



**Office for People With
Developmental Disabilities**

HCBS Settings Transition Stakeholder Advisory Steering Committee

February 4, 2015

Topics

- Major updates since this group last met on 8/28/14
- long-awaited CMS guidance for Non-residential settings issued mid Dec. 2014
- Revisions to OPWDD-Specific Transition Plan to include non-residential settings
- Next Steps



Status Update

Full System Compliance Required No
later than March 2019

4 years left!



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What Have We Done to Date?

March 2014- Present

- ❑ Developed Preliminary Transition Plan and implemented public input process
- ❑ Extensive Stakeholder Input and Operation of Regulatory Reform/HCBS Steering Committee for Residential Assessment Activities
- ❑ Developed/Issued ADM—October 20, 2014
- ❑ Developed Assessment Tools and Interpretive Guidance



What Have We Done to Date? March 2014-Present

- ❑ DQI Surveyor training completed October 9th
- ❑ Provider Training on October 22nd
- ❑ Implemented HCBS Settings Residential Assessment for IRAs/CRs began November 2014 through September 2015
- ❑ CQL POMs workshop for DQI staff and state operations staff ongoing November 2014-October 2015



What's Next?

- CMS issued its final guidance on HCBS settings in mid December 2014 for Non-residential Settings
- This triggers the need to update OPWDD's preliminary Transition Plan to include non-residential settings
- Then continue working with stakeholders on implementation of the Transition Plan



Revisions to the OPWDD Transition Plan Timeline

Early Feb 2015:

Reconvene Stakeholder
work group
Draft Revisions to TP

Mid Feb 2015:

Implement formal public
input processes for at
least 30 days

Prior to April 1, 2015:

Compile summary of
public input and OPWDD
responses
Incorporate into revised
Transition Plan



Revised Transition Plan Action Items

Jan.-April 2015

- Legislative Authority
- Resubmit Waiver

July 2015

- Anticipated Waiver Approval
- Develop PCP Regs effective 10/1

June 2016

- Conclude development of HCBS Waiver Regulations

October 2018

Ongoing monitoring/
Compliance with HCBS Settings Regs



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STATE OF
OPPORTUNITY.

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General Transition Plan Action Items

NYS Plan to Increase Competitive Employment Incorporated

Increase Self-Direction Opportunities Plan Incorporated

CQL POMs Training; other communications and training initiatives

Development of Person Centered Protocol Pilot late 2015/early 2016

Implement NYS START Program fully by October 2018



What is “Heightened Scrutiny”?

- A CMS process for submitting evidence to the CMS Secretary for settings “presumed not to be HCBS” where the State finds that the settings are not institutional and do not isolate people with disabilities and therefore can meet HCBS.
- State must overcome the presumption that such settings are not HCBS



Triggers for “Heightened Scrutiny”

- Locations that have qualities of institutions;
- Settings located in a building on the grounds of a public or private institution;
- settings that provide inpatient treatment;
- Settings immediately adjacent to public institutions;
- Any other setting that has the effect of isolating individuals from the broader community;

