Welcome to the OPWDD Webinar on Heightened Scrutiny and the Evidence Package Questionnaire.

We will begin shortly at the scheduled time.

All audio is currently muted.

Remember you need to use a telephone to access the audio portion of the webinar. See the “connect to audio” box on the WebEx quick start page.

Topics

I. Review of HCBS Settings Requirements and Heightened Scrutiny
   • What is Heightened Scrutiny
   • What sites are subject to Heightened Scrutiny
   • Process and Timeline
II. How to Complete the FluidSurveys Evidence Package
III. OPWDD Review and Validation
IV. Common Questions and Q and A Session
Review of the Intent of New HCBS Settings Rules:

• To better align HCBS Medicaid funding and program requirements with civil rights protections afforded under ADA

• To address concerns that in some states **HCBS is used to fund “institutional-style” settings** lacking opportunities for people to engage meaningfully in their communities

• To ensure that individuals have **full access to the benefits of community living** and the opportunity to receive services in the **most integrated setting** appropriate to their needs

Key Points of the HCBS Settings Rule to Keep in Mind:

• Outcome oriented – focuses on the **“nature and quality of individuals” experience** in the setting

• The regulations focus on whether individuals supported have the **“same degree of community access”** as others in the broader community

• **OPWDD’s Plan requires compliance by October 1, 2018**

• **Person Centered Planning and Process Requirements effective now** - not subject to five year phase in
Key Elements of the HCBS Settings Rules

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

Any modification of rights requires specific individualized assessed need, justified/document in person-centered plan, data on effectiveness, ongoing review of continued need for modification.

Key Elements of HCBS Settings Rules

**In provider controlled residential settings:**

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

What is Heightened Scrutiny?

“Heightened Scrutiny” is a term that comes from the CMS HCBS Settings Regulations
Settings that are NOT Home and Community Based
441.301 c 5 of the Regulation

“Home and community based settings do not include the following:
(i) A nursing facility;
(ii) An institution for mental diseases;
(iii) An intermediate care facility for individuals with intellectual disabilities;
(iv) A hospital;
(v) Any other locations that have qualities of an institutional setting, as determined by the Secretary. Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, or in a building on the grounds of, or immediately adjacent to, a public institution, or any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution unless the Secretary determines through heightened scrutiny, based on information presented by the State or other parties, that the setting does not have the qualities of an institution and that the setting does have the qualities of home and community-based settings.”

What is “Heightened Scrutiny”?

• Process for submitting evidence to the CMS Secretary for settings that CMS “presumes not to be HCBS” where the state finds that the setting can meet HCBS under a “heightened scrutiny” threshold.

• State must overcome the presumption and prove that such settings are not institutional in nature and do not isolate people with disabilities from the broader community.
Settings Subject to Heightened Scrutiny—By Location

1. Located in a building on grounds of public institution;
   • A public institution is an institution that is the responsibility of a governmental entity over which a governmental entity exercises control. OPWDD developmental centers, OMH psychiatric centers, institutions for mental diseases, prisons and addiction treatment centers and state run nursing homes are considered public institutions. A former developmental center (i.e. one that has been closed) is also considered a public institution. A public institution does not include: a medical institution (i.e. hospital including a VA hospital); child care institution; or publically-operated community residences, universities, libraries, and public schools.

2. Located in a building that is also publically or privately operated facility providing inpatient institutional treatment;

3. Immediately adjacent to public institution (this means next to and/or abuts the public institution)

4. Converted from an ICF on or after March 17, 2014.
   • ICFs converted prior to 3/1/2017 will undergo the Heightened Scrutiny process at this time
   • ICFs converting on or after 3/1/2017, once converted, will submit an evidence package 60 days after the conversion.
Settings Subject to Heightened Scrutiny

5. The setting/site is part of a group of multiple settings co-located and operationally related such that the co-location and/or cluster appears to isolate and/or inhibit interaction with the broader community, including any of the following:

   – 5a. Setting/Site is situated on a PRIVATE CAMPUS where there are multiple group homes and/or facilities for people with intellectual and/or developmental disabilities (I/DD) on the same property (NOTE: Private campus settings will automatically trigger heightened scrutiny); and/or
   – 5b. Setting is co-located with multiple settings for people with intellectual and/or developmental disabilities (I/DD) that are operationally related such that the co-located may isolate people with disabilities and/or inhibit individuals from interacting with the broader community.

Settings Subject to Heightened Scrutiny

6. The setting/site’s design, appearance, and/or location appears to be institutional and/or isolating:

   – Multiple services/activities on the same site;
   – People in setting have limited to no interaction with broader community
   – People have limited autonomy and/or regimented services
   – Setting is more isolating than other settings in the vicinity/broader community
Besides Locational Criteria, the Threshold Questions for Heightened Scrutiny:

1. Does the setting have the effect of isolating individuals? Practices and operations – what is the experience of the people in the setting?

   AND

2. Does the setting have institutional qualities instead of HCBS qualities? Again, what is the experience of people in the setting?

OPWDD - Number of HS Sites Identified by DQI

Heightened Scrutiny Protocols by Type

<table>
<thead>
<tr>
<th>Type</th>
<th>Number of Protocols</th>
<th>Number of Protocols where HS was triggered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day Program</td>
<td>854</td>
<td>87</td>
</tr>
<tr>
<td>Others</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Residential</td>
<td>6,036</td>
<td>293</td>
</tr>
</tbody>
</table>

* Data as of 3/8/17

Program Type – Residential Includes: CR(SUPPORTIVE...
How does a provider know if a setting is subject to Heightened Scrutiny?

