

Good Afternoon

The webinar on HCBS Settings and Day Habilitation Services will begin at 1:00pm

The audio is currently muted.

Remember: To access the audio portion of the webinar you must use a telephone.

Please note that you may type questions and comments into the Q and A Feature of the Webinar at any time. However, answers will be addressed after the presentation.





**Office for People With
Developmental Disabilities**

HCBS Settings Expectations and Day Habilitation Settings

**July 11, 2016
Webinar**

Agenda

Time	Topic	Lead Presenter
1:00-1:15 pm	Overview of HCBS Settings Rule	Mary Ellen Moeser, Director of Home and Community Living
1:15-1:35 pm	Person Centered Planning	Kate Bishop, Director of Program Development
1:35-2:20 pm	Day Habilitation Informational Letter: Overview and Expectations	Ceylane Meyers Ruff, Director of Employment and Meaningful Activities
2:20-2:40	Heightened Scrutiny And Day Habilitation Settings	Maryellen Moeser
2:40 to 3:00 PM	Division of Quality Improvement Review of Day Habilitation Services	Barbara VanVechten Director of Continuous Quality Improvement (CQI)

Q and A from 3:00-3:30 PM



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What are Day Habilitation Services and Settings?

In accordance with OPWDD's HCBS Waiver, Day Habilitation Services are defined as:

- Assistance with acquisition of skills
- Retention or improvement in self-help skills
- Socialization and adaptive skills including communication
- Travel and adult education that take place in a non-residential setting

Activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, community inclusion, relationship building, self-advocacy and informed choice.

Day Habilitation Settings are any place where Day Habilitation Services are provided including:

- A certified Day Habilitation facility with an OPWDD operating certificate
- A community integrated setting where Day Habilitation is provided
- A "Hub" location that is either certified or not certified



Overview of the HCBS Settings Regulations

Context and Requirements



Why--the HCBS Settings Regulations?

- Better align HCBS Medicaid funding and program requirements with civil rights protections afforded under **ADA**
- Address concerns that in some states **HCBS is used to fund “institutional-style” settings** lacking opportunities for people to engage meaningfully in their communities
- 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



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Key Points to Keep in Mind

- Outcome oriented – focuses on **nature and quality of individuals' experience** in the setting
- The regulations focus on whether individuals supported have the “**same degree of 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 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 and respect, and freedom from coercion and restraint;
- Optimizes autonomy and independence in making life choices; and
- Facilitates choice regarding services and who provides them.



Key Elements of the Final Regulations

In provider controlled residential settings:

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



What Does this Mean for Providers and People Served?

- Regulations establish additional rights that must be honored for HCBS waiver participants
- Modifications must be:
 - Supported by specific assessed need
 - Justified in the person-centered service plan
 - Documented in the person-centered service plan
 - Time limited and reviewed for continued need
 - Informed Consent of the Person



CMS issued Non-Residential Settings Guidance in mid Dec. 2014 consisting of:

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

This information applies to all Non-residential waiver settings and is incorporated in the Day Habilitation Informational Memo that this webinar is based on.



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Slide 11

mjt8

21-29 should follow 9- aLL of that information deals with the rule itself.

Then I would get into ADM 33-26

maria torgalski, 4/29/2015

What CMS says about complying with HCBS rules in Non-Residential Settings

The rules **do not prohibit facility-based or site-based settings, however** such settings “must demonstrate the qualities of HCBS settings”

- **Ensuring the individual’s experience meets HCBS rules**
- **That it is not institutional in nature, and that the setting does not “isolate the individual from the broader community”**

For settings designed specifically for people with disabilities and/or if individuals in the setting are primarily people with disabilities, **the setting may be isolating unless the setting facilitates people going out into the broader community.**



NYS and OPWDD HCBS Settings Transition Plan

- Development of expectations for Day Habilitation Providers is part of OPWDD's HCBS Settings Transition Plan
- Assessment of Day Settings for where we stand with the rules; remediation/correction strategies at provider level and systemic level also required by CMS for Transition Plans
- The Informational Letter for Day Habilitation forms the basis for the assessment and review of Day Habilitation



Complying with HCBS Settings Regulations Starts and Ends with Person Centered Planning

Kate Bishop, Director of Program
Development, Division of Person
Centered Supports



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.