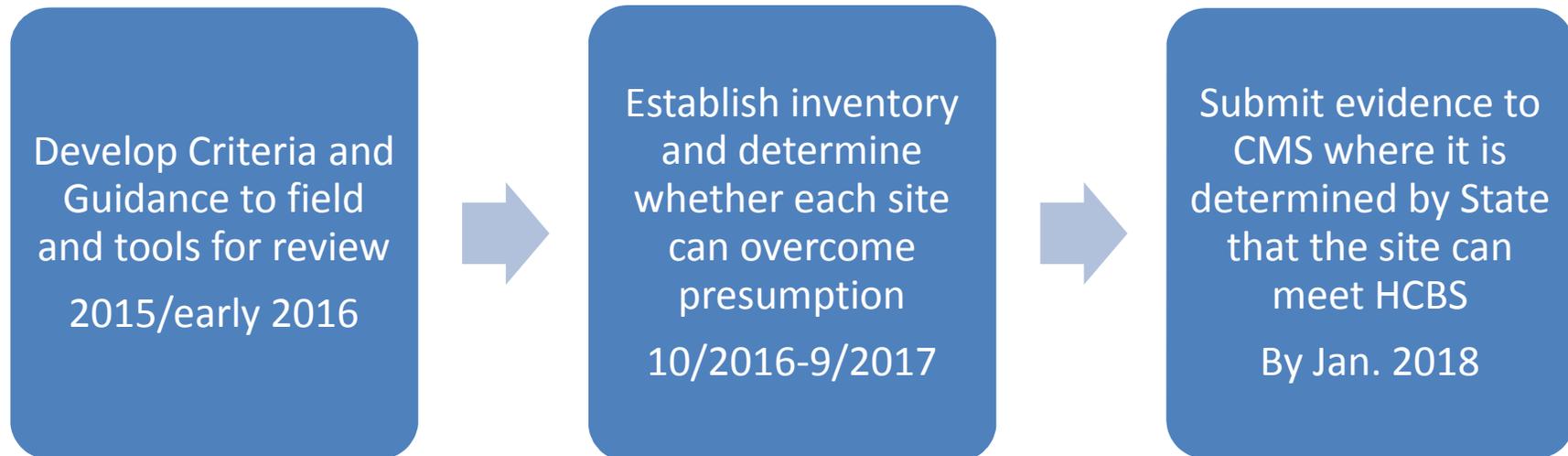


Triggers for “Heightened Scrutiny”

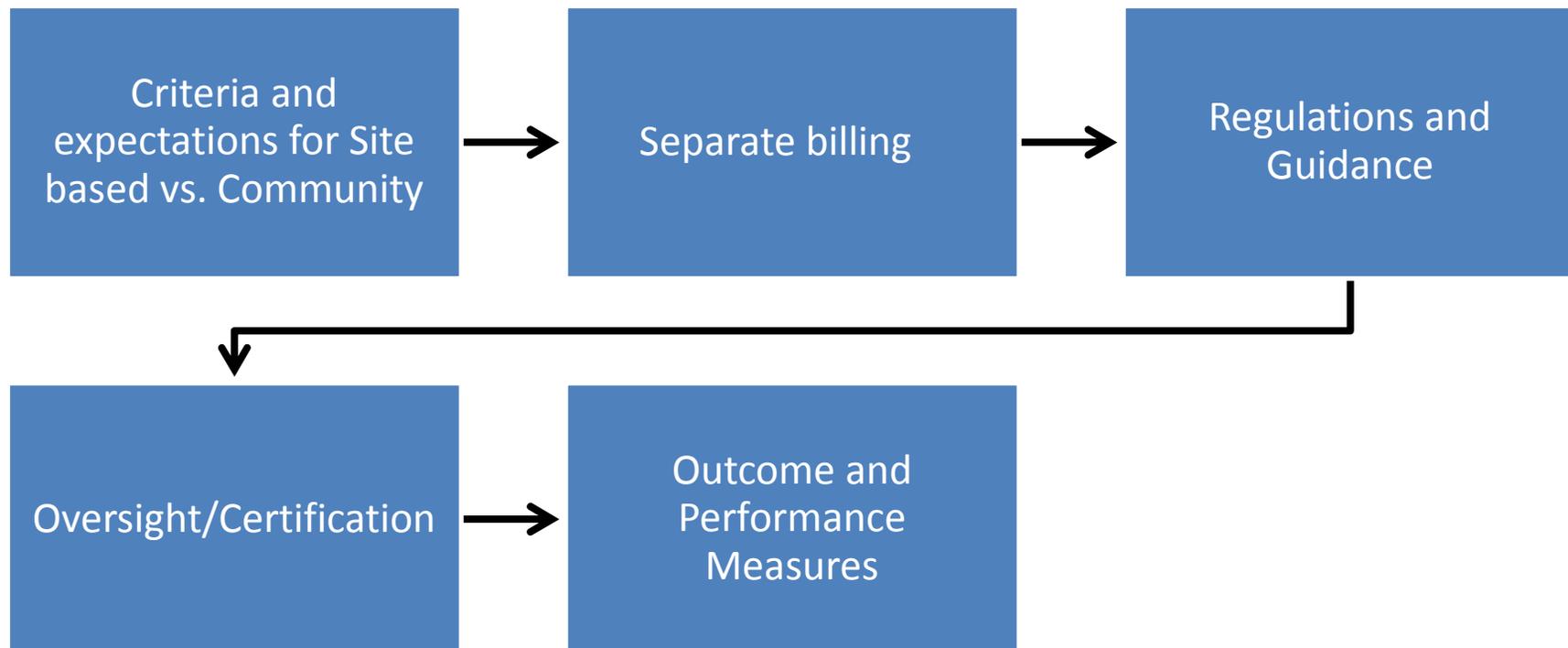
- Settings designed to provide multiple types of services and activities on-site;
- People in setting have limited, if any, interaction with broader community;
- Settings that use/authorize interventions/restrictions used in institutional settings;
- Settings that potentially isolate e.g., farmstead or disability specific farm community; gated community; residential schools;
- Multiple settings co-located and operationally related;
- CMS indicates that large settings may be subject to heightened scrutiny
- **CMS has not provided non-residential examples of “settings that isolate” but has made clear that general guidance is applicable to all settings**



