Enriching Individuals’ Lives Through Choice and Inclusion: The HCBS Settings Rule

Presented by OPWDD’s Division of Quality Improvement (DQI) and Division of Policy and Program Development (DPPD)

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Purpose

• OPWDD has been steadily moving towards implementation of the Home and Community-Based Services (HCBS) Settings Federal Rule since 2014.

• Programs and services delivered under the OPWDD HCBS Waiver must demonstrate true person-centered planning, individualized service delivery, and effective community integration to comply with the HCBS Settings Rule.

• Providers have been finding innovative ways to implement HCBS settings requirements despite significant workforce shortages and have been making positive differences in people’s lives for years now.

• This training serves as another HCBS Setting resource that provides additional insight, examples, suggestions, and recommendations for all levels of staff, from administration and boards of directors to direct support professionals.
Objectives

This training will provide staff with an increased understanding and awareness of HCBS Settings requirements, including:

• Characteristics of integrated settings that support individualized activities and autonomy
• Ensuring individual HCBS rights
• Supporting person-centered habilitation planning
• Facilitating informed decision-making and individualized choices
• Offering meaningful community integration opportunities
• Strategies for maintaining sustained long-term systemic compliance
• Resources and tools for provider self-assessment of HCBS Settings compliance
HCBS Settings:
Background and Overview
HCBS Settings: Background and Overview

• What are Home and Community Based Services (HCBS)?
  o Medicaid HCBS are services delivered in integrated settings that do not isolate individuals receiving Medicaid HCBS from the broader community of people not receiving Medicaid HCBS

• What types of settings cannot deliver HCBS?
  o Any type of institutional setting (e.g., ICF, hospital, nursing facility) and other settings that isolate individuals from the broader community
HCBS Settings: Background and Overview

• How does OPWDD and Centers for Medicare & Medicaid Services (CMS) define “settings that isolate”?
  o Individuals have limited interaction with the broader community
  o The setting restricts activities outside of the setting or restricts choice of services
  o The setting does not facilitate opportunities to access the broader community, consistent with the individual’s Life Plan
HCBS Settings: Background and Overview

• HCBS Settings Federal Rule
  o Effective March 17, 2014
  o Person-Centered Planning Process - No transition
  o Qualities of HCBS Settings, Development of Transition Plan for compliance, and Heightened Scrutiny - Nine (9) year transition

• End of Transition is March 17, 2023
  o Compliance required for all settings to continue receiving federal funding
  o Statewide Corrective Action Plan (CAP) submission by Department of Health (DOH) for standards impacted by the Public Health Emergency (PHE)

• Transition Plan Approval
  o OPWDD has a section of the DOH Statewide Transition Plan
  o Statewide Plan is out for public comment (posted to website and sent to providers/stakeholders on 12/7/22) and will be submitted to CMS for final approval
HCBS Settings: OPWDD Regulations

• 14 NY CRR 636
  o 636-1
  o 636-2

• Focus of Regulation
  o Person-centered planning
  o HCBS general requirements

• Effective Dates
  o November 1, 2015
  o October 1, 2021
Questions?

Please email Quality@opwdd.ny.gov
Characteristics of Integrated Settings
Important Distinctions

- Words that reflect **Non-Institutional** vs **Institutional** practices
  - Access vs Restrictions
  - Dignity vs Dishonor
  - Natural Supports vs Paid Supports
  - Autonomy vs Control
  - Person-Centered vs Staff Convenience
  - Privacy vs Open
  - Choice vs Coercion
  - Dignity of Risk vs Fear
  - Broader Community vs Provider Controlled
Institutional vs HCBS Settings: Examples

<table>
<thead>
<tr>
<th>Institutional Practices</th>
<th>HCBS Settings Compliance Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals are forced to eat meals in the dining room, at specified times</td>
<td>Individuals are free to eat when and wherever they would like to eat</td>
</tr>
<tr>
<td>Individuals have to wait for staff to unlock doors for them</td>
<td>Individuals can access their homes independently</td>
</tr>
<tr>
<td>Individuals must follow restrictive house rules that infringe upon their rights</td>
<td>Individuals exercise their rights and aren't forced to follow house rules</td>
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# Institutional vs HCBS Settings: Examples

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<tr>
<td>Individuals can only have visitors during specified times, set by a provider</td>
<td>Individuals can have visitors whenever they would like to do so</td>
</tr>
<tr>
<td>Individuals are only allowed to participate in group activities</td>
<td>Individuals engage in meaningful activities in their broader communities</td>
</tr>
<tr>
<td>Individuals adhere to a strict shower schedule, created by the provider</td>
<td>Individuals can shower whenever they want and as often as they would like</td>
</tr>
</tbody>
</table>
Community and Community Integration: Defined

• **Community**
  - Commonly refers to physical places in and around where a person lives, works, and socializes
  - In this situation, under the Settings Rule, Community must also include meaningful interaction with people not associated with the setting or provider-controlled location

• **Community Integration**
  - The opportunity for individuals receiving HCBS to live in - and have full access to - their community, to the same extent as those individuals not receiving HCBS
  - Valued and treated with dignity and respect
CMS Guidance

“Centers for Medicare & Medicaid wishes to remind the state that states cannot comply with the home and community-based settings rule simply by bringing individuals without disabilities from the community into a setting.”