The Habilitation Plan must reflect these principals.



Hallmarks of Person-Centered Habilitation Planning

- **Person-centered; person-directed and individualized**
- Include activities and interactions that are **meaningful to the person** based upon his or her needs, interests, preferences, strengths, and capacities
- Activities, supports, and services foster skills to achieve meaningful goals and outcomes of the person: personal relationships, community inclusion, dignity and respect, etc.
- The individual uses, whenever possible, **natural settings in the broader community**
- The person has **meaningful choices and makes informed decisions**



HCBS Settings Regulation

‘The setting is selected by the individual among setting options, including non-disability specific settings..... The setting options are identified and documented in the Plan and are based on the individual’s needs, preferences.....’ (441.301 (C)(4)(ii))



Choice of Setting where Waiver Services are Delivered

- HCBS Settings Rules require **choice** of the setting in which waiver services are to be delivered.
- This **choice** must include a non-disability specific setting.
- **Plan documentation reflects the choices offered including non-disability specific settings.**

This means that the Habilitation Planning process engages the person in decision making on where and how they receive their habilitation supports



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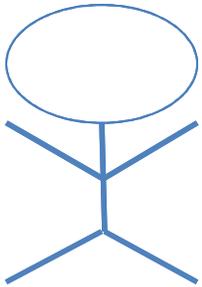
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Person Centered Habilitation Documentation

- **Documentation must clearly indicate that individuals have participated** in a person centered planning process and made decisions about where and how to receive their supports.
- **It must be clear from the documentation that the person's specific interest areas were explored**, as part of the person centered planning process, and are part of their proposed activities: Increased autonomy, Community integration
- A clear **outcome** of the person's choice or, when appropriate, the choice made by other people who know the person well must be included in the documentation.



“Risk” Continuum and Expectations



- ✓ Individualized—“a reasonable precaution for one person is an outrageous intrusion for another”
- ✓ What does the person want to do? What are the person’s skills, strengths, experiences, supports?
- ✓ What are the ongoing exploration and meaningful conversations about how the person can do this? Alternatives explored, discussions of risks vs. benefits, weighing options, positive approaches to safeguarding, ongoing communication and documentation .

Low Risk to the Person/Others

High Risk to the person/others

Higher expectations for engaging in conversations, engaging circle of support, provider “due diligence”/documentation of decision making process, negotiation with the person

May need to consider rights modification in the planning process



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Person Centered Planning 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:

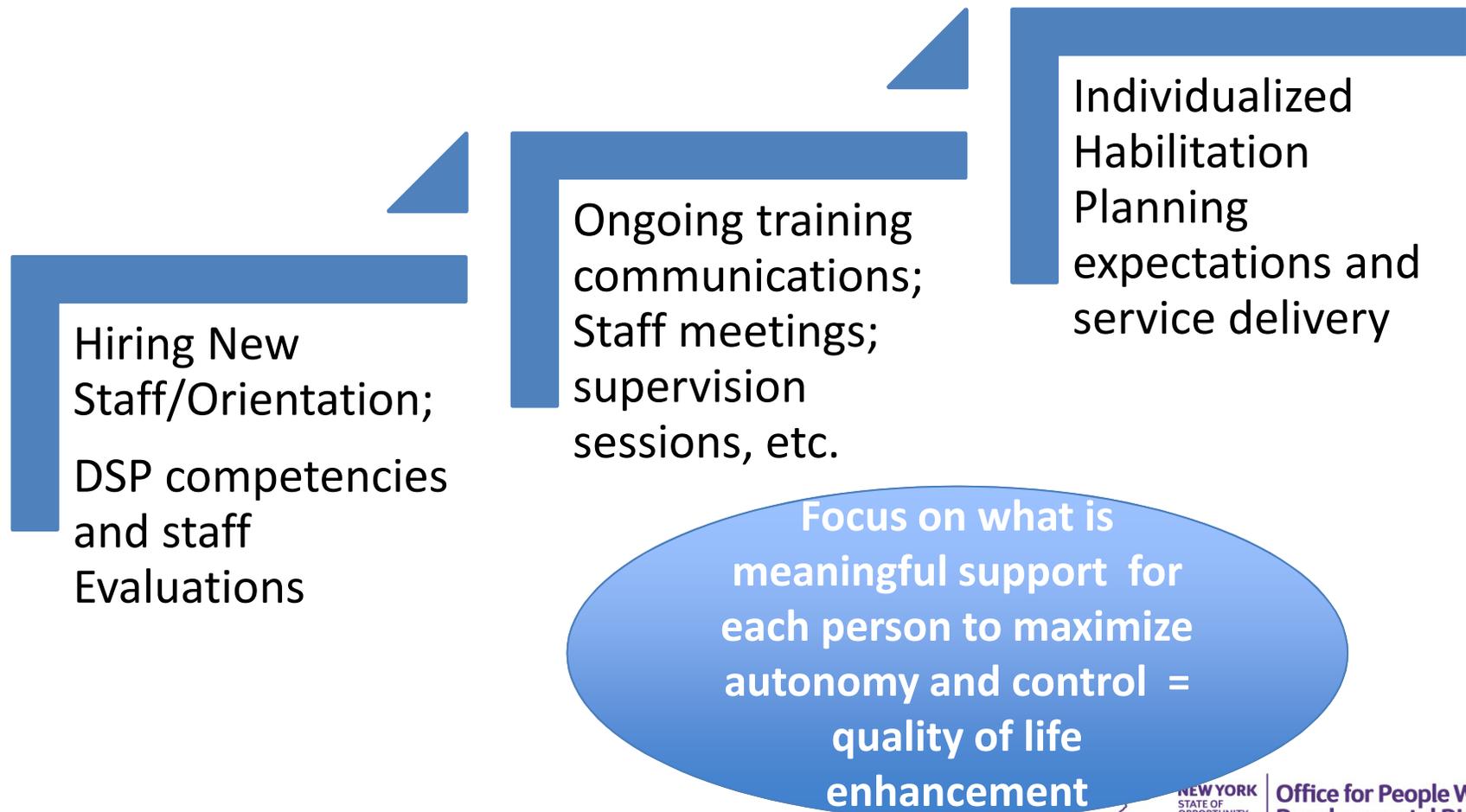
http://www.opwdd.ny.gov/opwdd_services_supports/person_centered_planning/various-person-centered-planning-methodologies

- 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



Infuse Person Centered Expectations/Practices Throughout Operations for Greatest Success with HCBS Compliance



Day Habilitation Program Principals and Expectations to Align with HCBS Settings Rules

Ceylane Meyers-Ruff, Director of
Employment and Meaningful
Activities



**The Informational Letter provides
principals and guidance for complying
with the HCBS Settings Rules in Day
Habilitation Settings**

**OPWDD will be developing
regulations for Day Habilitation
Services**



HCBS Settings Regulation:

“The Setting is integrated in, and facilitates the individual’s full access 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, the same degree of access as individuals not receiving Medicaid HCBS” (441.301 (C)(4))



“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 Day 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



- No “level of community interaction” is required, **but** the person centered planning process must be used to assess a person’s interests and reactions. A general count of activities outside of the setting will not be sufficient to demonstrate compliance.



- People need to be exposed to their community in order to assess their satisfaction and happiness with various interactions.



- Per CMS: people cannot be isolated from the broader community in an HCBS environment and there must be a demonstration that community inclusion experiences are happening and efforts are being made by providers.



“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 day setting and when they do it is in very large groups and interactions are only with people with disabilities**
- **The Day Program believes it is sufficient to count the number of “outings” to meet the requirement of facilitating Full Access to the Broader Community**



HCBS Regulation: “The setting optimizes but does not regiment, individual initiative autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment and with whom to interact” (441.301 (C) (4) (iv))



Setting optimizes autonomy

- People encouraged and supported to **freely choose and control their schedules** based on what is meaningful and important to the person
- Provide **access to information** on community inclusion, transportation and activities



Setting optimizes autonomy

- **Freedom to move about inside and outside of the setting** rather than being restricted to one room or area of the setting
- People have **access to meals/snacks at time and place of their choosing** consistent with people in similar settings who do not receive HCBS (e.g., work setting, senior center, etc.)