• If the setting was identified by DQI as subject to HS via Exit Conference Form and/or the agency Director was notified by DQI (10/2015-2/28/2017 review cycle).

• Or the provider self-identifies a site as HS by meeting one or more criteria for HS through the Evidence Package Process.

• Sites identified as meeting one or more HS criteria by DQI or self-identified will be reconciled by OPWDD and subject to the HS Process.

What Does a Heightened Scrutiny Designation Mean for the Setting and its Provider?

• It **does not mean** that the setting has to close and/or that it can no longer be funded by HCBS. However, the setting must be able to adhere to HCBS regulations to remain a HCBS waiver service.

• **It does mean** the setting is subject to a higher burden of proof that it meets or can meet community standards and is not isolating/institutional.
  – i.e.: Public Input and CMS Submission of Evidence
Some Examples of Heightened Scrutiny Settings in OPWDD’s Service System

- Private campus like settings or “villages”
  - *ALL private campus programs will need to go through the heightened scrutiny process regardless of individual experience*
- A residential cul-de-sac with no other private homes, businesses, or organizations in the same vicinity
- Apartment building where all apartments are for people we support and people are unlikely to interact with broader community
- Day Habilitation Site on grounds of ICF or co-located with other day and/or residential settings

Why Heightened Scrutiny—From CMS Guidance?

<table>
<thead>
<tr>
<th>Examples:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gated communities for people with disabilities</td>
</tr>
<tr>
<td>2. Farmsteads or disability specific farm communities</td>
</tr>
<tr>
<td>3. Residential schools</td>
</tr>
<tr>
<td>4. Private campus settings/ Multiple settings co-located and operationally related</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Why?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Little ability to access the broader community</td>
</tr>
<tr>
<td>People served only interact with others receiving services or paid staff</td>
</tr>
<tr>
<td>All activities/services provided on-site so people don’t have to leave</td>
</tr>
<tr>
<td>People don’t typically leave to access the community as part of their day to day lives</td>
</tr>
<tr>
<td>“Thus, the setting typically does not afford individuals the opportunity to fully engage in community...”</td>
</tr>
</tbody>
</table>
Executive Directors should have received a letter regarding sites affected by H.S.

Contact DQI if there are any site specific or survey related questions.

Contact your Area Director or email: Quality@opwdd.ny.gov

Heightened Scrutiny Evidence Package and Process Overview
Overcoming a Heightened Scrutiny Presumption

• To overcome the presumption that a setting is isolating, provide evidence of the following qualities:
  – Individuals participate regularly in typical community life activities outside of the setting to the extent each individual desires and these activities: Do not include only those organized by the provider agency specifically for a group of individuals with disabilities and/or involving only paid staff
  – Services and supports assist individuals to foster relationships with community members unaffiliated with the setting
  – Services to the individual, and activities in which the individual participates, are engaged with the broader community

Goals for OPWDD’s Heightened Scrutiny (HS) Evidence Package and Process to Comply with CMS Regulations

• Overcome CMS presumption of Heightened Scrutiny for affected settings
• Keep provider community and stakeholders informed on what the requirements are and engage them so they can make the needed changes
• Identify sites subject to Heightened Scrutiny through on-site review
• Establish an efficient streamlined method to:
  – Collect evidence from HS sites using our HS Self-Report that is designed to include evidence that will help overcome the presumption that the setting is not home and community based
  – Give providers a starting point to remediate areas of non-compliance
    • List of proposed action items to choose from
    • Work Plan format to integrate action items
• Ensure on-site validation of the evidence that is collected and on-site survey results as part of the evidence.
Why is an Evidence Package Self-Report Needed?

- The Evidence Package Self-Report + DQI survey results for HCBS Settings questions + Work Plan = Evidence to overcome presumption that a Heightened Scrutiny setting is institutional or isolating
  - Is evidence clear that it is not a site that is institutional or isolating?
  - Does survey results show that the setting is in compliance with HCBS settings requirements and/or is on its way to full compliance prior to 10/1/2018?
  - If site is not yet in full compliance, does the Work Plan indicate how the setting will achieve full compliance prior to 10/1/2018 and does DQI agree that the work plan is viable/achievable?

OPWDD will be using this information to decide next steps for a HS setting:
- If evidence is compelling, setting is approved for public input process/submission to CMS
- If evidence is not compelling, more information may be requested and/or technical assistance provided.