• Compliance requires a plan to integrate beneficiaries into the broader community.

• **Reverse Integration**
  - A model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries in the facility-based setting.

• Reverse Integration, in and of itself, is **not** a sufficient strategy for settings to meet the integration requirements outlined in the rule.
Community Integration Scenario #1

- Harry met Sally at Day Program and they have been dating each other for three years.
- A local restaurant closes their doors to the public on Tuesdays for “Disco Night”, which is just for individuals who have developmental disabilities.
- Harry and Sally love disco night.
- It is the only time that they can consistently see each other, outside of Day Program.

Is this community integration?
Community Integration Scenario #2

• Jason lives with his Family Care provider.
• Jason would prefer to join a men’s bowling league, but his Family Care provider doesn’t want him around people drinking alcohol.
• Jason bowls in a league that is just for people with developmental disabilities.
• The league rents out the entire bowling alley so that he and his peers can have the place to themselves.

Is this community integration?
Community Integration Scenario #3

• Norm enjoys painting in an art class, at a Community Center.
• The class ended at a time that made it difficult for staff to pick him up, which was preventing him from attending as often as he liked.
• Norm was taught how to use public transportation.
• Now his Direct Support staff brings him to art class every week and he rides the bus home afterwards.

Is this community integration?
Community Integration Scenario #4

• Whitney and Bobby attend the same church.
• On Sunday mornings, staff from Bobby’s IRA drops him off at Whitney’s IRA.
• A member from their church, who lives around the corner from Whitney, picks them up on her way to church and she brings them home when church is over.
• Sometimes they stop and eat lunch on the way home from church.

Is this community integration?
## Community Integration Do’s & Don'ts

<table>
<thead>
<tr>
<th>Community Integration Do’s</th>
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<tbody>
<tr>
<td>Support an individual’s personal preferences</td>
<td>Not supporting what an individual prefers to do</td>
</tr>
<tr>
<td>Engage in meaningful community activities</td>
<td>Doing something just to say that you did so</td>
</tr>
<tr>
<td>Provide training to increase independence</td>
<td>Not allowing individuals the dignity of taking risks</td>
</tr>
<tr>
<td>Involve individuals in planning activities</td>
<td>Making plans for an individual</td>
</tr>
<tr>
<td>Provide individual or small group activities</td>
<td>Only doing large group activities that are convenient</td>
</tr>
<tr>
<td>Offer a wide range of community activities</td>
<td>Limiting the opportunities that an individual has</td>
</tr>
<tr>
<td>Support individuals with employment activities</td>
<td>Not ensuring transportation to and from work</td>
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</table>
FAQ: What if someone does not like to participate in community activities and consistently refuses to go?

• Employ a **person-centered** approach; discuss **and document** the individual’s specific preferences and interests as well as dislikes and refusals.

• Document the attempts and choices offered, the individual’s response and the effort by the program and staff to encourage the individual whenever possible.

• Exposure to new community experiences can stimulate new hobbies and interests so keep offering various different types of new community activities; consider internet searches with the individual to generate ideas and discussion.

• Experiment with and document what is more successful (e.g., small group, different time of day, 1:1, alone or with preferred friend, quiet places or large crowds).
Questions?

Please email Quality@opwdd.ny.gov
Person-Centered Services and Informed Choice
Essential Components of Person-Centered Services

- Person-Centered Thinking
- Person-Centered Planning
- Person-Centered Practice
Essential Components of Person-Centered Services

• Person-Centered **Thinking**
  o Balancing what’s important **to** the individual, with what’s important **for** the individual.
    ▪ Consider what’s important **to** the individual (e.g., friendships, family, employment, life goals and dreams).
    ▪ Now think of what’s important **for** the individual (e.g., safety, medication, housing, food).
Essential Components of Person-Centered Services

- Person-Centered **Planning**
  - Person-centered planning should be happening **all the time**.
  - Goals/dreams change often. Person-centered planning results in a plan that is a living, fluid document that is **always changing**.
  - Person-centered planning is a process led by the individual receiving services, to the fullest extent possible, and includes the people the individual wants to be involved.
  - The process includes providing information and support to ensure the individual directs the process and is enabled to make **informed decisions and choices**.
Essential Components of Person-Centered Services

• Person-Centered Practice
  o The many ways we provide care, support, and services that allow for all individuals receiving services to have:
    ▪ Control over their space and resources
    ▪ Involvement and opportunities to engage with people in the communities where they live, work, and play
Informed Choice

• Informed choice means that individuals can make knowledgeable decisions
  o These decisions may reflect their own culture, values, and views
• Person-centered planning begins with informed choice
  o Includes unbiased, evidence-based information about the full range of options
  o One must consider the individual and use appropriate communication to give them the information needed to make a truly informed choice
  o While one may be able to “check a box” by handing an individual, an advocate, or family member a “rights packet,” this may not always be the best mode to inform that person of their rights
• Informed choice is most effective when an individual knows how to use it.
Informed Choice

