

Person-Centered Planning ASSESSMENT OF PUBLIC COMMENT

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning person-centered planning.

Comment: A commenter sought an effective date of March 2019, consistent with the date upon which full compliance with the federal Home and Community Based Services (HCBS) settings regulations is required. Another commenter suggested an October 1, 2018 effective date to coincide with OPWDD's target date to initiate HCBS settings compliance reviews.

Response: The federal person-centered planning regulations in 42 441.301(c)(1)-(3) went into effect immediately upon promulgation of the rule in March 2014, without a transition period. OPWDD is adopting the regulations as proposed.

Comment: A commenter suggested that section 636-1.4 pertaining to documentation of rights modifications be revised to state that this section only applies to provider-owned or controlled residential settings.

Response: Any rights modifications for recipients of services, regardless of living situation, are governed by the regulations. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that a Medicaid Service Coordinator (MSC) may not be aware of rights restrictions imposed on others that may impact the rights of an individual on the MSC's caseload.

Response: The person-centered planning process should identify any rights modification impacting an individual. OPWDD is adopting the regulations as proposed.

Comment: Two commenters sought clarification regarding the rights modifications in section 636-1.4 and existing practices involving human rights committees.

Response: The requirements in section 636-1.4 do not supersede requirements in section 633.16 for human rights committee review of behavior support plans. Committee reviews will still be required where applicable. OPWDD is adopting the regulations as proposed.

Comment: Several commenters remarked that the requirements in section 636-1.4 of the proposed regulations increase the responsibilities of the service coordinator with regard to documentation in the individualized service plan (ISP).

Response: OPWDD considers that the proposed regulations implement many existing system practices into regulation. OPWDD is adopting the regulations as proposed.

Comment: A commenter suggested that the requirement that the service coordinator issue written notification of the right to a person-centered planning process and plan be incorporated into the Service Coordination Basic Agreement Form.

Response: OPWDD will consider the suggestion.

Comment: A commenter remarked that for individuals that have an ISP in place on the effective date of the regulations, November 1, 2015, the person-centered planning requirements take effect at the individual's next review, which could also be November 1, 2015. The commenter suggested delaying the effective date for this requirement to apply to reviews scheduled after December 1, 2015.

Response: Since providers were notified of the requirements three months in advance of their effective date, providers have had adequate time to prepare for compliance with this requirement. OPWDD is adopting the regulations as proposed.

Comment: Several commenters sought clarification regarding the following:

- “unpaid supports” as phrased in paragraph 636-1.3(b)(4);
- “clear conflict of interest guidelines for individuals” as phrased in paragraph 636-1.2(b)(5);
- clarification of the term "self-direct" as phrased in paragraph 636-1.3(b)(5);
- “reassessment of functional need” as phrased in paragraph 636.-1.3(f)(5);
- paragraph 636-1.3(b)(8) that requires documentation in the person-centered service plan of the risk factors and measures in place to minimize risk, including individual specific back-up plans and strategies when needed.

Response: OPWDD will issue guidance on the regulations that will provide the requested clarification.

Comment: Several commenters indicated that requiring the person-centered service plan to be signed by the provider(s) responsible for implementing the plan could cause significant logistical concerns.

Response: Obtaining all required signatures is necessary to assure that all providers implementing the person-centered service plan are aware of the plan. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that the proposed regulations conflict with existing practice since existing practice requires the person responsible for writing the habilitation plan to be present at the plan review meeting.

Response: Federal HCBS regulations require that only those persons chosen by the individual be present at the person-centered planning meeting. OPWDD is adopting the regulations as proposed.

Comment: Several commenters believed that the requirement concerning documentation that the residence was chosen by the individual and that the individual had alternative residential settings to consider is unrealistic.

Response: Documentation of choice in residential setting is a clear requirement of the federal regulations. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that the proposed regulations do not address federal HCBS settings requirements in 42 CFR 441.301(c)(4).

Response: 42 CFR 441.301(c)(4) is an HCBS setting requirement that will be addressed in future OPWDD regulations. The proposed regulations are only meant to implement federal HCBS requirements for a person-centered planning process and plan.

Comment: A commenter remarked that the proposed regulation uses the wording "at least semi-annually" in reference to review requirements for the person-centered service plan. The commenter recommends using existing language, "twice annually."

Response: OPWDD notes that the language used in the regulation is consistent with language in existing regulation in subpart 635-99. OPWDD is adopting the regulations as proposed.

Comment: A commenter agreed with the requirement to document risk factors and measures to minimize risk, and suggested that additional guidance regarding the health and safety risks to the individual be provided.

Response: OPWDD will consider providing additional guidance. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that many individuals are unable to easily communicate their preferences and goals and that OPWDD should clarify that outcomes or results be in areas of the individual's life that he or she considers most important.

Response: OPWDD will consider providing additional guidance. OPWDD is adopting the regulations as proposed.

Comment: A commenter sought clarification concerning the rights of an individual as opposed to a person with decision-making authority conferred on him/her by state law to make decisions on behalf of the individual.

Response: OPWDD will provide guidance on the roles of decision-makers and the individuals in the person-centered planning process. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that a provision of the regulation conflates the requirement that the plan respond to individual preferences with the requirement that the plan ensure that unnecessary or inappropriate services are not provided. The provider suggested revisions to prevent confusion regarding how planners are to weigh individual preferences against the prohibition of unnecessary or inappropriate services.

Response: OPWDD will consider providing additional guidance. OPWDD is adopting the regulations as proposed.

Comment: A commenter remarked that the proposed regulations do not fully address the federal requirement in 42 CFR 441.301(c)(1)(iv) that providers of service must not provide case management to an individual except as allowed in the federal regulation.

Response: OPWDD has defined conflict of interest provisions within the recently approved HCBS comprehensive waiver and expects to address this in the future. OPWDD is adopting regulations as proposed.