Evidence Package Self-Report is Based Upon:
- CMS Regulations and CMS Exploratory Questions
- CMS response back to states on Transition Plans
- CMS June 26, 2015 Memo and Q and A on Heightened Scrutiny

Resources on OPWDD’s Website, Search “HCBS Settings Toolkit”

Heightened Scrutiny

- CMS June 26, 2015 Memo
- OPWDD Provider Communication Memo, October 13, 2015
- DQI Review tool for Heightened Scrutiny

Heightened scrutiny evidence package

- Informational Letter
- Appendix A (October 2015 Adm Memo)
- Appendix B (Self-Report)
- Appendix B-1 (Guidance and Instructions for evidence package)
- Appendix C (Webinar information)
- Appendix D (Work Plan template)
OPWDD’s Process & Timeline for Heightened Scrutiny
(Green text is where we are right now)

• **STEP 1**
  - 10/2015 Published Heightened Scrutiny Provider Communication Memo

• **STEP 2**
  - OPWDD on-site review of all certified settings for designation of Heightened Scrutiny or Not 10/2015-2/2017

• **STEP 3**
  - HS Self-Report Evidence Package Completion by providers for each site identified by DQI as requiring HS -- **Due May 7, 2017**
  - Collection of Evidence Packages through Fluid Survey

• **STEP 4**
  - On-site validation of HS Self-Report Evidence Packages/Work Plans and use of DQI HCBS settings protocols for compilation of on-site survey results to incorporate into evidence packages. **Beginning 10/1/2017**

OPWDD’s Process and Timeline for Heightened Scrutiny

• **Step 5**
  - Staff Analysis of Evidence Packages and Recommendations to OPWDD Leadership; Preparation of Evidence by Staff for Sites that Clearly Appear to Overcome the Presumption
  **Winter/Spring 2018**

• **Step 6**
  - Leadership Decision Making/Determinations
  **Winter/Spring 2018**

• **Step 7**
  - Package for Public Input and CMS Submission or Technical Assistance for Providers/Settings Not Ready to Go
  **Summer 2018**
Reminder - Heightened Scrutiny Process is not one-time

• Once OPWDD’s initial HS process is completed, there will need to be a “catch-up” completed to ensure that any ICFs that converted after the evidence due date and any new sites subject to HS and/or newly identified by DQI are processed for HS.

• There will need to be an annual HS reconciliation process implemented. Timeframes and processes are TBD.

Completing the FluidSurvey Evidence Package

Content and Technical Guidance

Remember that all Evidence Packages are due by May 7, 2017
Evidence Package Sections

A. Agency Info (All HCBS waiver providers must complete)  
B. Demographic Info for HS Site (Site Specific)  
C. Heightened Scrutiny Triggers (Site Specific)  
D. Setting Location (Site Specific)  
E1. Person Centered Hab Planning and Service Delivery (Site Specific)  
   – Hab Planning  
   – Full Access to the Community  
   – Rights  
   – Physical Setting Characteristics  
   – Staffing and Competencies  
E2. Type of Setting (Specific to Residential or Non-residential)  
   Questions for provider-owned and controlled residential settings  
   Questions for Non-residential settings  
F. Work Plan (Upload)  
G. Narrative

Heightened Scrutiny Evidence Self-Report

• All HCBS Waiver Providers Complete Section A  
• Evidence Self-Report is completed for all sites subject to Heightened Scrutiny including those identified by DQI (Section B-G).  
• Questionnaire mostly fill in the blanks—Yes/No; work plan action items provided for check off, as well as “other” category.  
• A Narrative is highly recommended.  
• We are asking for site maps through Google, pictures, and a Work Plan for action items that are not yet in place for full compliance—we will discuss each of these components as we go through the survey.
FluidSurvey Demo

Survey Link: http://opwddnygov.fluidsurveys.com/s/HeightenedScrutiny/

Logging into FluidSurveys

- All you need to do is click on the link and it will bring you directly into the survey – No log in information or user id needed!
  http://opwddnygov.fluidsurveys.com/s/HeightenedScrutiny/

- Once you read through the instructions on the welcome page, click “Next” to begin.

Thank you for your time in completing this important survey.
Technical Reminders for FluidSurveys Data Entry—Important!! (See Appendix B-1 pg. 3)

- **Use Back OR Next Button:** When moving through the survey on-line, if you need to go back or forward to a page, use the “Back” or “Next” button on the bottom of the survey page.

- **Done Button:** Before you click the “DONE” button at the end of each survey, please review your answers as you will not be able to change the responses to your survey unless you email heightened.scrutiny@opwdd.ny.gov. Once you click the “Submit” button at the end of the survey, you will have the chance to download your survey response.

- **Starting Another Survey:** To start another survey for a particular heightened scrutiny setting, you will have to type the survey link back into your browser to take the survey again by using the link: http://opwddnygov.fluidsurveys.com/s/HeightenedScrutiny/

*SAVE AND CONTINUE*

**SAVE AND CONTINUE OPTION:** Within this survey, you are given the opportunity to “Save and Continue”. This will allow you to save your survey and to continue your survey at a later date. When you click “Save and Continue” you will see a URL that you can bookmark to continue the survey later. **We highly recommend that you bookmark this URL so that you can continue your survey at a later date.** Or, you can enter your email address and click “Email me this link”. FluidSurveys will then automatically email you the survey link (which you also have bookmarked as mentioned above) for you to use to continue where you left off. This email will come from heightened.scrutiny@opwdd.ny.gov via FluidSurveys. **NOTE:** Please be sure to check your spam and junk folders if you do not receive an automatic email from FluidSurveys. OPWDD is not able to generate another “Save and Continue” email if the “Save and Continue” email is not automatically received due to being blocked by your agency. **Should you not receive your “Save and Continue” email from Fluid and do not bookmark your URL, you will have to restart your survey from the beginning.**
Survey Buttons

Throughout the survey:

- BACK
- NEXT
- SAVE AND CONTINUE LATER

At the end of the survey:

- BACK
- SUBMIT
- SAVE AND CONTINUE LATER

Save and Continue

NEVER exit a survey that is not complete WITHOUT clicking the “SAVE AND CONTINUE LATER” button.