• Informed Choice includes
  o The individual leads the planning process
  o The individual’s representative(s) participate only as needed and as defined by the individual (unless decision-making authority was granted to a legally appointed representative)
  o The planning process includes people chosen by the individual receiving services and/or their representative
  o The process is timely and occurs at times and in locations preferred by the individual
Informed Choice

• All agencies must develop and implement flexible policies that allow people the opportunity to make meaningful choices.
  o Sometimes agency policy is created without consideration of unique, individualized circumstances.
  o While there is a responsibility to ensure a reasonable degree of safety, this should always be balanced with ensuring a person’s dignity of risk.
• A person-centered approach to informed choice is to always presume competence.
Informed Choice: Key Takeaways

• Describe any risks and benefits in straightforward terms
• Adopt open and flexible policies that effectively promote the full range of options and possibilities
• Provide relevant information for the individual to make an informed choice
• Remember that informed choice is an ongoing process
• Support individuals and their representatives to reach decisions in ways that are sensitive to the individual’s strengths, resources, needs, and experiences
• Consider the use of communication aids during discussions  
  o E.g., visual aids, photos, pictures, diagrams, objects
Questions?

Please email Quality@opwdd.ny.gov
Role of Care Manager/CCOs vs. Habilitation Provider in Person-Centered Planning
Role of the Person Receiving Services

• The individual should be central to discussions and observations aimed to better understand their interests, preferences, choices, and values.
  o How and where they prefer to spend their days?
  o Where and how they choose to live?
  o Who are the people important to them?
  o What places do they want to go?
  o What do they like/don’t like about their daily life?
  o What makes them happy?
Role of the Care Manager

• Person-centered planning must be independent and free of conflicts-of-interest
• The Care Manager is responsible for:
  o Working with the individual receiving services to determine who should be involved in their planning process
  o Facilitating plan meetings
  o Aiding the individual in leading the team and discussion
Role of the Care Manager

• Ensures that choices in services and supports are based on the individual’s interests and needs
  o Provide alternatives to enable the individual’s access to services or activities in the community
  o This includes:
    ▪ Access to transportation and flexible schedules
    ▪ Choice in medical providers
Role of the Care Manager

• There should be a direct connection between an individual’s hobbies, interests and identified goals and services provided for the individual.
  o For example: If a person has expressed interest in employment or volunteer opportunities, there should be evidence that service and support choices have been discussed, researched and/or obtained.
  o Has there been a discussion between the person and their team about whether they want a job and if they know that they have the right to have one?
  o Has there been person-centered discussions about alternatives to a job?
Role of the Care Manager

• An individual’s interests and needs are ever-changing
  ◆ A Care Manager must be aware of these ongoing changes and assist the individual with adjusting their plan, services, and supports accordingly
    ▪ This is best achieved with consistent and effective communication with the individual, their service providers, and other members of their person-centered team

• A Care Manager updates the Life Plan in a timely manner
  ◆ Examples of an outdated Life Plan:
    ▪ Having the same age in their profile for several years, recent medical diagnoses not listed, important people in the person’s life not listed, current hobbies/interests not listed
Role of the Care Manager

In the “I get the last word” section of the life plan, which choice best evidences a person-centered plan?

1. “I am satisfied with all my current services and providers.”

2. “Frank was asked if he was happy with all his services, and he nodded ‘yes’ to confirm.”

3. “Hotdog.”
Role of the Care Manager: Key Takeaways

• A Care Manager should ensure that the individual’s services and providers are reflective of their current needs, wants, and/or interests.
  o An individual, like anyone, is always growing and evolving.
  o An individual gains skills, develops new interests, gains/loses relationships, and has changing medical needs.

• A Care Manager should ensure that the individual has reliable access to the services that the individual desires and which they are currently receiving.
  o This should be reflected in their Life Plan and related documents.

• A Care Manager is responsible for maintaining effective and consistent communications with all members of the individual’s support team.

• The Care Manager must ensure that the Life Plan is current and accurately reflects the needs, wants, goals, and the voice of the individual.
Role of Habilitation Providers

• HCBS providers are an important and equal player in person-centered planning on the individual’s chosen team
  o Providers have been chosen by the individual to be part of their plan
  o The provider’s role is to deliver the services chosen by the individual and outlined in the plan
• Therefore, providers should always assume an active and meaningful role in the planning process
Role of Habilitation Providers

• The provider is responsible for ensuring that the individual's plan is implemented
  o Are the individual's interests represented by their goals and outcomes?
  o Is the plan reflected in the day-to-day activities of the individual?
  o Make sure that goals, outcomes, safeguards etc. are included and accurate.
  o Review, acknowledge and agree to the role they have in the individual’s plan.
Role of Habilitation Providers

• Examples of what to avoid
  o All individuals at a Day Habilitation setting having the same goal (e.g., wipe tables, wash hands) is **not** a person-centered approach
  o An individual should not have a goal that they are achieving with 100% consistency month to month without exploring a change in how to discuss and **revise** this goal **with** the individual to reflect what their current strengths, desired outcomes, and interests are
  o Having blanket COVID-19 outcomes for individuals, to increase their safety or protection from infection, resulting in every individual having the same goals for hygiene and cleaning