Setting Optimizes Autonomy

RED FLAGS

- Blanket/Regimented Schedules/Rules that everyone must follow; e.g., From 11-12 we all do X, from 12-1 we all have lunch in the cafeteria in our assigned seats, from 1-2 we all do X.
- “Classrooms” -- No one can leave the room without special permission



Setting Optimizes Autonomy

- Demonstration of Compliance:

Unless there is a documented individualized rights modification in place:

- ✓ people served are encouraged to take breaks from scheduled activities whenever they need to;
- ✓ people served are encouraged to check out other activities happening in the setting and to join those activities if they interest the person more;
- ✓ people served are encouraged to express their satisfaction/dissatisfaction with their schedules and activities and this information is acted upon by the program

(There is evidence of these practices during a review)



Setting Optimizes Autonomy

Demonstration of Compliance: Access to food

- ✓ The Habilitation Planning process includes a discussion about meal times and whether the person is comfortable eating at _____ time and place and who they want to eat with. If person is not comfortable, the staff works with the person to make alternative arrangements that work for the person.
- ✓ Planning process includes discussions about access to food to assess the persons desires and how they can be accommodated.



HCBS Settings Regulations:

“The setting ensures an individual’s rights of privacy, dignity, and respect, and freedom from coercion and restraint”

“The setting facilitates individual choice regarding supports and services and who provides them”



Informed Choice and Rights

- Information about people is kept private
- People can safeguard their belongings/have a safe place to store their belongings while participating in the program (e.g., pocketbooks)
- People can choose freely who to interact with
- Setting provides people with information about their rights and how to make a request to change their supports/schedules



Informed Choice and Rights

- **RED FLAGS**
 - Peoples' personal files left out for anyone to see;
 - Staff discuss a person's "behaviors" out in the open where other people or staff can hear;
 - A person does not want to have lunch in the place that everyone else is having lunch—staff "coerce" the person to eat their lunch with everyone else;
 - Food, snacks or other things are withheld from a person for any reason without appropriate rights modifications in place



Heightened Scrutiny and Day Habilitation Settings

What is “Heightened Scrutiny”?

- Process for submitting evidence to the CMS Secretary **for settings that CMS “presumes not to be HCBS”**
- State must overcome the presumption/prove that such settings are **not institutional in nature** and **do not isolate people with disabilities from the broader community**



Heightened Scrutiny process is setting/site specific but all settings need to meet HCBS rules

All HCBS waiver services/settings must meet HCBS standards by 10/1/2018

Only settings triggering “heightened scrutiny” (HS) according to the criteria (HS) undergo HS process if OPWDD believes the setting can meet HCBS characteristics and requirements



Criteria for Heightened Scrutiny

- Day Setting is **on the grounds of** or **adjacent to** a public institution;
- The setting/site's **design, appearance and/or location appears to be institutional and/or isolating**;
- Multiple services/activities provided on the same site so that people do not have to leave the setting;
- 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, i.e., setting is on a private campus where there are residential settings for people with I/DD and most of the people who live in the residences also attend the day program on the campus.

Major Threshold Queries for Heightened Scrutiny—”Settings that Isolate”:

Does the setting **have the effect of isolating individuals?** Practices and operations—what is the experience of the people in the setting?

and

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



What does a Heightened Scrutiny Designation mean?

- It **does not mean** that the setting has to close and/or that it can no longer be funded in the waiver.
- **It means** the setting is subject to a higher burden of proof that it meets or can meet community standards and is not isolating/institutional.
 - Public Input and CMS Submission of Evidence



Day Settings Examples = Heightened Scrutiny

- Private campus like settings or “villages” that include a Day Habilitation/Day Setting on the same property;
- Day Habilitation Site on grounds of ICF or co-located with other Day and/or residential settings;
- Day Habilitation setting where the majority of people served do not leave the setting; etc.