Heightened Scrutiny

Survey saved successfully. When you want to continue answering your survey, please go to the following weblink:

http://opwddnygov.fluidsurveys.com/s/draftfls/survey/+9e429be67ed5f13948634973b9f9a48ad1d4a?page=6

To bookmark this link press CTRL+D  

ALWAYS bookmark surveys that are not completed

casey.l.downey@opwdd.ny.gov

Email me this link

Have the link emailed to you as well. If you do not receive it, check you junk mail

You may also click on the link sent to you in the original email we sent you, or copy and paste the above link into a text document to save, create a bookmark that points to the link, or write it down on paper.
Survey Content Instructions - Section A:

- All agencies must complete Section A even if the agency has no settings that have triggered a heightened scrutiny review. If the agency believes there are no settings under their auspices that are subject to a HS review, they do not need to complete the rest of the Self-Report.
- If agencies have one or more settings that triggered Heightened Scrutiny, one survey must be completed for each of these sites. Section A only has to be completed once in its entirety. For each subsequent survey completed, only questions 1, 2, 2a, and 5 are required within this section.

Information Needed to Complete Survey Sections B-D

For Agencies with HS Settings—1 Survey for each Site

**Section B Demographic**
- Operating Certificate # for the HS site (8 digits)
- Contact person for the HS setting should additional information be needed
- Address for the HS setting and county where the HS setting is located
- Certified capacity of HS setting

**Section C HS Triggers**
- The specific (1 – 6) HS triggers for each HS setting (see [http://www.opwdd.gov/node/6252](http://www.opwdd.gov/node/6252))
- Select all that are relevant for each site

**Section D Location**
- If the setting is co-located and/or clustered with other agency settings in a multi-family home/apartment building
  - The number of total units in colocation/cluster
  - The number of designated units for people served by OPWDD/HCBS Waiver Services
  - Characteristics of the HS setting (e.g., if public transportation is available, building type, location type, etc.)
- HS Setting Site Map – Site maps can be obtained at [http://maps.google.com](http://maps.google.com) (once there click the satellite button)
- At least 1 picture of the setting
Information needed to Complete Survey Sections E-G for Agencies with HS Settings

Section E Questions
- Provider agency will need to self-identify areas that are not in full compliance with HCBS Settings Regs
- Agency will need to develop and report action items that will be used to bring deficient areas of practice into compliance.

Section F Work Plan
- Development of a work plan to bring deficient areas of practice into compliance. The work plan will be uploaded to FluidSurveys.
- It is HIGHLY RECOMMENDED to utilize the Self-Report as a guide and the work plan template provided by OPWDD.

Section G Narrative
- Narrative: Responses within this section must reflect the experience of EACH PERSON within the setting.
- Section G gives agencies an opportunity to highlight procedures and practices that demonstrate the setting is Home and Community-Based which may not have been touched upon in other parts of the Self-Report.
- Agencies may also submit additional information through the Optional Upload function found in this section.

Information Needed to Complete Section A (Qs 1-5)

Agency name
Agency Corporate ID
Agency contact person and their contact information
Agency address

All agencies will need the following to complete the FluidSurvey:
Section A Questions that Must be Completed for Each Site Specific Survey

1. Provider Agency Name

2. Agency Corp ID
   2a. Re-enter Agency Corp ID

5. Does the agency have any sites that trigger heightened Scrutiny?

Section D: Required Site Maps

- [http://maps.google.com](http://maps.google.com) is suggested
  - Satellite images give a good picture of type of setting (rural, suburban, urban)
  - Satellite images can be used to identify points of interest in the community

- If a site was triggered due to co-location/private campus, site map can be used for all the settings located at that site.

- EVEN IF A MAP IS USED FOR MULTIPLE SETTINGS, THE NAMING CONVENTION FOR THE MAP NEEDS TO CHANGE BASED ON THE SETTING
Preferred Site Map

- Easy to read
- Clearly shows homes and community
- Identifies the campus/cluster and all OC's associated with that cluster

Acceptable Site Map

Why it's NOT preferred:
- More difficult to read
- Picture is not as clear
- Handwriting is more difficult to read
- Surroundings not as easy to identify

Why it’s acceptable
- Identifies agency sites and shows OC #'s
- Identifies points of interest in the community
- The words are legible (not written ON the picture, handwriting is legible)
- Gives a key to assist in understanding the map
Section D: Pictures of Setting

• Should NOT contain any identifying information for people served at the setting

• Things to think about:
  – Were locks an issue? Did the agency now install them?
  – Did the agency modify a hallway to allow access for all people at the setting?
  – Is it a rural community and would a picture assist in understanding the community?