• Consistent communication between providers and other members of the individual’s team is crucial
Role of Habilitation Providers

• The role of the provider involves being a strong advocate for the individual and for their growth

• Provide alternatives and/or work to facilitate each individual’s access to services and activities in the community
  o This includes access to transportation and flexible schedules

• Remain aware of an individual’s changing wants/needs for new services or settings
  o Discuss with the individual and their team members any updates that are needed to plans, services, or settings
    ▪ This includes evolving medical needs
Role of Providers: DSPs

• Direct Support Professionals (DSPs) have a critical role in person-centered planning
• DSPs have:
  o Day to day involvement in individuals' lives
  o Experiences and proven methods for assisting individuals
  o Awareness of the provider agency’s existing practices and service settings
  o Ability to evaluate existing practices and provide insight for improvements
  o Awareness of solutions and strategies to minimize challenges and barriers
  o Knowledge of the individuals, their preferences, desires, strengths, values, services, and supports
  o Familiarity with the local community and ability to connect individuals to both formal and natural supports
  o Responsibilities in the person-centered planning process
Role of Providers: DSPs

• Documentation and DSP expectations
  o DSPs play a significant role in delivery of person-centered services, therefore, DSPs should play a role in the planning process
  o Key elements of DSP notes
    ▪ Detailed description of the service provided
    ▪ The role of staff in providing the service
    ▪ Details in how the service was received by the person
    ▪ Demonstrate an understanding of the plan/goal purpose
Role of Providers: DSPs

- DSPs Should Be Able to Explain
  - Why is the goal in place?
    - Did the individual choose the goal?
    - What does the individual hope to achieve?
  - How does the individual engage with the activity/goal?
    - Do they enjoy the goal?
  - How is the goal/achievement of goal measured?
  - Are there any changes needed or requested by the individual?
Role of Providers: Key Takeaways

• Service providers spend a significant amount of time with the individual
  o Providers are in the best position to know when changes are needed and/or wanted by the individual
• Providers have been chosen by the individual
  o Accordingly, they must assume an active and equal role in all person-centered planning
• DSPs are essential because of their knowledge of how the individual’s plan is working
• Documentation should indicate the services being provided and detail how the individual responded to the service
  o Do they like the goal? Is it too easy for them? Too difficult? Are changes needed or requested?
Questions?

Please email Quality@opwdd.ny.gov
Individual Rights
and
Examples of Deficient Practices
**Access:** to facility, transportation, to keys, to food at any time, to community, to visitors at any time, to personal resources

**Privacy:** includes not posting personal health information publicly, having visitors over in private, privacy during personal treatments

**Protections:** occupancy agreement, rights modifications process, being free from coercion

**Choice:** of daily schedule, of residence - including a non-disability setting, of roommate, of competitive employment, of right to person-centered planning
Accessibility

• The setting **must** be physically accessible
  o A person-centered approach requires that the person can move about and access their environment
  o Individuals should have access to common areas of the facility
  o Includes access to preferred food storage, laundry facilities, personal storage area
  o Is it possible to increase accessibility to these areas by changing the type of door or other simple modification?
  o Can individuals reach their preferred foods in the kitchen or are they out of reach?
Accessibility

- Can individuals in wheelchairs access areas of the facility the same way that others can?
- If accessibility modifications were made, could they be more independent in daily living tasks?
- Examples
  - Installing a lower kitchen counter for cooking and meal preparation
  - Installing a door to the laundry room that can be opened by an individual in a wheelchair by themselves
Privacy

• The individual must be afforded the right to have the level of privacy they desire
  o If that desire includes having a lockable bedroom door, one must be provided
    ▪ Only the individual and appropriate staff should have access
    ▪ How many individuals living in certified settings know of and/or exercise this right? (i.e., have their own keys to their home)
• Be wary of using “key assessment” forms to determine “capability” in handling keys instead of just asking an individual if they want their own key
• What would individuals say if someone asked them if they wanted to have their own key?
  o Be prepared for DQI to ask individuals that question during site surveys
• If the individual cannot physically use a key, there could be other ways of ensuring secure access (e.g., installing a door keypad, installing a different type of door handle)
## Access to Residence

<table>
<thead>
<tr>
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<th>Strategies/Alternatives for Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Individuals not given key(s) to the residence</td>
<td>• Agency training</td>
</tr>
<tr>
<td>• Residence exit doors with non-key mechanisms, individuals not afforded with a way to enter their residence (FOB)</td>
<td>• Mechanisms in place for individuals to freely enter and exit residence doors</td>
</tr>
<tr>
<td>• Exit doors locked/secured, individuals restricted from leaving the site without direct staff intervention to access the community, no accommodations made to freely exit</td>
<td>• Keys, codes, fobs, etc. provided to individuals</td>
</tr>
<tr>
<td></td>
<td>• Systemic person-centered policies and procedures</td>
</tr>
<tr>
<td></td>
<td>• Person-centered planning process for specific modifications</td>
</tr>
<tr>
<td></td>
<td>• Plan meets requirements for the rights modification</td>
</tr>
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<td></td>
<td>• No blanket modifications/restrictive systems</td>
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FAQ: Does OPWDD Have a Key Assessment Template to Share?