North Dakota H.S. Review of Facility Based Day Setting on ICF Campus –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.**



OPWDD Heightened Scrutiny Process Timeline

- 10/2015: Provider Communication Memo
- 10/2015-9/2016: Inventory heightened scrutiny settings; review baseline HCBS standards for residential settings only
- 8/1/2016 – 9/1/2016: Collection of HS Self Reports and HCBS compliance work plans
- 10/2016-2/2017: DQI Front loads all heightened scrutiny settings for review of HCBS standards; collect/verify evidence
- Summer 2017: First Public Input Period





Division of Quality Improvement (DQI) Review of HCBS Requirements

Barbara VanVechten, DQI
Director of Continuous Quality Improvement



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DQI Review

- Timeline
- Process
- Tools and Review Activities
- How Can Day Habilitation Providers Be Proactive Now?



Timeline: Review of HCBS Requirements

Fall 2014 -
9/2015

- **HCBS Assessments:** Completed for a sample of certified residences and people to gather baseline data

Current:
10/2015 -
9/2016

- **HCBS Heightened Scrutiny Reviews:** Completed during visits to all applicable certified day service sites and residences

10/2016
forward

- **Survey Redesign:** Review for HCBS requirements will be routine with each survey visit. Timeframe from 10/2016 to 03/2016 includes validation of Compliance Plans for Heightened Scrutiny triggered sites



Survey Redesign: Starts 10/2016

- DQI continues to visit every certified service site
- New review protocols:
 - Routinize review of HCBS settings standards in applicable sites where HCBS Waiver services are delivered. **This includes Day Service Settings.**



Survey Redesign: Starts 10/2016

- Non-compliance identified on ECF
 - Agency can focus corrective activities to ready for requirement effective date
- Reviews occur via two mechanisms:
 - **Site Protocol:** Used during all site visits/ reviews
 - **Person Centered Protocol:** Used for sample of individuals and must include people in HS triggered sites.



Site Protocol and HCBS Requirements

Focus: Location, Appearance and Operations

- Triggers of Heightened Scrutiny
- Integration with community
- Rights and Rights Protections
- Privacy, Access, Activities
- Support individual choice, autonomy, preferences, and ability to make such choices



Person Centered Protocol and HCBS Requirements

- Person Centered Service Planning evidenced in:
 - Service Plans
 - Service Plan Delivery
- Person's experience regarding:
 - Integration with community
 - Rights and Rights Protections
 - Privacy, Access, Activities
 - Support individual choice, autonomy, preferences, and ability to make such choices



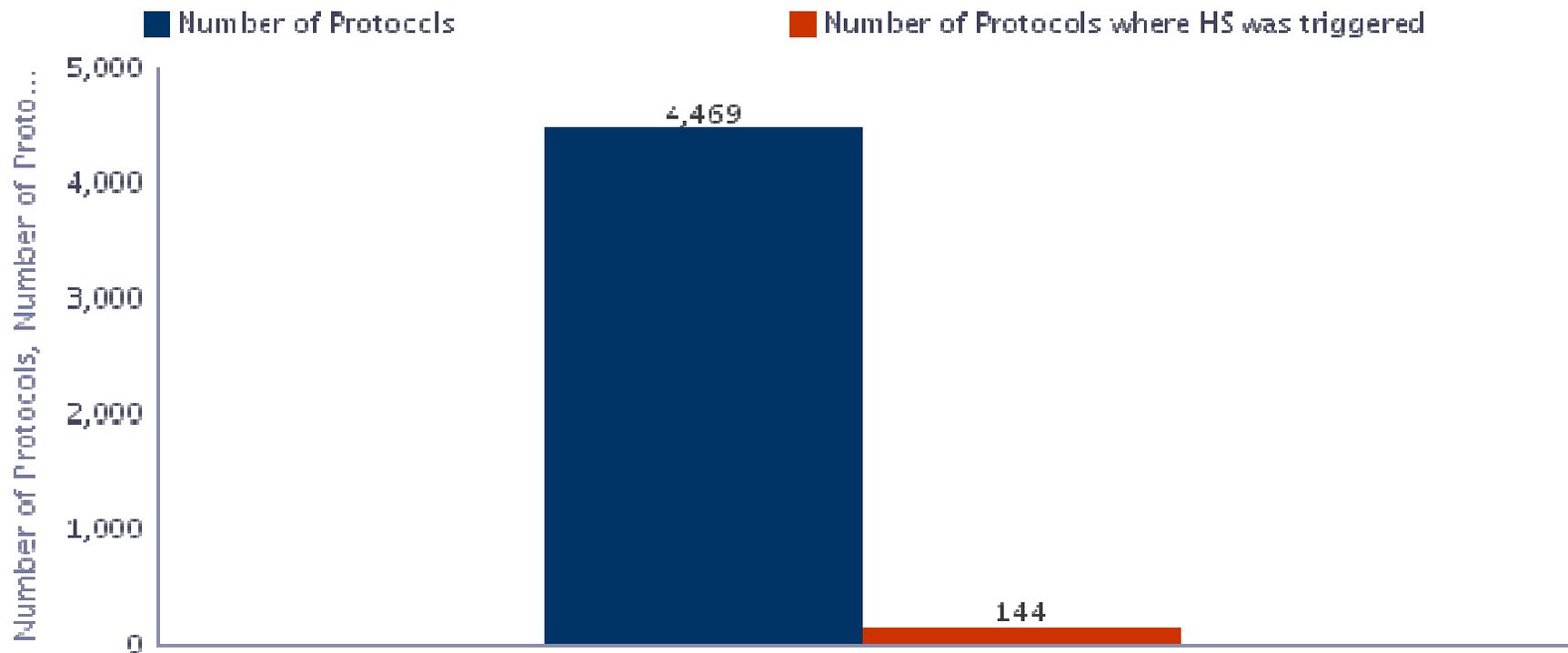
Day Habilitation Provider Actions to Facilitate Compliance

