

## Exploratory Questions to Assist States in Assessment of *Non-Residential* Home and Community-Based Service (HCBS) Settings

### Background

The home and community-based (HCB) settings regulation requirements at 42 CFR §441.301(c)(4)/441.710(a)(1)/441.530(a)(1) established a definition of HCB settings based on individual experience and outcomes, rather than one based solely on a setting's location, geography or physical characteristics. The purpose of these final regulations is to maximize the opportunities for participants receiving Medicaid HCBS under Section 1915(c), 1915(i), and 1915(k) of the Social Security Act, to receive services in integrated settings and realize the benefits of community living, including opportunities to seek employment and work in competitive integrated settings. The HCB settings requirements apply to both residential and non-residential settings for individuals who are receiving Medicaid funding for HCBS.

CMS previously released a set of Exploratory Questions to assist states in their assessment of *residential* HCBS settings, and is now releasing a similar set of Exploratory Questions for *non-residential* settings. CMS encourages states to consult the residential guidance Exploratory Questions as well in evaluating their non-residential settings. Many of the questions are relevant to all HCBS settings.

These two documents along with a set of Frequently Asked Questions (FAQS) titled "HCBS Final Regulations (42 CFR Part 441) Questions and Answers Regarding Sections 1915(c) and 1915(i) Home and Community-Based Services and Settings" complete the subregulatory guidance that we plan to issue at this time. Other documents available in the HCBS Toolkit at [www.medicaid.gov](http://www.medicaid.gov) including the Statewide Transition Plan Toolkit for Alignment with the Home and Community-Based Services (HCBS) Final Regulation's Setting Requirements, Guidance on Settings that Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community, and the Regulatory Requirements for Home and Community-Based Settings supplement the information contained in the rule itself. This array of documents provides direction to help states develop their statewide transition plans and waiver-specific transition plans. Please note: states must submit their statewide transition plans to CMS by March 15, 2015; these plans should address HCB settings requirements for both residential and non-residential services.

### Purpose

The purpose of this document is to offer considerations for states as they assess whether non-residential HCB settings meet the Medicaid HCB settings requirements. The optional questions for non-residential settings are organized by each HCB setting regulation requirement (*in italics*). These questions serve as suggestions to assist states and stakeholders in understanding what indicators might reflect the presence or absence of each quality in a setting. These questions are not designed to be a score sheet and not all questions relate to every HCBS or every individual served. As part of a state's Statewide Transition Plan for compliance with the HCB settings requirements, please note that simply asserting that a non-residential service adheres to these questions is not sufficient to represent a state's assessment of compliance with HCB requirements. We offer these questions as a tool (and not a requirement) to help illustrate the HCB settings qualities for non-residential HCBS and to assist states in developing their transition plan for an existing 1915(c) waiver or 1915(i) state plan, or for ensuring initial compliance with HCB requirements in a new 1915(c), (i) or (k) program. Finally, we clarify here that CMS will not require use of these questions in our review of a state's transition plan or plan for new program compliance. States provide a wide variety of non-residential services under HCBS programs, ranging from extended state plan services (which may be highly clinical/medical in nature but provided in an amount, scope or duration not available under the regular state plan benefit) to services that may support the individual in regular community based activities (e.g., supported employment, pre-vocational, habilitation, adult day, clubhouse models and psychosocial rehabilitation). Therefore, states

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will be tailoring their review to the type of services that are relevant in their state. In some cases, especially when the service provided is highly clinical/medical in nature, e.g., medical adult day programs, the nature of the service will impact how the state addresses the HCB settings requirements. The state's determinations about these settings and the extent to which changes in the settings are necessary to comply with the requirements may be different than state decisions/actions for a setting that is less medical/clinical in nature.

States should consider carefully the extent to which settings compliance is met due to the nature of the service and/or the HCB qualities. For example, for individuals seeking supports for competitive employment, 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, or whether the provision of a different type of service would more fully achieve competitive employment in an integrated setting for the individual, in addition to whether the setting meets the HCB settings requirements. Or, in another example, a service that is primarily rehabilitative (offers physical, speech, occupational and other therapies), but also offers respite to family caregivers, may be short-term in duration and requires by definition that all participants have a disability. Another type of service may be designed to primarily offer personal care, social recreational supports and respite for family caregivers, and is more long-term in duration. The manner in which each of these services meets the HCB settings requirements may vary.

We also note that these 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).