• No - A key assessment template document is not the recommended approach towards meeting this standard
  o A person-centered approach, such as a discussion with the individual regarding what their rights are, including the choice to have their own key to their house and bedroom, is the recommended approach.
    ▪ That discussion should be documented.
FAQ: Does OPWDD Have a Key Assessment Template to Share?

• Consider this scenario
  o During a site review, the DQI team asks an individual if they have a key to their bedroom and house, and they reply no but they would like one
  o DQI team then asks the individual if they knew that they have the right to have their own key and they respond no, they did not know that
  o Review of the individual’s file shows a key assessment document stating they refused one (or in some cases, not capable of handling one)
Key Assessment: Key Takeaways

• Unless there is a documented health and safety concern for use of a key, based on real data that is using the rights modification process, everyone has the right to have their own key if they want one

• If handling a key is not physically possible, there are other possible solutions, such as a keypad or different type of door handle

• This is considered to be an unmet standard by DQI if there is no evidence indicating why the individual is not able to have their own key, and there is no evidence that they were educated or made aware of this right (even if there is a document stating they refused one)
## Privacy

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<td>• No privacy during treatments/care of a personal nature</td>
<td>• Privacy must be assured during treatments and other services of a personal nature</td>
</tr>
<tr>
<td>• No privacy during visits with guests, phone calls, or video communications</td>
<td>• Person-centered planning process for specific modifications</td>
</tr>
<tr>
<td>• Personal information or conversations in the presence of others at the setting</td>
<td>• Keep individuals’ information confidential and secured</td>
</tr>
<tr>
<td>• Written information about the individuals accessible to others at the setting</td>
<td>• Refrain from discussing individuals’ information while others are present</td>
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# Privacy

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<tr>
<td>• Bedroom and bathroom doors lack locking mechanisms</td>
<td>• Bedroom and bathroom doors equipped with locks</td>
</tr>
<tr>
<td>• Bedroom keys not provided to individuals</td>
<td>• Keys provided to individuals</td>
</tr>
<tr>
<td>• Bedroom keys provided to personnel and others, not included in person’s plan or determined by individual and provider</td>
<td>• Person-centered planning process for all specific modifications</td>
</tr>
<tr>
<td></td>
<td>• Plan meets requirements for the rights modification</td>
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Privacy

• Specific Examples to Avoid
  o Leaving the bathroom door open while it is being used by the individual
  o Having someone meet with their significant other in the living room versus in private
  o Administering medications and/or posting medication and bowel management schedules in public common areas
## Access to Food Anytime

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<tr>
<td>• Food is not accessible 24 hours a day</td>
<td>• Staff Training</td>
</tr>
<tr>
<td>• Limited access to preferred food and beverages</td>
<td>• Physical accessibility to food (in reach)</td>
</tr>
<tr>
<td>• Lack of meal choices</td>
<td>• Varied and preferred choices available</td>
</tr>
<tr>
<td>• Food kept in locked: refrigerators, rooms, pantries, drawers, and cupboards</td>
<td>• Develop shopping lists for snacks and meal planning based on foods and beverages preferred by individuals at the setting</td>
</tr>
</tbody>
</table>
Access to Food

• Unless there is a legitimate and documented risk to an individual’s health or safety, an individual should be able to access the kitchen and/or have access to food at any time.

• Questions to ask
  o Do individuals have an opportunity to buy their own food, snacks or drinks?
  o Are they able to choose dinners? Is there a house menu?
  o Are individuals able to access food at 4:00pm? How about 2:00am?
  o Is food stored in locations accessible to the individuals?
    ▪ E.g., not stored on high shelves in a home with individuals in wheelchairs, not stored in inaccessible storage areas, such as a locked basement
  o Do they have to eat with everyone else or can they eat where they want to?
OPWDD Health and Safety Alert

Balancing the Right to “Access to Food” with Protections for Individuals in Home and Community Based Settings, July 2018

Link: balancing_hcbs_settings_requirements_health_and_safety_alert.pdf (ny.gov)
CHOICE

• Ensuring individual choice is an essential aspect of the HCBS Settings rule
• The choices and preferences of the individual must be reflected throughout their person-centered planning documents
• There should be evidence and documentation that the setting continues to be appropriate for the individual and meets their needs
• Residential settings - Evidence that the individual has chosen their setting
  o The individual has choice of roommates in the setting
  o Choice in decoration, room color, furniture, etc.
  o Requirement includes offering non-disability setting options as well
• Day habilitation settings
  o Includes the right to choose to work in a competitive setting
Access to Visitors

• Individuals can have visitors of their choosing at any time
• Restrictions on visiting hours have been found posted at many residential sites, included in lease agreements, and/or documented elsewhere in programs
• Strategies for Compliance
  o Training of staff at all levels of the organization
  o Development, review, and revision of agency policies and procedures
  o Ensuring any modifications to HCBS Rights are done as part of the person-centered planning process
## Access to Visitors