- Governance
- Review of Agency policies/procedures, training and other materials to incorporate expectations
- Organizational self-assessment
- Communication with Stakeholders
- DSP Competencies



Heightened Scrutiny Triggered All Programs – Status Update

Heightened Scrutiny Protocols



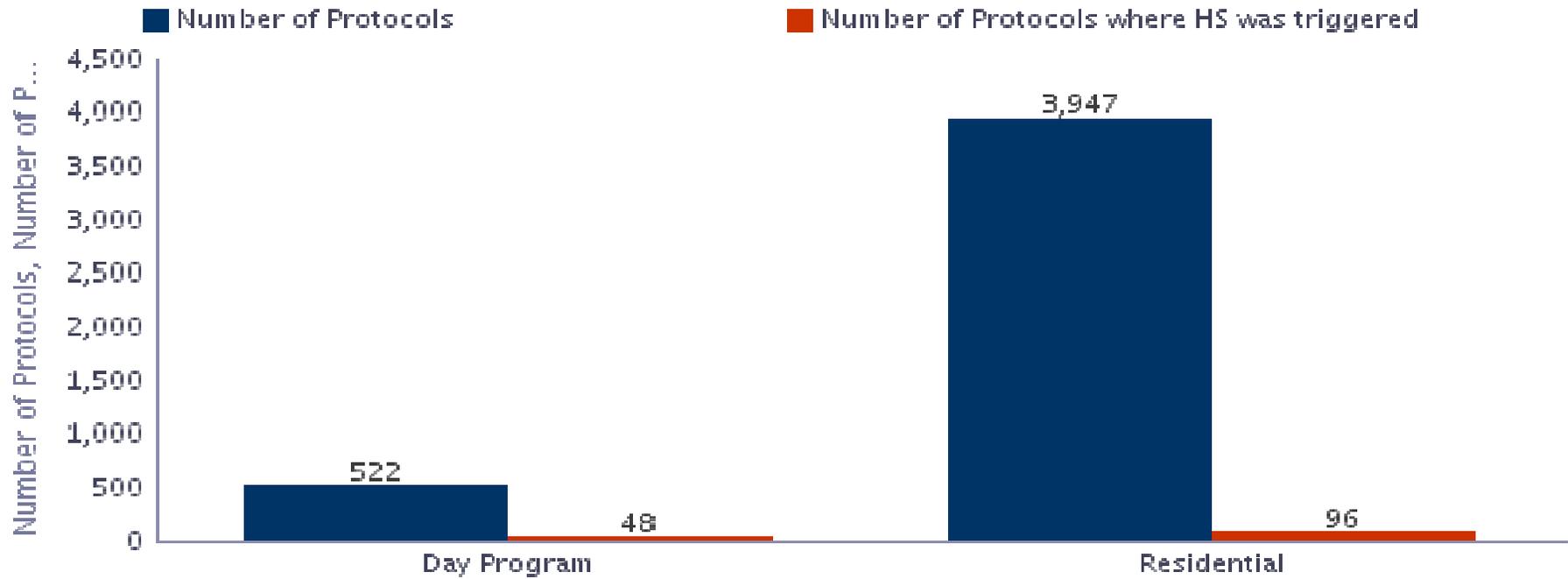
Note: Represents number of closed/completed protocols and does not include protocols that are open, started or under review. These numbers also do not reflect ICFs, which (as defined by federal CMS) trigger Heightened Scrutiny. Data extracted 7/5/16.