Implement “Heightened Scrutiny” Process



Remediation Plan for Day Habilitation and Prevocational Services – Achieve the following no later than October 2018



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

- ✓ Exploratory Questions for non-residential settings
- ✓ Final Q and A



CMS Non-Residential Settings Guidance -- Purpose

- Offer **considerations** as States assess non-residential settings
- Serve as **suggestions** to assist states and stakeholders in understanding what indicators might reflect the presence or absence of each quality in a setting
- States tailor their review to the type of services relevant in their state



CMS Non-residential Guidance

- Nature of service will impact how the state addresses HCBS settings requirements especially when the service is highly clinical/medical in nature, e.g. medical adult day programs
- CMS makes clear that the exploratory questions do not constitute guidance on states' obligations under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, as interpreted by the Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999).



CMS Non-residential settings Guidance

- The state should consider whether the right service is being appropriately provided to achieve its goal, including the duration of the service and the expected outcomes of the service



Home and Community Based Day Service Setting Qualities:

- There is **interaction** with the public
- individuals are provided with contact information, access to and training on the use of **public transportation**, if available
- tasks and activities are comparable to tasks and activities for people of similar ages— **AGE APPROPRIATE**
- schedules are **individualized**



Home and Community Based Day Service Setting Qualities

- Services are provided in a community/building that is located among other residential buildings, private businesses, retail businesses, restaurants, doctor's offices, etc. and facilitates **integration** with the greater community
- There are opportunities for regular meaningful non-work activities in **integrated** community settings that are responsive to the goals, interests and needs of individuals



Institutional Qualities of Presumptively Non-HCB Day Settings:

- Day settings that are designed **specifically** for people with disabilities
- Day settings that are comprised **mostly** of people with disabilities and staff providing services
- Day settings that provide **multiple types of services** in one setting
- **CMS does clarify that the regulation does not “prohibit facility-based or site-based settings.” Such settings, however, “must demonstrate the qualities of HCB settings, ensure the individual’s experience is HCB and not institutional in nature,” and ensure that they do not “isolate the individual from the broader community.”**



CMS Guidance Regarding Non-Residential Settings (Dec.2014)

- Although facility and site based day service settings are not per se prohibited they must be closely examined and may be unallowable “settings that isolate”
- States have flexibility to limit or even prohibit facility or site-based day services



Americans With Disabilities Act (ADA) and Olmstead:

- The ADA defines a **SEGREGATED DAY SETTING** as: those “*that provide for daytime activities primarily with other people with disabilities*”.
- The ADA defines an **INTEGRATED SETTING** as: those that provide people with disabilities “*the opportunity to live, work, and receive services in the greater community*”.
- CMS states that “people may receive services with other people who have either the same or similar disabilities, but must have the option to be served in a setting that **is not exclusive** to people with the same or similar disabilities.”



Committee Work Going Forward



Committee Work Going Forward

Two initial Subgroups Meet March– Summer 2015

Day Habilitation/Prevocational

- Written recommendations for Criteria based on CMS guidance and OPWDD charge
- Will use existing prevocational services group

“Heightened Scrutiny”

- Develop written guidance to field clarifying what triggers heightened scrutiny
- Develop the “evidence” package and review tool(s)



Next Immediate Steps for this Committee

1. Respond to Maryellen by cob 2/6 with any suggestions for the Transition Plan before it goes public on 2/10 (you can still also submit formal public comments through the process)
2. Respond to Maryellen by 2/20 with recommendations for heightened scrutiny subgroup and contact info for potential members; and any suggestions for the subgroup charges

(Note: OPWDD will select no more than 10 people for subgroup to keep manageable)



Opportunities for Public Input

Mid Feb-March 18th

- E-mail: Quality@opwdd.ny.gov Attention: HCBS Settings
- Snail Mail: OPWDD 44 Holland Ave, 4th floor, Attention HCBS Settings
- Verbal comments – Call Alicia Matuliewicz 518-473-9050
- Webinars on 2/23 and 2/24