• Pictures can:
  – Give a better understanding of a setting
  – Show improvements the agency made to assist in compliance
  – Show that the location of the setting is integrated in the broader community

Example of Content Instructions – Annotated Guidance – Appendix B-1

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>E-1: Peoples’ Habilitation Plans are developed and updated using a person centered planning process that reflects their dreams, interests, preferences, strengths, capacities, and informed choices; consequently their Plans drive activities and supports that are meaningful to each person.</td>
<td>People are offered and provided concrete and varied life experiences to make informed and meaningful choices. The Hab Plan is reflective of current desires and needs and people are afforded the support to participate in activities that are meaningful to them. Planning also includes acknowledging what training and skills are needed for the person to be able to access their community interests with more independence. The person's planning focuses on positive safeguarding when possible and may not necessarily result in risk elimination.</td>
<td>6-1; 6-2</td>
<td>45-47; 47-49</td>
</tr>
</tbody>
</table>

Example of Content Instructions – Annotated Guidance – Appendix B-1

| E.7: The planning process includes strategies for solving conflicts or disagreements and includes clear conflict of interest guidelines for all involved. | A person centered planning process is required. The provider must have strategies that address conflicts or disagreements in the planning process. For example, should family members not agree with the choice of the person, the provider agency must have a process in addressing the conflict. | Person-Centered Planning Regulations – 14 NYCRR Part 636.4


<table>
<thead>
<tr>
<th>STAFFING AND COMPETENCIES</th>
</tr>
</thead>
</table>
| E.30: Paid and unpaid staff receive training and continuing education related to the rights of people receiving services, supporting informed choice and decision making, and the HCBS settings rules. | Support (paid and unpaid) staff have a knowledge of HCBS settings rules. Staff demonstrate through their performance and interactions that they have an understanding of people’s rights and how to support informed choices and decision making. Training of staff is documented. | Direct Support Professional Core Competencies


Survey Content Instructions For all in Section E-1:

FOR “YES” ANSWERS

- If the statement is currently implemented **AND** reflected in policies/procedures, select “Yes”.

FOR “NO” ANSWERS

- **Specify one or more work plan action item which will bring that requirement into compliance by 10/1/18.**

- For all requirements that are not currently reflected in policies/procedures, a work plan action item(s) must be selected that will remediate that area of non-compliance. **Please select all that apply.** If none of the action items are applicable, please select “Other” and provide a brief explanation.
Survey Content Instructions –Section E-1
Review Appendix B-1 Instructions and Content Guidance

• Each question asked is cross walked with DQI’s Heightened Scrutiny Protocol Guidance – annotated guidance based on this document is included in B-1.

• If additional content guidance is needed, see source materials and page numbers

• Further guidance notated in B-1 can be found at the following links:
  – DQI’s Heightened Scrutiny Protocol Guidance:
    • https://opwdd.ny.gov/node/6256
  – Person Centered Planning Regulations:
    • https://opwdd.ny.gov/sites/default/files/documents/person-centered-planning-text.pdf
  – Direct Support Professional Core Competencies
    • https://opwdd.ny.gov/node/6419/

Example of Section E of the survey

1) People’s Habilitation Plans are developed and updated using a person centered planning process that reflects their dreams, interests, preferences, strengths, capacities, and informed choices; consequently their Plans drive activities and supports that are meaningful to each person.

1a) Specify the work plan action items.
Check all that apply and attach detailed Work Plan in Section F.

- Review and revise service/habilitation plans using a person centered methodology (include description information in Section F)
- Train setting staff on person centered planning rights and honoring choices
- Train staff responsible for the writing and coordination of service/habilitation plans
- Train individuals supported on their rights and how to make informed choices
Survey Content Instructions - Section E-2– This was a late add to the Evidence:

• Questions are setting type specific:
  – Questions 33 – 46 – Provider-owned or controlled residential settings
  – Questions 47-52 – Non-residential settings

The survey will automatically trigger the questions you will need to answer based on the setting type you select.

Section E-2, Specific to a Residential or Non-Residential Setting

• Must select setting type to trigger setting specific questions

• Questions are from the CMS Exploratory Questions
  Note: Some may be duplicative of content answered in E-1 so ensure that you are consistent across the survey for each site.

• A “Yes” indicates that the requirement is in place for ALL people served within the setting
Section E-2

• Completed the same as Section E

• Questions will be triggered based on type of setting
  – Residential
  – Non-residential

• Even one “Not Met” will require a work plan action item

Where to Find Further Guidance

Instructions and Content Guidance for OPWDD’s HCBS Settings Heightened Scrutiny Self-Report can be found:

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

OR

Can be found on the OPWDD website by searching “HCBS Settings Toolkit”
Sections F-G

F. Work Plans
- Provider Uploads Work Plan
- Directions specify that there must be a work plan item for each item that is not met

G. Narrative
- Describes how the provider ensures full community access for every person
- Describes how the setting overcomes the presumption that it is not HCB

Optional additional info
- Allows for additional info to be uploaded
- Gives provider a chance to discuss anything else relevant to the review

Section F: Work Plans
- Providers who have a Heightened Scrutiny trigger must attach a work plan for remediation of aspects of the HCBS rule that were found to be non-compliant. It is HIGHLY RECOMMENDED to use the template located on the OPWDD website.