Exploratory Questions:

**1. *The setting is integrated in and supports full access of individuals receiving Medicaid HCBS 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, to the same degree of access as individuals not receiving Medicaid HCBS. 42 CFR 441.301(c)(4)(i)/441.710(a)(1)(i)/441.530(a)(1)(i)***

- Does the setting provide opportunities for regular meaningful non-work activities in integrated community settings for the period of time desired by the individual?
- Does the setting afford opportunities for individual schedules that focus on the needs and desires of an individual and an opportunity for individual growth?
- Does the setting afford opportunities for individuals to have knowledge of or access to information regarding age-appropriate activities including competitive work, shopping, attending religious services, medical appointments, dining out, etc. outside of the setting, and who in the setting will facilitate and support access to these activities?
- Does the setting allow individuals the freedom to move about inside and outside of the setting as opposed to one restricted room or area within the setting? For example, do individuals receive HCBS in an area of the setting that is fully integrated with individuals not receiving Medicaid HCBS?
- Is the setting in the community/building located among other residential buildings, private businesses, retail businesses, restaurants, doctor's offices, etc. that facilitates integration with the greater community?
- Does the setting encourage visitors or other people from the greater community (aside from paid staff) to be present, and is there evidence that visitors have been present at regular frequencies? For example, do visitors greet/acknowledge individuals receiving services with familiarity when they

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encounter them, are visiting hours unrestricted, or does the setting otherwise encourage interaction with the public (for example, as customers in a pre-vocational setting)?

- Alternatively where public transportation is limited, does the setting provide information about resources for the individual to access the broader community, including accessible transportation for individuals who use wheelchairs?
- Does the setting assure that tasks and activities are comparable to tasks and activities for people of similar ages who do not receive HCB services?
- Is the setting physically accessible, including access to bathrooms and break rooms, and are appliances, equipment, and tables/desks and chairs at a convenient height and location, with no obstructions such as steps, lips in a doorway, narrow hallways, etc., limiting individuals' mobility in the setting? If obstructions are present, are there environmental adaptations such as a stair lift or elevator to ameliorate the obstructions?

**2. The setting is selected by the individual from among setting options including non-disability specific settings ... The settings options are identified and documented in the person-centered plan and are based on the individual's needs, preferences, ... 42 CFR 441.301(c)(4)(ii)/441.710(a)(1)(ii)/441.530(a)(1)(ii)**

- Does the setting reflect individual needs and preferences and do its policies ensure the informed choice of the individual?
- Do the setting options offered include non-disability-specific settings, volunteering in the community, or engaging in general non-disabled community activities such as those available at a YMCA?

**3. The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)/ 441.710(a)(1)(iii)/441.530(a)(1)(iii)**

- Is all information about individuals kept private? For instance, do paid staff/providers follow confidentiality policy/practices and does staff within the setting ensure that, for example, there are no posted schedules of individuals for PT, OT, medications, restricted diet, etc., in a general open area?
- Does the setting support individuals who need assistance with their personal appearance to appear as they desire, and is personal assistance, provided in private, as appropriate?
- Does the setting assure that staff interact and communicate with individuals respectfully and in a manner in which the person would like to be addressed, while providing assistance during the regular course of daily activities?
- Do setting requirements assure that staff do not talk to other staff about an individual(s) in the presence of other persons or in the presence of the individual as if s/he were not present?
- Does the setting policy require that the individual and/or representative grant informed consent prior to the use of restraints and/or restrictive interventions and document these interventions in the person-centered plan?

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- Does the setting policy ensure that each individual's supports and plans to address behavioral needs are specific to the individual and not the same as everyone else in the setting and/or restrictive to the rights of every individual receiving support within the setting?
- Does the setting offer a secure place for the individual to store personal belongings?

### **4. 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. 42 CFR 441.301(c)(4)(iv)/441.710(a)(1)(iv)/441.530(a)(1)(iv)**

- Are there gates, Velcro strips, locked doors, fences or other barriers preventing individuals' entrance to or exit from certain areas of the setting?
- Does the setting afford a variety of meaningful non-work activities that are responsive to the goals, interests and needs of individuals? Does the physical environment support a variety of individual goals and needs (for example, does the setting provide indoor and outdoor gathering spaces; does the setting provide for larger group activities as well as solitary activities; does the setting provide for stimulating as well as calming activities)?
- Does the setting afford opportunities for individuals to choose with whom to do activities in the setting or outside the setting or are individuals assigned only to be with a certain group of people?
- Does the setting allow for individuals to have a meal/ snacks at the time and place of their choosing?