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<tr>
<td>• Requiring pre-approval to have guests</td>
<td>• Agency-wide training</td>
</tr>
<tr>
<td>• Limits on the time of day to have visitors</td>
<td>• Systemic person-centered policies and procedures</td>
</tr>
<tr>
<td>• Strict visiting hours</td>
<td>• Person-centered planning process for specific modifications</td>
</tr>
<tr>
<td>• Limited number of visitors and visits</td>
<td>• Plan meets requirements for the rights modification</td>
</tr>
<tr>
<td>• Choice of guests not honored</td>
<td>• Blanket restrictions are not allowed</td>
</tr>
<tr>
<td>• Staff decide whether to allow visitation</td>
<td></td>
</tr>
<tr>
<td>• Systemic restrictions for visitation (site and agency-wide)</td>
<td></td>
</tr>
<tr>
<td>• Prohibiting overnight guests</td>
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</tr>
</tbody>
</table>
Rights Modification Process

• Rights modifications must be supported by a specific assessed need and justified in the individual’s plans
  o This may include:
    ▪ Assessments, monitoring, evaluations by a clinician
    ▪ Behavior Support Plans
    ▪ Plans of Protection
    ▪ Life Plan
    ▪ Consistent and thorough documentation and reassessment

• Rights modification should not be viewed as permanent
  o When needed, they should evolve with the individual and their needs
## Rights Modifications: Behavior Plans

<table>
<thead>
<tr>
<th>Deficient Practices</th>
<th>Strategies/Alternatives for Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Behavior plans required individuals to earn activities/rights or using the loss of activities as a</td>
<td>• Requiring pre-approval to have guests</td>
</tr>
<tr>
<td>negative consequence (e.g., visitor restrictions, smoking, access to food)</td>
<td>• Person-centered planning process for specific modifications and plans meet requirements</td>
</tr>
<tr>
<td>• Plans lacked a specific assessed need and/or clinical justifications for HCBS rights restrictions</td>
<td>• Individuals cannot be required to earn activities that are their right</td>
</tr>
<tr>
<td>• Individual moved to a new setting and the prior setting’s modifications were put in place without</td>
<td>• Using a loss of activities and rights as a motivator or as a negative consequence for behavior is not</td>
</tr>
<tr>
<td>reevaluation or planning</td>
<td>permitted</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------------</td>
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<td>------------------------------------------------------------------------------------------------------</td>
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</tbody>
</table>
Rights Modifications: Behavior Plans

• Rights modifications requirements include
  o A specific and individualized assessed need
  o Clinical justification for the restriction
  o A clear description of the condition directly related to the assessed need
  o Documentation of positive interventions used prior to any modifications
  o Documentation of less restrictive methods tried and failed
  o Regular collection and review of data
  o Time limits to review need to continue, fade, or to terminate informed consent from individual (to extent able) and representative if applicable
  o Assurance that intervention will not cause harm
Rights Modifications: Behavior Plans

• When rights modifications impact another individual receiving services, the following must be documented
  o The impact that the rights modification has on the individual
  o Efforts taken to lessen the impact on the individual
  o The informed consent of the individual
Balancing Regulations with Health and Safety

• Implementing person-centered planning while maintaining the health and safety of individuals can be a challenge
• How does a provider ensure the person can exercise their rights while in a supervised setting?
  o You always must follow the person-centered plans along with agency policies
    ▪ i.e., IPOP, Plan of Nursing Care (PONs), Behavior Support Plan, Habilitation plans, and individual’s Life Plan
• Remember: We are not giving people rights, we are ensuring their rights
Lease/Residency Agreements

- Individuals residing in provider-owned or controlled residential settings must have a lease, residency agreement, or other form of written agreement
  - The agreement **must**:
    - Be legally enforceable
    - Provide protections that address eviction processes and appeals
      - Protections are comparable to those provided under the jurisdiction’s landlord/tenant law
  - Not intended to be used by providers only for the purposes of eviction - this is an HCBS right
## Lease/Residency Agreements

<table>
<thead>
<tr>
<th>Deficient Practices</th>
<th>Strategies/Alternatives for Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Language inconsistent with typical lease agreements</td>
<td>• Systemic person-centered policies and procedures for lease/residency agreements</td>
</tr>
<tr>
<td>• Visitation and other restrictions included in the lease</td>
<td>• Settings where providers have control or influence are considered provider-controlled</td>
</tr>
<tr>
<td>• Lease document does not provide enforceable protections that address eviction</td>
<td>o Influence of what individuals live there and over what service providers are used at the setting</td>
</tr>
<tr>
<td>process or appeals, comparable to those in landlord-tenant laws</td>
<td></td>
</tr>
</tbody>
</table>
FAQ: Will OPWDD Be Providing Us With A Lease/Residency Agreement Template?

- OPWDD will be providing additional information to voluntary providers on this topic soon, including a lease/residency agreement template to be used as a resource and template for providers.
- A Google search for “HCBS Settings lease agreement template” will provide templates from numerous states.
- Remember that this is a right and housing protection for individuals.
  - It makes sense to incorporate this into the person-centered planning process and discuss this in a meaningful way on a regular basis.
- 14 NYCRR 633.12 - Objections to Services regulations still apply as well.
Questions?