Heightened Scrutiny Triggered in Day Programs – Status Update

Approximately 10% of Day Program sites have triggered Heightened Scrutiny

Heightened Scrutiny Protocols by Type



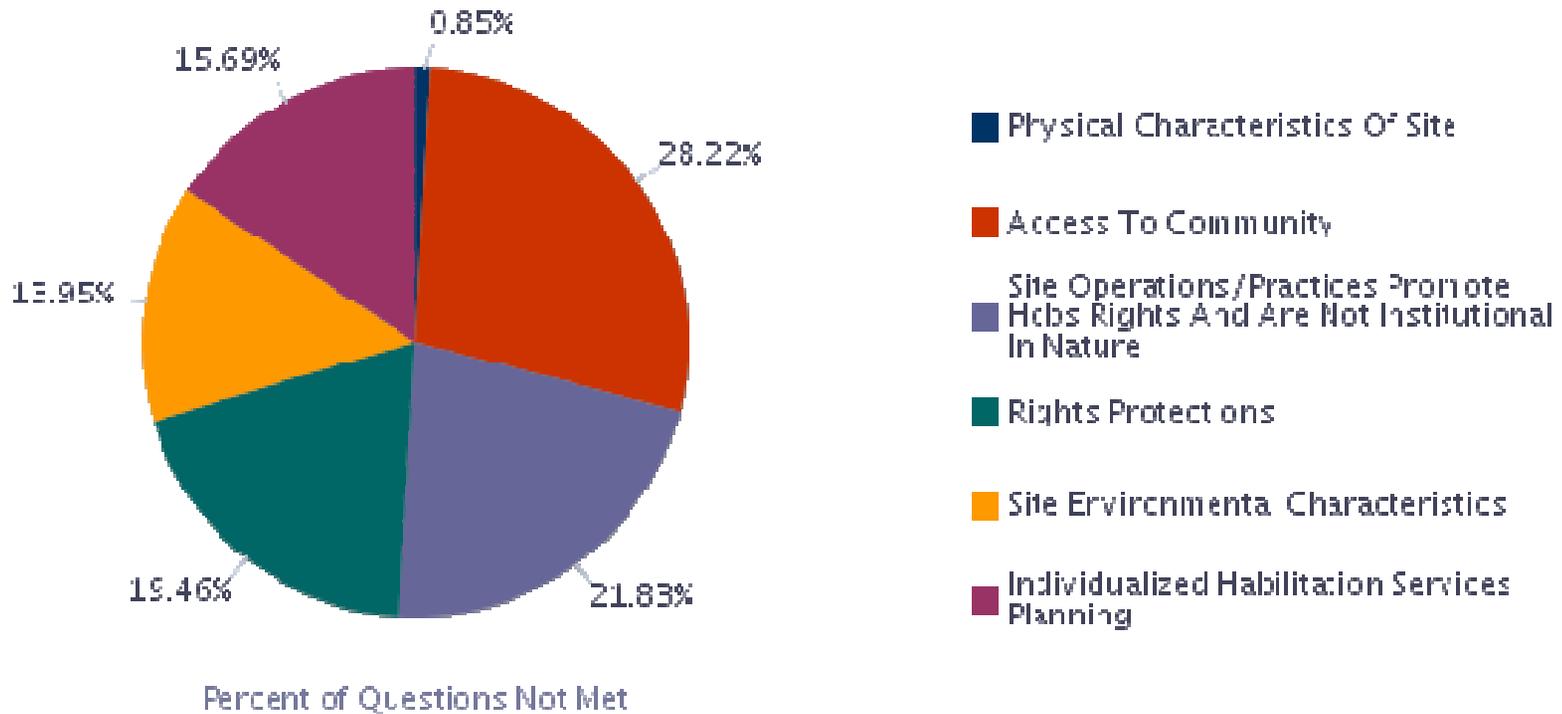
Program Type – Residential Includes: CR(SUPPORTIVE & SUPERVISED GROUP HOME), IRA, IRA-C

