, independence, autonomy and full participation in community life.
- Exploration of new experiences is an acceptable component of the Habilitation Plan. Learning about the community and forming relationships often require a person to try new experiences to determine life directions. This trial-and-error process eventually enables the person to make informed choices and, consequently, to identify new valued outcomes that then become part of the ISP and the Habilitation Plan. <sup>9</sup>

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<sup>8</sup> In accordance with the OPWDD Administrative Memorandum #2012-01, “Habilitation Plan Requirements”, “Habilitation services are designed to assist participants in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in Home and Community-Based settings. Habilitation Plans describe what staff (this term includes Family Care providers) will do to help the person reach his/her valued outcome(s) that have been identified in the Individualized Service Plan (ISP). Habilitation services involve staff teaching a skill, providing supports and exploring new experiences. The regulations that govern habilitation services are 14 NYCRR Parts 624, 633, 635, 671, and 686.”

<sup>9</sup> Administrative Memorandum #2012-01 “Habilitation Plan Requirements”, page 5, 3 c.

- The Habilitation Plan must reflect supports and services based on the individual's interests, preferences, strengths, capacities, and needs, as well as supports and services that are designed to empower the individual by fostering skills to achieve desired personal relationships, community participation, dignity, and respect. It should also reflect personally meaningful community inclusion/integration goals or outcomes and associated activities as applicable and appropriate including the supports needed for the person to fully participate<sup>10</sup>.
- This process includes providing informed choice regarding services/supports and settings and opportunities to visit/understand the options. Habilitation Plan options offered should also include non-disability specific settings in integrated community settings such as volunteering in the community or engaging in general community activities available to all people, such as those available at the YMCA. These options, whether or not they are chosen, should be documented in the Habilitation Plan and/or supporting documentation.
- The ultimate goal for Day Habilitation services should be helping people to achieve the outcomes that are most important to them and become members of their communities through regular access to the community and opportunities for frequent interaction with people without disabilities who are not paid staff. These supports are based upon each person's individualized needs, preferences and desired outcomes discovered through a person-centered planning methodology.
- Whenever possible, supports are provided in a way that maximizes use of natural and peer supports in the community, not solely paid staff and providers.<sup>11</sup>
- The Habilitation Plan is updated in accordance with OPWDD Administrative Memorandum #2012-01, when the individual's circumstances or needs change, or at the request of the individual.
- Providers of Day Habilitation services should ensure that people are aware of their right to request a Habilitation Plan change. These providers are expected to take timely action to honor these requests.

Practice guidance on person-centered planning and service delivery can be found on OPWDD's website under the "Person-Centered Planning" link at:

[http://www.opwdd.ny.gov/opwdd\\_services\\_supports/person\\_centered\\_planning](http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning) .

The Person-Centered Planning regulation can also be found on the OPWDD website at:

<http://www.opwdd.ny.gov/sites/default/files/documents/person-centered-planning-text.pdf>.

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<sup>10</sup> Associated activities can be included in associated Plan documentation rather than the actual Plan if applicable.

<sup>11</sup> Adapted from, "Keeping the Promise: Self-Advocates Defining the Meaning of Community Living", published by the Autistic Self-advocacy network, National Youth leadership network, Self Advocates becoming Empowered, and Allies, March 2011, page 17

## **Appendix B:**

### **Considerations for Day Habilitation Services Providers in Facilitating Full Access to the Broader Community.**

In practice, when considering whether people share in the hallmarks of community living to the “same degree of access as individuals without disabilities,” it is helpful to consider and compare/contrast how you live your own life and the day-to-day choices, as well as compromises that you make in your home, workplace, and community and the negotiations necessary to develop and pursue your own interests and important relationships. The rights and responsibilities that we all experience every day, such as having consideration for other people that we live and work with, having a job/going to work/fulfilling work commitment/volunteer commitment, respecting our coworkers, making choices within our income/budget, etc. are also useful to consider as we support people to navigate community life and consider the benefits and consequences of their actions. The expectations for people with disabilities who receive Day Habilitation services should be the same as for any other person in the community. All people have the responsibility to consider the thoughts and needs of others while exercising their own rights, priorities, and preferences.

In addition, when considering “same degree of access” to life in the community for the people we support, we need to ensure that people with disabilities are not segregated or isolated from people without disabilities and ensure that support and service delivery practices are not “institutional” in nature. There are a number of critical factors to consider when making this determination:

- The purpose of the activity; are people interested in the activity, will they see people they know or with whom they have common interests;
- The number of people participating together and if people are offered a choice on whether or not to participate;
- The larger environment in which the activity is occurring (for example, a larger group may be more appropriate participating in an activity where other large groups congregate, such as at a community concert, as long as individuals are interested and staff support is sufficient to help the group participate positively);
- The intent and anticipated outcomes for people participating in the activity; and
- Peoples’ feelings about the activity and how supports are delivered during it, are staff supports available to help individuals fully participate in the activity? are people required to stay together for example, everyone in the group mandated to a “classroom” in a Day Habilitation, everyone goes to the rest room together with paid staff or stands together on the food line?

For example, a “group trip” in an agency bus or van can be isolating/segregating and appear institutional (even if unintentional) if people are congregated together and mandated to stay together with only each other and paid staff when at/engaging in the activity; and while at the activity, there are displays of supervision, power or control exerted by staff over participants drawing unwanted attention to the group. This can make participants feel isolated and different from the larger community of people around them. It also exhibits institutional service delivery characteristics to the greater

community. These characteristics would not be considered “full access to the community” to the “same degree of access” as people who do not receive HCBS<sup>12</sup>.

People receiving Day Habilitation services may not have had sufficient opportunity to discover activities that are of the greatest interest to them. In addition, during some activities people may not have been engaged or may have actively resisted the activity. This is how we all learn and both staff and natural supports should facilitate learning opportunities and “listen” to the person to best understand their ongoing interests. Learning and “listening” requires noting any verbal, vocal, gestural and behavioral communications exhibited by the person and putting them in context with the person’s life experiences. This learning is best achieved in a small group or individually, as support givers will need to be flexible during the activity to accommodate the person’s response to the environment and event.

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<sup>12</sup> This paragraph should not be interpreted that all group bus transportation is isolating and segregating. The intent of the paragraph is that the activity maybe isolating if people’s freedom of movement and the way supports are delivered during the activity is institutional in nature.