



**Home and Community-Based Services (HCBS) Statewide Transition Plan (STP)
Webinar
Questions and Answers
August 18, 2016**

These FAQs respond to questions received by participating agencies and offices about the New York Home and Community-Based Services (HCBS) Statewide Transition Plan (STP) Webinar. Please consult all previously released materials in conjunction with the following Q & A.

General Questions

Q1. We are a skilled nursing facility with an adult day health care (ADHC) (medical model) program. The ADHC program operates in a building that is connected to the SNF [skilled nursing facility], has its own entrance/exit, and has staff that are dedicated/work solely in the ADHC program. Why does the HCBS Setting Rule identify a nursing facility as a setting that is not home or community-based? In addition, can you please provide the definition of an “institutional setting”?

A1. As defined by CMS, “Settings presumed to have institutional qualities include: 1) settings located in a building that is also a publicly or privately owned and operated facility that provides inpatient institutional treatment; or 2) settings located on the grounds of, or immediately adjacent to, a public institution; or 3) settings that have the effect of isolating individuals from the broader community of individuals not receiving HCBS.” All of these settings are subject to heightened scrutiny review as they may be isolating by nature and therefore not home and community-based.

CMS does not define “institutional setting” within the regulation; they indicated “public institution” is already defined in Medicaid regulations for purposes of determining the availability of Federal Financial Participation (FFP).

Q2. What will happen to current Plans of Correction (POC) concerning specific individuals and/or systemic issues that the Intermediate Care Facility (ICF) has been required by a federal Department of Health (DOH)/Centers for Medicare and Medicaid (CMS) survey's finding of deficiencies to adopt? Does the POC then end?

A2. The agency will still be required to ensure the plan of correction is implemented. The Office for Persons with Developmental Disabilities (OPWDD) will verify the plan of correction at the next visit; and if the area is still deficient, it will be cited under the appropriate state regulation.

Q3. Is it intended for the Care Coordination service under Managed Care to replace Medicaid Service Coordination?

A3. NYS intends to offer strengthened and conflict free care coordination through new Care Coordination organizations that are planned for development in 2017 for the OPWDD

system. Once this team-based and IT-enabled service is launched across NYS, it will foster increased person-centeredness in care planning and service delivery, and provide a path to begin to implement managed care.

Q4. The OPWDD portion of the transition plan did not have adequate statements on medical/clinical necessity for non-residential settings. OPWDD has not made available its "validation" of the new Coordinated Assessment System (CAS).

A4. The initial, and current implementation of the CAS is focused on using the resulting summaries for person-centered planning purposes. The CAS validation studies have been completed and resulted in establishing a valid instrument. We are actively working on the public report and are including all validity related activities. Upon completion and review, we will have a statewide WebEx presentation to share the outcome of the various CAS studies with interested stakeholders.

Q5. Residents of converting ICFs may want to stay there and have it continue to be operated as an ICF so they can secure the active treatment to which they are entitled. Some feel they are denied due process rights to protest the conversion.

A5. When a provider converts an ICF to an Individualized Residential Alternative (IRA), it is obligated to notify the individuals who reside in that ICF and their advocates of the change. The provider is not obligated to provide due process to an individual unless the individual is relocating to another residential setting. In that case, the individual is being discharged from the ICF and due process rights are available. Individuals who reside in ICFs that propose to convert to IRAs can request to relocate to another ICF setting.

Q6. Is a recipient's only recourse, if they seek a reasonably prompt placement in an ICF, to agree to placement in a secure facility with a population consisting mainly of people referred by the criminal justice system, plus a few vulnerable individuals who have nowhere else to go? The system fails to provide sufficient and adequate settings for people with complex needs and allows private providers to turn away those most in need (i.e., "cherry picking").

A6. ICF providers are able to backfill any vacancies they currently have in their ICFs. As of August 2016, 423 community-based ICF/IDDs operate throughout New York State.

Q7. Are due process procedures required for all people involved in a conversion?

A7. No. Due process is required when an individual is being asked to relocate and the ICF they leave will remain in operation. When an ICF is converting to an IRA with no change in capacity and all individuals are choosing to remain at that location, that ICF program is ending and is no longer a choice for any individuals. The ICF provider must notify the individual and his/her advocates of the change in the program, but does not offer due process.

Q8. What happens when families/consumer refuse to transition to an IRA?

A8. Individuals may request to relocate to another ICF, but should recognize that there are plans for most ICFs (with the exception of Children's Residential Project) to transition by October 2018. Through its ICF Transition Plan, which has been approved by the federal Centers for Medicare & Medicaid Services (CMS), OPWDD is transforming its residential

services to ensure that each person is able to receive supports and services in the most individualized way and integrated setting possible. Providers will be working with individuals and their advocates to help them understand that as ICFs transition to community-based waiver services, each individual will undergo person-centered planning and develop an Individualized Service Plan (ISP) that will ensure that his/her needs for support are met in the IRA or other community setting. OPWDD will assist providers with these communications. In addition, the New York Association on Independent Living (NYAIL), through a contract with the Department of Health, has established nine regional Transition Centers which will provide peer support to individuals and families who have concerns about the transition process.

Q9. Is the HCBS settings toolkit only for OPWDD providers or relevant to all HCBS?

A9. While the OPWDD toolkit is specific to OPWDD, it does contain tools/materials available on the CMS website which are relevant to all HCBS. You can find the CMS website here: <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

Q10. If our Supportive Housing Scattered Site program has the lease in the agency name, would it qualify for HCBS?

A10. If the agency holds the lease and is also the provider of HCBS, then the program would need to comply with the additional provider-owned and controlled standards within the HCBS rule. More commonly, supportive housing scattered site programs will meet the settings requirements for individuals to receive HCBS (if otherwise eligible), by ensuring individuals have a lease or other legally enforceable agreement in their name which provides similar protections as those not receiving HCBS services; such as a sublease or protections under regulations such as Part 595.

Q11. NYC already received their housing assessment for Office of Mental Health (OMH) providers. When will the rest of state be receiving this assessment? It sounded like the presenter said November 1. Does the November 1 date indicate when agencies will be receiving it, or does it indicate when it will need to be completed by? Also, is it possible to receive a copy of the assessment that was distributed in NYC so that we can begin assessing what information will be needed?

A11. OMH residential providers throughout the rest of the state (excluding NYC) can expect to receive training on the provider housing assessment tentatively in mid-October to early November. Once training is conducted, providers will be expected to complete the assessment within 60 days. The assessment is in an electronic format, however a hard copy can be made available to you by requesting a copy at hcbs-residential@omh.ny.gov.

Q12. Due to all of the lines being in use, I was unable to have access to the NY HCBS STP webinar. How do I get on?

A12. We apologize for the technical difficulties resulting from the high volume of participants. For future webinars, we encourage offices to get on the webinar in groups in order to reduce individual participation. This may help prevent future occurrences.

Q13. When and where will the PowerPoint slides and webinar with audio be available?

A13. They have been posted and can be accessed through the following link:
http://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm

Q14. Is there an HCBS listserv?

A14. At the current time, there is no HCBS listserv. In order to receive updated information and documents about HCBS please be sure to periodically check for updates on the website listed above.