Please email Quality@opwdd.ny.gov
Strategies, Tools, and Resources
Strategies for Long-Term and Sustained Compliance

1. Practice meaningful person-centered planning
   • Effective person-centered planning policies and practices are essential for complying with the HCBS Settings rule.
   • All providers should have policies on person-centered practices and all staff should be trained accordingly, especially DSPs.
   • Person-centered practices should be embedded throughout agency culture and programs.
   • The HCBS Settings Rule is most importantly about the experience of the individual in the HCBS setting, which is why person-centered planning is such an important part of this rule.
Strategies for Long-Term and Sustained Compliance

2. Update agency policies and procedures to reflect HCBS Settings and person-centered planning requirements
   • Policies and procedures set a consistent set of expectations to follow for all staff throughout the agency.
   • All applicable outdated policies and procedures should be revised, such as outdated 633.4 rights documents and policies.
   • All staff should be trained on HCBS-related policies
     o It is important that agency staff on all levels are familiar with this rule and what it means for the individuals that we serve.
   • Establish a system of consistency, accountability, and minimum standards for compliance in critical HCBS areas.
3. Staff training on HCBS Settings, individual rights, and person-centered planning is important, especially for DSPs
   • DSPs play an essential role in implementing the HCBS settings rule and person-centered planning.
     o DSPs must be trained accordingly on those expectations.
   • A focus on DSP Core Competencies and Code of Ethics are an effective way to train DSPs on how to support individuals in a person-centered way.
   • DSPs should be familiar with HCBS settings, person-centered planning, supporting individual rights, and how this impacts the individuals that we serve.
   • Trainings should include creative ways for staff to problem-solve barriers in meeting requirements.
3. Staff training on HCBS Settings, individual rights, and person-centered planning is important, especially for DSPs (cont.)

• Be wary of only using “read and sign” trainings vs using other interactive methods.

• Inform people of resources available for additional information, training and/or guidance.

• Consider including all groups in the agency’s training process.
  o E.g., other DSPs, clinicians, individuals receiving services

• Assess what training method is most effective.

• Routinely assess the effectiveness of training being provided.
Strategies for Long-Term and Sustained Compliance

4. Incorporate HCBS Settings requirements into quality improvement tools and routinely assess HCBS Settings for compliance

- Routinely assess all HCBS programs for Person-centered practices and HCBS settings requirements on a regular basis
- Include HCBS settings and person-centered planning efforts and activities into the agency’s Quality Improvement Plan (QIP) on an ongoing basis.
- All agencies should have a Quality Improvement Plan.
  - If your agency does not have a QIP, you can find information and a template on OPWDD’s website
Strategies for Long-Term and Sustained Compliance

5. Effective and meaningful implementation of individual rights for HCBS Settings requirements is essential for long-term and sustained compliance
   • All individuals receiving any HCBS waiver services should be educated on their rights and know how to exercise them.
     o This should be discussed as part of the person-centered planning process.
     o Remember that there are additional rights for provider-controlled or owned settings.
   • Any outdated policies and procedures should be revised to include new updated requirements
     o E.g., Having access to food at any time and visitors at any time for provider-controlled or owned settings.
Strategies for Long-Term and Sustained Compliance

5. Effective and meaningful implementation of individual rights for HCBS Settings requirements is essential for long-term and sustained compliance (cont.)

- Use plain language for all individual rights documents.
  - Avoid dense complicated terminology and repeating of regulation terminology that is difficult to understand.
  - Use pictures, graphics, and other ways to explain rights in a concrete and understandable way for individuals.
Strategies for Long-Term and Sustained Compliance

5. Effective and meaningful implementation of individual rights for HCBS Settings requirements is essential for long-term and sustained compliance (cont.)

• Avoid “read and sign” documents as evidence that the individual is aware of and exercises their HCBS rights or as evidence that staff have been trained on and know how to support others in exercising their rights.
  o If DQI had a conversation with an individual or staff member about HCBS rights, would they recognize these requirements as rights for individuals?
DQI Review of Certified HCBS Sites

• Prior to Federal Compliance Deadline of **March 17, 2023:**
  - DQI is reviewing certified sites funded by OPWDD’s HCBS Waiver to validate compliance with HCBS Settings requirements
  - Sites with previously **unmet** HCBS requirements based on DQI review history will be validated prior to the compliance date and must be corrected before that time
  - All sites delivering HCBS habilitation services will be reviewed for compliance with HCBS settings requirements as part of routine DQI Site Reviews
  - Providers are encouraged to self-assess their HCBS programs for compliance with the HCBS Settings Rule prior to the compliance date
HCBS Tools and Resources