Note: Represents number of closed/completed protocols and does not include protocols that are open, started or under review. These numbers also do not reflect ICFs, which (as defined by federal CMS) trigger Heightened Scrutiny. Data extracted 7/5/16.



Standards Not Met for Heightened Scrutiny Sites

Percent of Questions Not Met



Note: Represents number of closed/completed protocols and does not include protocols that are open, started or under review. These numbers also do not reflect ICFs, which (as defined by federal CMS) trigger Heightened Scrutiny. Data extracted 7/5/16.

DQI Validation in Heightened Scrutiny Triggered Sites

- Beginning October 2016, DQI will front load Site Reviews in triggered sites in first half of survey year
- DQI will validate Compliance Plan submitted:
 - Implementation status
 - Effectiveness in meeting compliance goals
- DQI validation included as a consideration in support of compliance needed for CMS Evidence Package



Where to Get More Information?

OPWDD HCBS Settings Toolkit:

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

www.hcbsadvocacy.org

CMS Toolkit: www.medicaid.gov/hcbs



Type “HCBS Settings Toolkit” in Search on www.opwdd.ny.gov Home Page

The screenshot shows a web browser window displaying the "HOME AND COMMUNITY BASED SERVICES" page. The page title is "HOME AND COMMUNITY BASED SERVICES" and the URL is "http://www.opwdd.ny.gov/opwdd_services_supports/HCBS/hcbs-settings-toolkit". The page content includes a navigation menu on the left, a main content area with a header "HOME AND COMMUNITY BASED SERVICES", and a search bar. The main content area is organized into several sections:

- HCBS Settings Toolkit**
- Tools and Information**
 - [Regulatory Requirements for HCBS Settings](#)
 - [Crosswalk POMs Comps Ethics HCBS PCP Promote](#)
- Questions and Answers:**
 - [When honoring a person's right to choose where they live, what is expected of providers?](#)
- Person Centered Planning Resources:**
 - [Person Centered Planning](#)
 - [DQI Person Centered Planning Checklist 10/2015 - 9/2016](#)
 - [CQL POMs](#)
 - [Strengths and Risks Inventory Tool](#)
- Assessment, Survey Tools and Guidance:**
 - Residential Assessment:**
 - [ADM #2014-04 OPWDD Home and Community Based Settings Preliminary Transition Plan Implementation](#)
 - [Guidance Document for Residential Assessment](#)
 - [Part I, Person Centered Residential Assessment Tool](#)
 - [Part II, Residential Assessment Site Review Tool](#)
 - [DQI Review tool for Heightened Scrutiny / HCBS](#)
 - [DQI Heightened Scrutiny / HCBS Settings Tool](#)
 - Residential Assessment Final Data and Quality Improvement Resources:**
 - [HCBS Settings Assessment Report Letter](#)

The left sidebar contains a list of links: HCBS Home, Announcement for Public Comment on the Waiver/HCBS Transition Plan, Transition Plan, New York State HCBS Settings WebPage and Transition Plan, Stakeholder Workgroup Resources, CMS Information on HCBS Settings, and HCBS Settings Toolkit (highlighted).



Comments



Questions

For HCBS Settings general questions:
Catherine.I.Holmes@opwdd.ny.gov

For DQI Related Questions: Quality@opwdd.ny.gov