- Work plans must identify the following:
  - Work plan action items identified in the survey
  - Area(s) of non-compliance;
  - What the agency will do to bring this area into compliance;
  - The projected date of compliance; and
  - Who is responsible for the remediation.
Section F: Work Plans

- Initial work plan will be based off of the following:
    - Residential – Triggers and Standards
    - Non-Residential – Triggers
  - Site Review Protocol – 2016/2017 survey cycle (Residential AND Non-Residential)
    - IF DQI has conducted their survey prior to submission of the Evidence Package
- Revisions to work plans will be based off of the following:
  - Site Review Protocol – 2016/2017 survey cycle (Residential AND Non-Residential)
    - IF DQI had not conducted their survey prior to the submission of the Evidence Package

Sample Work Plan

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Action Item</th>
<th>Responsible Staff Positions</th>
<th>Target Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person Centered Habilitation and Service Delivery</td>
<td>1. Peoples’ Habilitation Plans are developed and updated using a person centered planning process that reflects their dreams, interests, preferences, strengths, capacities, and informed choices; consequently their Plans drive activities and supports that are meaningful to each person.</td>
<td>Program Managers</td>
<td>12/15/16</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Admin. Staff</td>
<td>6/1/17</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DSP’s</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hab plan writers</td>
<td>10/1/17</td>
</tr>
<tr>
<td></td>
<td>Review and revise service/hab plans using a person centered approach</td>
<td>Program Managers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Once trained, staff responsible for hab plans will conducted meetings over the next 6 month and utilize the PC approach to review and revise hab plans for each person at the setting.</td>
<td>Program Managers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Managers will review to ensure a PC approach was used and sign off on the plans</td>
<td>Program Managers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Train setting staff on PCP rights and honoring choices</td>
<td>Program Managers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administrative Staff will develop a PCP training for staff and individuals. They will conduct “train the trainer” sessions with all Program Managers on a yearly basis or more frequently as needed.</td>
<td>Program Managers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Managers will use the tools developed by Admin. Staff to train their staff and individuals supported in their programs on PCP rights. Staff training will be conducted on a yearly basis or more frequently as needed.</td>
<td>Program Managers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Train individuals supported on their rights and how to make informed choices</td>
<td>Program Managers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Managers will use the tools developed by Admin. Staff that they were trained on, to train their staff and people supported in their programs on PCP rights. Training will be conducted on an ongoing basis that meets the needs of all people served. At a minimum, individuals will have their rights reviewed with them on a yearly basis.</td>
<td>Program Managers</td>
<td></td>
</tr>
</tbody>
</table>
Sample Work Plan - Continued

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Progress To Date/Milestones Met as of: ____________________________ (date)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Person Centered Habilitation and Service Delivery</strong></td>
</tr>
<tr>
<td></td>
<td>1. Peoples’ Habilitation Plans are developed and updated using a person centered planning process that reflects their dreams, interests, preferences, strengths, capacities, and informed choices; consequently their Plans drive activities and supports that are meaningful to each person.</td>
</tr>
<tr>
<td></td>
<td>• Agency has developed a person-centered planning training for staff.</td>
</tr>
<tr>
<td></td>
<td>• Agency has completed training with hab plan writers and managers on person-centered planning. Meetings have begun using the tools hab plan writers have been trained on to ensure person-centered planning.</td>
</tr>
<tr>
<td></td>
<td>• Agency has developed a training for individuals on person-centered planning and their rights. This will be implemented in all agency programs beginning 6/1/17.</td>
</tr>
</tbody>
</table>

Completed work plan action items should be marked as completed on the work plan and a date of completion indicated.

ICF Conversion – Work Plan

• ICF’s may use their ICF Conversion Work Plan in lieu of developing another work plan.

• All completed work plan items should show as completed on the work plan.
Survey Content Instructions - Section G - Narrative

• Responses within this section must reflect the experience of EACH PERSON within the setting.

• Section G gives agencies an opportunity to highlight procedures and practices that demonstrate the setting is Home and Community-Based which may not have been touched upon in other parts of the Self-Report.

• Agencies may also submit additional information through the Optional Upload function found in this section.

Section G: Additional Information Required

• For settings that are in a publically or privately-owned facility that provides inpatient treatment OR in a building located on the grounds of or immediately adjacent to a public institution, please provide information and documentation showing that the HCBS setting is not operationally interrelated with the facility setting, such as:
  – Interconnectedness between the facility and the setting in question, including administrative or financial interconnectedness, does not exist or is minimal.
  – To the extent any facility staff are assigned occasionally or on a limited basis to support or back up the HCBS staff, the facility staff are cross-trained to meet the same qualifications as the HCBS staff;
  – Participants in the setting in question do not have to rely primarily on transportation or other services provided by the facility setting, to the exclusion of other options;
  – The proposed HCBS setting and facility have separate entrances and signage;
  – The setting is integrated in the community to the extent that a person or persons without disabilities in the same community would consider it a part of their community and would not associate the setting with the provision of services to persons with disabilities.
Section G: Additional Information Required – MOST Important

Evidence should focus on the qualities of the setting and how it is integrated in and supports full access of individuals receiving home and community-based services into the greater community.

Step 4 of the Heightened Scrutiny Process
DQI Validation

DQI will be validating information contained within the HS evidence package submissions which include the Self-Report and site work plans.

Review of Self-Report by DQI
Validation by DQI
The results of the DQI on-site survey of each certified setting subject to heightened scrutiny will be included as part of the evidence for that setting.

The results of the Person Centered Samples will also be included as evidence.