• In November 2022, DQI emailed all providers several tools and informational resources to aid in provider self-assessment and training
  o This was aimed to support overall HCBS compliance in HCBS programs
• The following tools were shared by DQI
  o HCBS Compliance Worksheet for Providers
  o HCBS Worksheet-Site and Partial Person-Centered Review Worksheet
  o Individual Experience Interview Template
  o Final Agency Heightened Scrutiny Site Worksheet
  o HCBS Resources-hyperlinks
• These tools and resources are recommendations that providers should utilize
  o They are for providers to use for their own QI purposes only
  o They are not being collected by DQI on site
HCBS Compliance Worksheet

- A systemic tool looking at HCBS-related policies, procedures, staffing, and training throughout an agency
- Divided into
  - Habilitation Planning and PCP Process
  - Integrated Settings, Natural Supports, and Community Access
  - Policies and Procedures that Promote HCBS Rights
  - Staffing, Education, and Training
  - Rights and Due Process
Site/Partial PCR HCBS Worksheet

- From HCBS-related standards in DQI’s Site Review and PCR Protocols
- DQI has guidance for all standards including HCBS related standards
- These standards reflect the current HCBS Settings requirements that DQI reviews for in Site and PCR Reviews
Individual Experience Interview

- The experience of an individual in an HCBS Setting from their point-of-view
- Focuses on aspects of HCBS settings requirements, rights, and person-centered planning
- Can be used as a satisfaction survey tool
- The experience and satisfaction of individuals is essential for site compliance
Agency Heightened Scrutiny Site Worksheet

- Shows what agency documentation is in compliance with HCBS Settings and person-centered planning requirements
- Provides questions to consider about the site, PCP, and relationship to the community
- Providers should look at the list of suggested documents and determine if there are any topics on the worksheet that should be further discussed, developed, and/or explored
OPWDD HCBS Resources

• OPWDD 636-1 and 636-2 Regulations
  o Home and Community-Based Services and Settings Requirements, Effective 10/1/2021
  o Link: [OPWDD Regulations Person-Centered Planning, 636-1 and HCBS Settings Requirements, 636-2](#)

• OPWDD HCBS Settings Toolkit
  o Rights Palm Card
  o Guidance on balancing access to food
  o Other HCBS resources
  o Link: [HCBS Settings Toolkit | Office for People With Developmental Disabilities (ny.gov)](#)
OPWDD HCBS Resources (Cont.)

- DQI Resources and Protocols
  - QI Toolkit: Risk, PCP, QI Plans, and many other topics
  - DQI Review Protocols and Guidance
    - Includes HCBS standards in Site Review, Person-Centered Review, and Agency Review protocols
  - Agency Quality Performance Standards
  - Link: Provider Stability and Performance | Office for People With Developmental Disabilities (ny.gov)
OPWDD HCBS Resources (Cont.)

• OPWDD Health & Safety Alert
  o Balancing the Right to Access to Food with Protections for Individuals in HCBS Settings
  o Link: Health & Safety Alert: Balancing the Right to "Access to Food" with Protections for Individuals in HCBS Settings-July 2018

• Resources for DSPs
  o Link: National Alliance of Direct Support Professionals: Code of Ethics, DSP Core Competencies, and Frontline Supervisor Core Competencies
Department of Health (DOH): HCBS Resources

• Department of Health (DOH) - HCBS Final Rule
  o Statewide Transition Plan
  o PCP Training Series and Resources
  o Link: Home & Community-Based Services (HCBS) Final Rule (ny.gov)

• NYS DOH Person-Centered Planning and Practice Resource Library
  o Includes recorded trainings, resources, presentations, and much more
  o DOH has contracted with Michael Smull’s group, Support Development Associates (SDA) for this HCBS person-centered planning training series
  o Includes person-centered planning templates and guidance
  o Link: NYS DOH Person-Centered Planning and Practice Resource Library
Federal HCBS Resources

• CMS HCBS Settings Toolkit
  o FAQs on HCBS Settings and Heightened Scrutiny topics
  o Technical guidance on specific aspects of the rule
  o Transition plan guidance and implementation timeline
  o Link: [Home & Community Based Settings Requirements Compliance Toolkit | Medicaid](#)
Federal HCBS Resources (Cont.)

- Administration For Community Living (ACL)
  - Federal clearinghouse of resources, articles, and grants pertaining to PCP, community integration, and many other HCBS topics
  - Link: [https://acl.gov/](https://acl.gov/)

- National Center on Advancing Person-Centered Practices and Systems
  - Includes resources, technical assistance, webinars, and much more
  - Link: [National Center on Advancing Person-Centered Practices and Systems](https://www.ctrs-alc.org/)

Additional HCBS Resource

• HCBS Advocacy.org website
  o National clearinghouse of HCBS settings articles and resources
  o Links to all statewide transition plans
  o Link: HCBS ADVOCACY COALITION
The intent of the HCBS Settings Rule is to improve the quality of life for individuals that we serve.

HCBS Settings requirements are individual rights that are guaranteed.

HCBS Settings requirements are an expansion of rights for individuals receiving HCBS waiver services.

Important HCBS Settings Areas to Focus on for Individuals:

- Community Integration
- Person-Centered Planning
- Meaningful opportunities
- Informed Choices
- Access
- Control of one's own Schedule
Questions?

Please email Quality@opwdd.ny.gov