On-Site DQI Evidence Package Validation

• Incorporation of DQI’s activities and validation findings for Heightened Scrutiny evidence packages:
  – DQI will provide an attestation document that states that OPWDD DQI staff completed a review to determine whether compliance actions reported by the agency to overcome HS and ensure HCBS compliance were implemented and effective. Based on their findings a selection of one of the following categories will be made:

  □ All reported compliance actions were implemented and appear effective

  □ Reported actions were implemented and appear effective except the following: ________________________________________________________________

  □ The plan was not implemented.
DQI Reviews Moving Forward

- In addition HCBS settings requirements will be reviewed routinely during review visits moving forward:
  - Both the site visits (site protocol) and person centered reviews (PCR protocol) will include elements to ensure review of the HCBS requirements from a setting and person’s point of view.
  - BI in development will be able to extract data for all standards across all protocols.

STEP 5: Staff Analysis of Evidence Package and Recommendation to OPWDD Leadership
Staff Analysis of Evidence Package and Recommendations to Leadership (Work in Progress)

- Materials included in analysis include:
  - Setting self-report, work plans, site maps, narrative
  - DQI validation of settings work plan and Self Report (accuracy/feasibility)
  - DQI review of HCBS settings and where the setting stands
  - Scoring sheet for evidence analysis and recommendations

- **Recommendations to Leadership on Staff Analysis Sheet:**
  - Evidence Overcomes Presumption – Advance Setting to Public Input Process

  **STAFF WOULD PREPARE EVIDENCE PACKAGE BASED ON WHAT WAS SUBMITTED BY THE PROVIDER AND DQI SURVEY RESULTS**
  - Setting Needs Technical Assistance but can likely overcome presumption with TA
  - Setting unlikely to overcome presumption

Proposed Evidence Package if Setting is Ready to Prove it Overcomes Presumption

- Based on CMS Directives
- Demographic Info— Provider, Site, Address, # of People Served, Rural/Suburban/Urban
- Brief narrative written by OPWDD staff that clearly articulates how the setting overcomes the presumption that it is institutional and/or isolating based upon all the documentation from the provider and survey results from DQI
- DQI on-site survey results score and info on what the setting is doing to come into full compliance if it isn’t all ready based on on-site review
- Public Input received on the setting, if any
Step 7—CMS Submission
Criteria CMS Uses to Review Requests for HS

- Whether all of the qualities of a home and community based setting outlined in the federal settings regulations are met
- Whether the state can demonstrate that persons receiving services are not isolated from the greater community of individuals not receiving HCBS
- Whether CMS concludes that there is strong evidence the setting does not meet the criteria for a setting that has the qualities of an institution

Tips for Completion of Evidence Packages
Tips for Narrative and Additional Documentation:

Person Centered Planning Includes Habilitation Planning

PCP is at the center of the HCBS settings rule. This is not just about creating a nice PC plan!

If you don’t know what the person’s interests, likes, dislikes, dreams and aspirations are, or, if the person doesn’t know either – you can’t meet the essence of the rules.

On-going discovery and learning has to be part of the service delivery model and practice - making the PCP a living “document”.

Requires a transition from a “service life” model to a “community life” model – but this takes learning.

Requires training for the entire organization on what person-centered thinking means.

Facilitate Meaningful Community Access

1. Provide and post information about community events and happenings for residents and facilitate information sharing and informed choice making.

2. Incorporate priorities/preferences for meaningful community activities into the Hab Planning process including supports needed for the person to participate.

3. Consider adjustments to staff schedules/creative scheduling during peak hours when community events would be occurring even just a day or two a week.

4. Encourage people to use natural supports, neighborhood folks, co-workers, etc. for community participation when possible.

5. Review and discuss which individuals can participate in a community event without requiring staff support, update the Individual Plans of Protective oversight (IPOP) accordingly and begin allowing alone time in the community when appropriate.
Facilitate Meaningful Community Access:

6. Encourage settings to coordinate access to transportation with each other when possible. Encourage people with similar interests to participate in an activity with each other, when desired.

7. Incorporate travel training into routine habilitation activities for increased access to public transportation. Where available, encourage use of public transportation.

8. Post taxi information, bus lines, etc. in a visible location and train people to utilize these services.

9. Through person-centered planning meetings, determine what natural support resources are available to assist in carrying out specific community interests. Incorporate this discussion into routine person-centered reviews as a topic of further discussion.

“Full Access to the Community to the Same Degree as People who Do Not Receive HCBS”

• Options! Options! Options! and documentation of choices offered and selected in the provision of Habilitation Services.

• Options offered include a variety of activities in the community.

• Options offered are consistent with tasks and activities for people who do not receive HCBS.
“Full Access to the Community to the Same Degree as People who Do Not Receive HCBS”

- Options are meaningful to people supported—based upon their interests, goals, priorities, and preferences.

- Options offered include peoples’ priorities for community inclusion/integration activities.

- Disability/complexity of person is not an “excuse” for limited community inclusion—each person must be looked upon as an individual and have the opportunity to experience and demonstrate their interest and benefit from community experiences.

“Full Access to the Community to the Same Degree as People who Do Not Receive HCBS”

- RED FLAG

“Settings cannot comply with the community integration requirements of the rule simply by only hiring, recruiting, or inviting individuals who are not HCBS recipients into the setting to participate in activities that a non-HCBS individual would normally take part in a typical community setting.

Solely using “Reverse Integration” is a major red flag.
“Full Access to the Community”
RED FLAGS

• Little to no engagement with the broader community—most people stay in the facility for most of their program time

• People rarely leave the setting and when they do it is in very large groups and interactions are only with people with disabilities

• The program believes it is sufficient to count the number of “outings” to meet the requirement of facilitating Full Access to the Broader Community

Tips for the Narrative and Additional Documentation: If at all possible, it should demonstrate that:

• Setting is integrated in the community to the extent that a person without a disability in the same community would consider it a part of their community and would not associate it with the provision of services

• Individuals participate regularly in typical community life activities outside of the setting to the extent the individual desires

• Community activities foster relationships with community members

• Services to the individual, and activities in which the individual participates are engaged with the broader community
Tips for Narrative: Services Provided
Reflect and Document:

Choice

Individual Rights

Autonomy

Control over Personal Resources

Self-direction

Tips for Narrative and Additional Information:
Services Provided
Reflect and Document:

Access
• to community based on individual desires

Variety
• of activities/offering — both individualized and small group activities

Quality
• cultural competency, measures to increase community access and decrease social isolation (e.g., CQL POMs)
Checklist for Completing the HS Evidence Package

• Is there internal consistency within the Evidence Package?
• Is there consistency between the answers in the Evidence Package and the DQI Survey results—if corrections have been made since the DQI survey, is this indicated on the Work Plan as a Completed Action Item?
• Is there at least 1 Work Plan action item for all “No” answers that includes completion time frame?
• Is a site map included that accurately identifies each HS site and the sites/areas around it?
• Is a narrative included that is compelling and explains how each person served in the setting is afforded full access to the broader community?

Checklist for Completing the HS Evidence Package

• Self-Report Complete
  • Questions
  • Site Map
  • Narrative
  • Additional Information Upload (if applicable)
• Work Plan
  • The work plan is consistent with DQI protocols/findings
  • Action items, who is responsible, and target completion date are clear, brings HCBS standards into compliance by 10/2018, and work plans are updated appropriately
Common Questions

Q. Once a heightened scrutiny site, always a heightened scrutiny site?

A. It depends on why the site was triggered. If due to location, HS does not change. Therefore the program will always have the designation of a heightened scrutiny site. If a site is designated as a heightened scrutiny site for programmatic reasons (e.g., limited access to the community), once issues with HCBS compliance have been corrected the site could come off the list of heightened scrutiny sites.
Common Questions

Q. What happens if a site “fails” HS? Will there be a time frame for the agency to bring it into compliance?

A. If packages are received that do not appear to make a strong case for how the setting overcomes the presumption of being institutional and/or isolating, the settings will be brought to leadership for review and recommendations. In some cases, leadership may want another visit to the site or recommend the site receive technical assistance.

Common Questions

Q. Does a site designated as Heightened Scrutiny need to undergo a yearly Heightened Scrutiny process and submit Evidence yearly?

A. No. Once a site has undergone the HS process and has been approved by CMS as an HCBS eligible setting, it does not need to go through the HS process again (public input/Evidence submittal) unless there is a material change to that setting. All settings will continue to be reviewed by DQI for HCBS Settings compliance in accordance with DQI’s survey processes.

“Any material changes to the settings approved through heightened scrutiny such as an increase in licensing capacity, the establishment of additional disability-oriented settings in close proximity (e.g., next door), or changes in the ways in which community integration is realized, will require the state to update CMS and may result in a reevaluation of the setting.”
Common Questions

Q. Has CMS made any Heightened Scrutiny determinations yet?

A. Yes. North Dakota submitted 3 homes with 10 waiver enrollees on grounds of an ICF and a Day Program on ICF campus that serves 12 people. The homes “passed” H.S. The Day Program did not.

North Dakota H.S. residences on grounds of ICF found to be HCBS eligible

- All 10 people engaged in wide variety of employment or education activities including entrepreneurial
- Each had his/her own room
- Homes and rooms reflected individual choice of living arrangement, interests, hobbies
- People interacted with broader community on a daily basis, including many community activities that enabled participants to engage directly throughout the day with people not paid to provide them with services
- Many of the community activities were not organized only for benefit of the residents, thereby fostering relationships with the broader community
- Residents have access to food at any time; visitors do not have to adhere to a schedule
- Residents have individually defined schedules that support their specific interests and preferences
North Dakota H.S. Review of Facility Based Day Setting on ICF – does not overcome institutional presumption

- 10 out of 12 participants spend majority of their day on-site engaged in such activities as mail/package delivery; swimming; sensory stimulation room; greenhouse; laundry
- Activities take place on ICF campus alongside ICF residents under the direct supervision of ICF staff
- CMS finds that the Day Program does not meet characteristics of HCBS because the majority of individuals receive most of their services at the facility-based program and are not integrated into the greater community.

Common Questions

Q. Do Sheltered Workshops that have site based Prevocational Services delivered need to submit an evidence survey.

A. No. Sheltered workshops that must close or convert to another type of program model such as integrated employment do not need to submit surveys at this time. It might be necessary after the setting converts and if DQI determines the site to be subject to heightened scrutiny.
Additional Q and A Session– Questions Submitted Through Webinar

Contacts for Questions

Site specific compliance questions:

quality@opwdd.ny.gov

Heightened Scrutiny Evidence package questions or FluidSurveys technical assistance:

heightened.scrutiny@opwdd.ny.gov